

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

JULY 18, 2006

7:00 P.M. TOWN HALL

Present: David Sherman, Chair
John Siegfried
Peter Hatem

Barbara Schenkel
David Griffin
Jack Kennealy

Absent: Paul Godfrey

Also present, Maureen O'Meara, Town Planner.

Mr. Sherman opened the meeting and asked for comments on the minutes. With noted amendments, he asked for a motion.

Mr. Kennealy made a motion to accept minutes as amended.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

Mr. Sherman reviewed correspondence submitted.

OLD BUSINESS

Spurwink Woods Subdivision Reconsideration - Richard Bryant of 55 Spurwink Ave is requesting that the Planning Board reconsider the approval vote for the Spurwink Woods Subdivision granted on June 20, 2006.

Mr. Sherman told the Board that they are not required to reconsider the vote, however, a Board member that voted to approve the project could make a motion to reconsider. He asked if there were any members that wanted to make a motion.

No motion for reconsideration was made.

Elliot Private Accessway Permit/Resource Protection Permit - Donald Elliot is requesting a Private Accessway Permit and Resource Protection Permit to make the lot buildable and construct a driveway for a lot located at 43 Hannaford Cove Rd, Sec. 19-7-9, Private Accessway Permit Public Hearing, Sec. 19-8-3, Resource Protection Permit Public Hearing.

Herbert P. Gray, consulting engineer for Mr. Elliot, stated the revised plans show a 20' paved radius, and schedule "A" with a maintenance agreement has been added. There has been a 2" water line added for the sprinkler system recommended by the Fire Chief. A

keystone retaining wall system has been added as well as a guardrail. Emergency vehicles would now be able to access the lot with the radius upgrades.

Mr. Sherman opened the floor to the Public Hearing.

Mr. Thomas Egan, 41 Hannaford Cove Road, located to the west of the subject. He wanted to submit some comments to the Board for the record. In a previous letter to Maureen O'Meara, he listed some of the criteria this application did not meet from the Zoning Ordinance dealing with the septic system and the turning radius. He has spent time, effort and expense to protect his property and the environment. The proposed driveway is 10' narrower than the Zoning Ordinance provisions. Construction will take place within 3" of the boundary lines and he will not accept any trespassing or damage in the course of excavation or construction. He is concerned that a fire truck could not navigate the driveway to fight a fire that would be so close to his home. There are adverse impacts to the Board allowing waivers for the applicant's requests. The high retaining wall will create ponding on his property from the proposed driveway. Consideration should also include the upstream and downstream of ponding as erosion will occur. He stated that there has been a change in vegetation since the Yokabaskas driveway was built 16 years ago. He will not accept ponding or erosion on his property due to the driveway being constructed. He has provided a lot of data, has hired a wetland scientist, a surveyor, and provided legal data to support his concerns. He remains convinced that without a residence plan, this application is premature, abstract and incomplete. That risk should not be born by him.

Mr. Sherman thanked Mr. Egan and asked for a copy of his remarks.

Will Haskell, Gorrill Palmer, wanted to discuss a few items related to the submission, specifically the Resource Protection Standards, that relate to drainage, obstruction of natural flow, and not threatening upstream or downstream waters by erosion. He believes, from the information submitted, that the higher storm events will create ponding upstream. Although the 12" culvert shows it will convey a 25-year storm, in surcharge conditions there will be ponding. The velocity exceeds 6 ft per second and vegetative soil can only handle 3-4 ft per second. This will have a negative impact on upstream and downstream properties next to the proposed roadway. There is no information on how the peak flows were calculated through the culvert. He suggested that the Board recommend the applicant submit a drainage plan and watershed maps to show flow calculations. The Planner's most recent memo showed that the applicant had addressed erosion control. They did not find any erosion control or maintenance on the plans.

The Private Accessway Standards show a 30' wide right of way. The existing R.O.W. is 20.63 ft. This will be very difficult for a contractor to construct without encroaching on abutting properties. There needs to be clear information submitted on how this will be built in that narrow R.O.W. There is also concern with the narrow width between the guardrails, specifically with emergency vehicles. There is also some issue with site distance that can be achieved with some clearing; however, he wants to make sure that clearing doesn't occur on abutting properties. The other concern is the fill section,

located on the detailed road section. The first 60 ft of the proposed road is a cut section, without details. How will it affect abutting properties? The surface drainage may be an issue as it is currently designed for the water to run down the road and flow over the slight berm and over the retaining wall.

Mr. Hatem asked where ponding relates to the resource protection standards.

Mr. Haskell stated in 19-8-3(b) items 1,2 &3 relate to drainage. Item 3 specifically speaks to this issue where it speaks to flooding.

Mr. Hatem asked if ponding, in of itself, violates item 3(b)?

Mr. Haskell stated that he did not agree with that, as you are creating a drainage problem on someone else's property that did not exist previously.

Mr. Hatem asked why would it be ponding?

Mr. Haskell stated because the culvert was not adequately sized.

Mr. Hatem asked, what size would the culvert need to be to not create ponding?

Mr. Haskell stated he would need to see the drainage map and the peak flows.

Mr. Hatem asked how he concluded there would be ponding then.

Chris Vaniotis, legal counsel for Mr. Egan, thanked the Chair for the ability to speak. He said that the Board might consider this much ado about nothing, but this application is about squeezing substantial construction within 20 ft, and could encroach on abutting properties and cause damage. If the Egan property is high and dry, and, due to this construction there is flooding, even temporarily, damage is being caused to that property.

Mr. Sherman asked, if the flooding occurred in delineated wetland areas, would your client take the position that it is damaging to the property?

Mr. Vaniotis referred to same section of the Ordinance as Mr. Haskell. He noted that there is the opportunity for erosion and sedimentation. Mr. Haskell believes there will be erosion on both the Egan and Yokabaskas properties. There is no room to build a permanent structure at the end of the culvert to alleviate this potential problem. The Ordinance requires the property owner to stay within the confines of his property. It is up to the Board to make sure that the applicant will be able to do what he has proposed to do.

He discussed the waivers requested. Nonconforming lots without necessary street frontage are going to be closer to neighbors when developed, typically back lots. The provision provides development of nonconforming lots if adequate access is provided, if the impact on adjacent properties is minimized, and if consistent with sound

neighborhood development. He believes this application will not improve neighborhood development but also create adverse impacts on neighbors.

When looking at the Planner's memo, it doesn't include in the findings of fact the alteration of wetlands standards. He urges the Board to look at the standards one by one to determine that the application meets the standards. The Planner offers the Board the option of approving this if the applicant meets a series of conditions raised in the report from the Town's Engineer. The Town Engineer recommends that the width of the road not be reduced by the guardrails, and the guardrails be redesigned. The report from the Fire Chief has yet addressed the ability to get the trucks through the 11.5 ft. to the left of the guardrails. He does not believe the application currently meets the standards for the reasons described.

Rob Yokabaskas, 45 Hannaford Cove Road, believes his property would be most affected. An 180 ft wall would be out of place in the neighborhood, or in Cape Elizabeth for that matter and unprecedented in this community. This is why the Ordinance states that 30 ft is required for a road. They had some extra landscape fabric and made a wall to see what it would look like. He had pictures for the Board, and the photos do not show the 180ft of wall as proposed. During the fall flood of 1996, he had flooding up and over his driveway, which overwhelmed his 15" culvert. He had a photo of a recent storm, which shows ponding occurring on his property. He has also identified 5 mature trees that are on his land that would lose ½ of its root system and would probably perish. He wants to know who would be responsible.

Mrs. Schenkel stated that May and June were the rainiest months on record. Was it both months that the culvert was inadequate?

Mr. Yokabaskas stated that it didn't go over the road, but flooding did occur.

Mrs. Schenkel asked how long the flooding or ponding remained on the property?

Mr. Yokabaskas stated that there is always water there.

Mr. Egan asked to speak with a rebuttal.

Mr. Sherman stated they normally do not allow that. He concluded the Public Hearing and asked Mr. Gray to return to the podium.

Mr. Gray wanted to return to the Oest review, of May 10, 2006. The 12" culvert proposal was approved by Stephen B. Harding, Town Engineer. Also in this letter, the Town Engineer stated that they might want to consider a guardrail in the section the area of the highest fill section. The guardrail is less than 3 ft from the end. With careful construction, the wall will look very nice. Finally, the Town Engineer concurred with the application submitted. Mr. Gray stated that when frozen, there could be spill over the wall, however, the applicant is willing to install a larger culvert. He also stated that the

Fire Chief wrote a memorandum stating that he could maneuver the ladder truck through the driveway, and that truck is the widest truck that the Town has.

Mrs. Schenkel asked about snow removal.

Mr. Sherman asked if they had asked the abutters for easements.

Mr. Gray said that they had asked the abutters, and no one would give easements. He stated that snow removal is taking care of with a snow blower blowing the snow into a dump truck.

Mr. Sherman asked about constructing the wall without encroaching upon neighbor's property.

Mr. Gray said that it depends on the contractor. He reiterated that the 12" pipe was accepted by the Town Engineer, however, he will increase the size to be good neighbors.

There was discussion concerning the interpretation of the Ordinance for acceptance of nonconforming lots and minimizing the impact of other lots.

Mrs. Schenkel asked if there was any precedence for this application.

Ms. O'Meara referenced a bridge to access a lot on Dyer Pond Rd.

Mrs. Schenkel asked about stormwater calculations.

Mr. Gray stated he thought they were past that as the Town Engineer agreed with his engineer. He stated a copy of the report that is stamped from an engineer is in his file.

There was discussion concerning removing vegetation for site distance.

Mr. Sherman asked staff that, if this was approved, and the project encroached on abutters, would it then be a code enforcement issue?

Ms. O'Meara stated and that if there is an encroachment, it becomes an enforcement issue and a civil issue. The Town Engineer had stated there are styles of guardrails that can be mounted to provide more width of the travel way.

Mr. Hatem asked that, if this lot was created in good faith, and with current regulations, and there are some difficulties to meet compliance and if the Board refuses the application, isn't that a taking?

Mr. Vaniotis doesn't believe it is a taking if there are valid regulatory reasons why the property is unbuildable. A waiver needs to be granted in this case.

Mr. Griffin believes that they need to look at the type of structure that would be built, the setbacks, and the impact of views to neighbors.

Mr. Hatem stated that the Board typically doesn't look at that.

Ms. O'Meara stated she asked the Town Attorney for his opinion of whether a building footprint is required. The Board could ask for a building footprint. If a sample footprint is provided, however, and the Planning Board approves it, the likelihood is good the Planning Board would also approve a revised building footprint later on as long as it fits inside the building envelope.

Mrs. Schenkel feels for everyone this lot affects. This will have an effect on the neighbors and would like to see the neighbors talk about a resolution.

Mr. Sherman stated that this is an invited problem, and if the Board approves this, and if the project could survive an appeal, the abutters would want to work with the applicant with easements to get around constructing the wall. He doesn't believe he has enough information to approve the project and would like the applicant to return with revised plans showing the larger culverts, and address the issue of ponding.

Mrs. Schenkel asked that maybe everyone could get together and come up with a rational, equitable solution to the problem.

Ms. O'Meara stated that she had talked to the applicant about this previously, and the applicant had written letters to the abutters for a solution.

Mr. Siegfried asked how the vegetation would be cut and if the 15" culvert would be added as a condition.

Ms. O'Meara stated that the abutter was correct that no findings of fact had been drafted concerning related to the Resource Protection Permit and if the Board were to consider a motion, those findings would need to be added.

Mr. Hatem made the following motion for the Board to consider.

Findings of Fact

1. Don Elliot is requesting a Private Accessway Permit and Resource Protection Permit for a lot located at 43 Hannaford Cove in order to make the lot eligible for a building permit. The lot is 45,262 sq. ft and located in an RA District where the minimum lot size is 80,000 sq. ft. As a legal, nonconforming lot located in the RA District, only one single family home is permitted by the Zoning Ordinance. The proposed lot will have only one (1) dwelling unit and related accessory buildings and uses.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

2. Based on the project plans, the proposed accessway shall be located within a dedicated right-of-way of 20.63 feet wide. This is a reduction from the 30' requirement and, based on the final comments of the Fire Chief in his memo dated June 16, 2006, will provide adequate access for emergency vehicles.

Mr. Siegfried seconded the motion. 6 in favor, 0 opposed.

3. As designed on the plans, the accessway will be improved with a paved drive constructed with a sub base constructed with gravel meeting MDOT Spec. 703.06 Type D with a depth of at least fifteen (15) inches and paved, and having a width of fourteen (14) feet, except where the wall will be constructed and a lesser width provided to accommodate a guardrail. The maximum grade within the first fifty (50) feet of the edge of street paving will be five percent (5%). Pavement radius at the intersection with the street will be twenty (20) feet to the west and ten (10) feet to the east.

Mr. Siegfried seconded the motion.

Mrs. Schenkel did not believe that sort of construction belonged in a single family neighborhood and Mr. Kennealy agreed.

Mr. Sherman asked if there should be a finding of fact that recognizes this issue.

Mr. Hatem stated he would not amend the motion on the table.

Motion was approved. 6 in favor, 0 opposed.

4. Based on the project plans, gutter drainage along the street will not sheet across the face of the intersection with Hannaford Cove Rd.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

5. Based on the plan's conformance with the turnaround design included in the Subdivision Ordinance, a turnaround is provided that meets the requirements of the Fire Chief.

Mr. Siegfried seconded the motion. 6 in favor, 0 opposed.

6. The accessway is located so that 150' of sight distance is available to the west with the removal of vegetation within the Hannaford Cove right-of-way and existing sight distance exceeds 150' to the east.

Mr. Siegfried seconded the motion. 5 in favor, 1 opposed. (Schenkel)

7. The Planning Board finds that reducing the right of way width from 30' to 20', reducing the gravel base from 18' wide to 16' wide, reducing the traveled way width from 14' to 11.5 feet where the guardrail is installed and reducing the pavement radius from 20' to 10' on the eastern side of the driveway promotes better neighborhood development and maintains access for any municipal emergency vehicle

Mr. Griffin seconded the motion.

Mr. Sherman stated that these are the type of reductions that have been approved previously by the Board and would be voting in favor.

Mr. Kennealy disagreed, that this was a much more sensitive case.

4 in favor, 2 opposed. (Schenkel, Kennealy)

8. Based on the memorandum from Code Enforcement Officer Bruce Smith, adequate disposal of sewage will be provided as evidenced by the submission of a completed HHE-200 form designing a septic system that meets the Town Sewage Ordinance.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

9. Based on the project plans, a building envelope is depicted wherein the house and accessory buildings will be located on the lot demonstrating conformance with the setback requirements of the district in which it is located and any natural constraints and that the house site will be buffered from abutting residential properties.

Mr. Griffin seconded the motion. 5 in favor, 1 opposed. (Schenkel)

- 10.1 Based on the information presented, the alteration as proposed, with specified conditions of approval, will not materially obstruct the flow of surface waters from the alteration area.

Mr. Griffin seconded the motion.

Mr. Siegfried thinks that since the applicant is willing to look at a larger drain, that should be implemented now.

There was discussion amongst the Board members concerning adding this item and the possibility of ponding.

Ms. O'Meara stated that the Town Stormwater Regulations do not prohibit ponding. They require stormwater structures that can accommodate the 2, 10 and 25 yr storm. She urged the Planning Board to be specific in the conditions.

There was discussion over procedure to handle item 10-1.

Mr. Sherman asked for a vote in item 10.1 0 in favor, 6 opposed.

10.2 Based on the information presented, the alteration as proposed, with the specified conditions of approval, will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause the flooding of adjacent properties.

Mr. Siegfried seconded the motion. 0 in favor, 6 opposed.

10.3 Based on the information presented, the alteration as proposed, with specified conditions of approval, will increase the flow of surface waters across, or the discharge of surface waters from, the alteration areas so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;

Mr. Griffin seconded the motion. 0 in favor, 6 opposed.

10.4 Based on the information as presented, the alteration as proposed, with the specified conditions of approval, will not result in significant damage to spawning grounds, habitat for aquatic bird or other wildlife.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

10.5 Based on the information presented, the alteration as proposed, with the specified conditions of approval, will not propose problems related to the support of structures.

Mr. Siegfried seconded the motion. 6 in favor, 0 opposed.

10.6 Based on the information presented, the alteration as proposed, with specified conditions of approval, will not be detrimental to aquifer recharge of the quantity or quality of ground water.

Mr. Griffin seconded the motion. 4 in favor, 2 opposed.

10.7 Based on the information presented, the alteration as proposed, with specified conditions of approval, will not disturb coastal dunes or contiguous back dune areas.

Mr. Siegfried seconded the motion. 6 in favor, 0 opposed.

10.8 Based on the information presented, the alteration as proposed with specified conditions of approval, will maintain or improve geological or aesthetic values.

Mr. Griffin seconded the motion. 3 in favor, 3 opposed.

10.9 Based on the information presented, the alteration as proposed with the specified conditions of approval, will maintain an adequate buffer area between wetlands and adjacent land uses.

Mr. Griffin seconded the motion. 5 in favor, 1 opposed.

10.10 Based on the information presented, the alteration as proposed with the specified conditions of approval, will be accomplished in conformance with the erosion prevention provisions, of the environmental quality handbook, Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March 1986, or subsequent revisions thereof.

Mr. Siegfried seconded the motion. 6 in favor, 0 opposed.

10-11 Based on the information presented, the alteration as proposed with the specified conditions of approval will be accomplished without discharging wastewater from buildings, or from other construction, into wastewater treatment facilities, in violation of sec. 15-1-4 of the Sewerage Ordinance.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

10.12 Based on the information presented, the alteration as proposed with the specified conditions of approval will in the case of resource protection permits in the resource protection floodplain district also comply with Sec. 6-6-6 of the Floodplain Management Ordinance.

Ms. O'Meara stated this item would not apply.

Mr. Hatem withdrew the motion.

Mr. Sherman stated that since a number of items failed, that the Board should either deny the item or table it.

Mr. Hatem made the following motion.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Don Elliot for a Private Accessway Permit to make the lot buildable and Resource Protection Permit to construct a driveway

across a wetland for a lot located at 43 Hannaford Cove Rd be tabled until the August 18, 2006 meeting of the Planning Board.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

Mr. Sherman encouraged the applicant to meet with the planner concerning what the Board needs to see next month.

NEW BUSINESS

Winnick Woods Master Plan Resource Protection Permit - The Town of Cape Elizabeth is requesting a Resource Protection Permit to cross wetlands with trails proposed in Winnick Woods, a 71 acre parcel located on Sawyer Rd, Sec. 19-8-3, Resource Protection Permit Completeness and Public Hearing.

Jonah Rosenfield, Conservation Commission, gave an overview and history of the parcel donated to the Town. The Town Council approved the master plan for Winnick Woods in January, 2006. The proposed trails were designed to create public access while minimizing impact on wetlands. They are asking tonight to alter 2060 sq. ft. of wetland areas. Actual location of the trails will vary as the volunteers field site the trails. Where there are streams, there will be 6 ft wide trails and where the land is damp, there will be 2 x 12 planks placed as a boardwalk. Off of Sawyer Road, there is a bridge proposed to be 8 feet wide, as the Town will be bringing a mower across the bridge.

Mr. Rosenfield stated they are asking for waivers to submit a plan where 1" = 300ft, instead of 100 ft., topographical information, soils information, flow direction of water courses, and the stormwater runoff plan.

Mr. Sherman stated the first order of business would be completeness. He asked for comment.

Mrs. Schenkel made the following motion.

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 alter 2,060 sq. ft. of RP2 wetlands with trail crossings on the Winnick Woods property located on Sawyer Rd be deemed complete.

Mr. Griffin seconded the motion. 6 in favor, 0 opposed.

Mr. Sherman opened the Public Hearing. With no one coming forth, he closed the hearing and the Board could begin substantive discussion.

Mr. Siegfried asked what "passive use" entailed?

Mr. Rosenfield stated it meant nonmotorized use.

Mr. Siegfried stated that in Cross Hill, bikes are doing significant damage on the trails.

Mr. Sherman suggested that, with a recommendation from the Conservation Commission, there be a restriction from bikes during certain seasons. He had stated they had mentioned a site walk, however, he did not feel the need for one for approval.

Mrs. Schenkel wanted to complement the Conservation Commission on the submission.

Mr. Griffin made the following motion.

Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to alter 2,060 sq. ft. of RP2 wetlands with trail crossings on the Winnick Woods property located on Sawyer Rd, which requires review under Sec. 19-8-3, Resource Protection Permit 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 to alter 2,060 sq. ft. of RP2 wetlands with trail crossings on the Winnick Woods property located on Sawyer Rd be approved.

Mr. Kennealy seconded the motion. 6 in favor, 0 opposed.

Mr. Sherman thanked Mr. Siegfried for his time with the Board and appreciated his advice and concern. He asked Mr. Siegfried as his last act if he would make a motion to adjourn.

Mr. Siegfried made a motion to adjourn.

Mr. Sherman seconded the motion. 6 in favor, 0 opposed.

Meeting adjourned at 9:10 pm.

Respectfully submitted,

Laurie Palanza
Minutes secretary

