

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

March 17, 2009

7:00 p.m. Town Hall

Present: Peter Hatem, Chair

James Huebener

Liza Quinn

Barbara Schenkel

Thomas Dolan

Absent: Elaine Falender, Beth Richardson

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and called for discussion or corrections of the minutes of February 23, 2009. There were two minor corrections and Mr. Dolan moved to accept the minutes as amended. Mr. Huebener seconded and the motion carried, 5-0.

CONSENT AGENDA

Jordan Farm Stand Expansion Site Plan Amendment - The Jordan Family are requesting a de minimus change to expand the existing farm stand located at 21 Wells Rd, Sec. 19-9, Site Plan Amendment.

Carol Ann Jordan spoke to the Board and noted that the proposed plan is outlined in a letter and a drawing.

Mr. Hatem asked if there were any letters or emails concerning this project.

Ms. O'Meara said there was one email in support of this project.

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 Jordan Family to expand the farm stand, located at 21 Wells Rd, to 2,128 sq. ft. be approved.

Ms. Quinn seconded and the motion passed 5-0.

OLD BUSINESS

Eastman Meadows Final Subdivision Review - Wyley Enterprises, LLC is requesting Final Subdivision Review and a Resource Protection Permit for Eastman Meadows, a 46-unit condominium project plus 1 single family lot

located at 68 Eastman Rd, Sec. 16-2-4, Major Subdivision Review Public Hearing, and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Owens McCullough of Sebago Technics spoke on behalf of Wyley Enterprises. They are before the Board tonight for final approval. They have the necessary approvals in place from the DEP and the permit for wetlands alteration. The Town Engineer has approved the project and Mr. Fitzpatrick has been before the Conservation Commission for their input. Mr. McCullough briefly outlined the project and the history of the process of going for approval of this proposal. They started the process in 2006 and have been before the Planning Board many times along the way. He showed a plan of the development and said it will be a condo marketed to people in the 55+ age group. He showed the open space and noted that it is about 65% open space for the whole project. There will be all private roads, with no request for the Town to assume ownership of them.

They will coordinate with the trails in the adjoining Winnick Woods open space area. The condos will be duplex, quadriplex, and singleplex units. All units will have garages and will be single story in height.

Mr. Fitzpatrick will begin construction as soon as he has pre-sales in place. The bank financing is in place.

Mr. Hatem opened the public hearing. Since no one came forward to speak, the public hearing was closed.

Ms. O'Meara recommended to the Board that they take each of the findings of fact one at a time and vote on each one individually.

Mr. Dolan asked about the letter from the Town Engineer attached to the Findings of fact.

Ms. O'Meara replied that this is in reference to the performance guarantee that will need to be in place before the construction begins and is one of the conditions of approval.

Mr. Huebener made the following motion:

Findings of Fact

1. The proposed Eastman Meadows Project requires review under Sec. 11-2-4, Major Subdivision Review, Sec. 19-7-2, Open Space Zoning Provisions, and Sec. 19-8-3, Resource Protection Permit Standards. These reviews will satisfy all land use review requirements under the Zoning Ordinance, in accordance with Town practices for condominium projects.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved:

2. The proposed project is a clustered residential development and permanently preserved open space and these uses do not generally include discharges to the water or air that are regulated as pollution. The plan will not result in undue water or air pollution. The project does not include alterations to floodplain areas. The project will be served by public sewer instead of subsurface disposal systems. The slope of the land, the creation of a 250' wide natural vegetation buffer, and construction of stormwater infiltration beds will mitigate the impact of stormwater flows.

Ms. Quinn seconded and the motion passed 5-0.

Mrs. Schenkel moved:

3. Based on the comments of the Portland Water District, the project has sufficient water available for the reasonably foreseeable needs of the subdivision.

Mr. Huebener seconded and the motion passed 5-0.

Ms. Quinn made a motion:

4. The plan includes a sediment and erosion control plan consistent with Best Management Practices. The plan will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Mr. Huebener seconded and the motion passed, 5-0.

Mr. Huebener moved:

5. The applicants have submitted a traffic study prepared by John Adams, professional traffic engineer of Sebago Technics, Inc., that analyzes the traffic to be generated by the proposed project. On behalf of the Town, Tom Errico, professional traffic engineer of Wilbur Smith Associates, conducted a peer review of the traffic analysis and found it consistent with standard traffic engineering practice. Both engineers found that the project would not create unsafe conditions. The plan will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways, public roads or traffic patterns, alone or in conjunction with existing or contemplated road use;

Mr. Dolan seconded.

Mrs. Schenkel wanted in the record that there is a note on the plan that the traffic will be checked again after 35 permits have been issued, and any traffic problems will be addressed at that time.

The motion passed 5-0.

Mr. Dolan moved:

6. Based on the recommendation of the Bob Malley, Town Public Works Director and Sewer Superintendent, the project will provide for adequate sewage waste disposal by utilizing the public sewer system.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mrs. Schenkel made the motion:

7. Based on comments from the Public Works Director, the project will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.

Ms. Quinn seconded and the motion was approved, 5-0.

Ms. Quinn moved:

8. The 1989 Visual Resources Assessment Report conducted by the Town does not list the project area as a significant scenic area or vista. The project has been designed as an Open Space Zoning subdivision, resulting in conservation of most of the 26.5 acres of open space in its natural state as forest and wetlands. Wetlands expert Dale Knapp of Woodlot Alternatives (now Stantec) submitted a written report dated 10/31/07 and oral testimony that vernal pool habitat was not located on the portion of the property proposed for development. Rod Howe of the U.S. Army Corps of Engineers and Bob Greene of the Maine Department of Environmental Protections concurred with Mr. Knapp's findings. No historic sites listed in the 1993 Comprehensive Plan are located on the property. The bulk of the wetland shorelines on the site, including all of the RP1 wetland, are located within the open space where public access will be permanently preserved. The project will not have an undue adverse effect on the scenic or natural beauty of the area, scenic vistas, aesthetics, wildlife habitat, historic sites or rare and irreplaceable natural areas; or any public rights for physical or visual access to the shoreline.

Mr. Huebener seconded and the motion passed, 5-0.

Mr. Huebener moved:

9. Based on a letter from Ellen Niewoehner of TD Banknorth, the applicant has adequate financial capacity. The applicant has provided a list of previously

completed projects and the professional credentials of the project engineering team and has adequate technical capability.

Mr. Dolan seconded and the motion passed, 5-0.

Mr. Dolan moved:

10. The developed portion of the project, in whole or in part, is not within 250 feet of wetlands as defined in the Zoning Ordinance. A DEP Site Location Permit and Stormwater Permit has been issued.

Ms. Quinn seconded and the motion passed, 5-0.

Mrs. Schenkel moved:

11. Based on the aquifer mapping in the 1993 Comprehensive Plan, no aquifer is located in the project area. The project will not, alone or in conjunction with existing activities, adversely affect the quality of ground water.

Mr. Huebener seconded and the motion was approved, 5-0.

Ms. Quinn moved:

12. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, the developed portions of the subdivision are not in a flood-prone area.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Huebener moved:

13. Because the project employs a cluster design that reduces road and utility lengths, the project will promote energy conservation and efficiency.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan made the motion:

14. The Town Engineer has reviewed the project plans and made recommendations in numerous letters to the Planning Board to make the road designs for the project comply with the Road Classifications Standards Table included in the Subdivision Ordinance, except for waivers requested consistent with private roads located in a condominium project. The Road Classification Standards table was created to implement the recommendations for road design in the Comprehensive Plan. The proposed roads conform to the Comprehensive Plan as adopted by the Town Council. The Board has not required provision for the projection of roads or for access to adjoining property, whether subdivided or

not, as the property edges are either made up of wetlands or abut permanently protected open space.

Mrs. Schenkel seconded and the motion was passed, 5-0.

Mrs. Schenkel moved:

15. The Public Works Director, Town Engineer, Fire Chief and Code Enforcement Officer do not oppose the proposed private road system with two access points from a public road and no right-of-way for the private road. Local roads are laid out so that their use by through traffic is discouraged, and that roads are designed so as to provide safe, convenient and attractive access from the subdivision to previously existing or proposed public ways, and includes two or more means of such vehicular access.

Ms. Quinn seconded and the motion passed, 5-0.

Ms. Quinn made the motion:

16. Based on the plans which show preservation of naturally vegetated buffers and open space and additional plantings where existing vegetation will not be preserved during construction, plants or other types of vegetative cover are preserved or placed throughout and around the perimeter of any proposed subdivision to provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Huebener moved:

17. No off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas are proposed.

Mr. Dolan seconded and the motion was approved, 5-0.

Mr. Dolan moved:

18. The roads are proposed to be private and maintained by the condominium association, and provide 2 means of access to the project. Proposed roads are laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision, conform to existing topography, and minimize cuts and fills.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mrs. Schenkel moved:

19. The project is primarily located in a former farm field and all the proposed units will have access to direct sunlight. The proposed subdivision design has considered protecting and assuring access to direct sunlight and locating structures so as to minimize shading of either existing or proposed structures.

Mr. Dolan seconded and the motion passed, 5-0.

Ms. Quinn moved:

20. The subdivision is not designed as a traditional grid system. Block lengths do exceed 1,000 feet to suit the topography and character of the subdivision and to avoid an awkward road pattern or detrimental effect to adjacent property.

Mr. Huebener seconded and the motion was approved, 5-0.

Mr. Huebener made the motion:

21. Based on comments from the Police Chief, road names have been used which do not duplicate or may be confused with the names of existing roads.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved:

22. The applicant has submitted a stormwater plan prepared by Sebago Technics, Inc. which has been reviewed and accepted by Town Engineer Steve Harding of Oest Associates as in compliance with the Town Storm Water Ordinance. The subdivision involves more than 10,000 square feet of impervious surface, paving, clearing or vegetative alteration and complies with the provisions and improvements for the control of storm water runoff governed by Chapter 18, Article II, Storm Water Control Ordinance. Drainage easements have been provided where channeling surface water within such subdivision on private property will require town maintenance.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mrs. Schenkel moved:

23. The project includes pedestrian easements for the public to access protected open space. Deeds for these areas have been submitted to the Town. The plan includes pedestrian easements where a pedestrian accessway would add to the Town's Greenbelt System and is important to provide access open space.

Mr. Dolan seconded and the motion was approved, 5-0.

Ms. Quinn moved:

24. The condominium project is located in the RB Zoning District, which mandates a project design in compliance with the Open Space Zoning standards, Sec. 19-7-2. Under this section, the Planning Board has the authority to vary dimensional standards to promote clustered development and preserve open space. The distance between buildings is at least the height of the taller building. All buildings are set back at least 20' from the property line and the buildings are set back at least 10' from the proposed roads. The building units are configured to orient to the proposed roads. A single lot is proposed for the existing farmhouse and barn. The lot is 15,000 sq. ft, which exceeds minimum lot size of 10,000 sq. ft., and complies with the average lot size not to exceed 15,000 sq. ft. The area and other dimensional standards comply with the requirements of the Zoning Ordinance.

Mr. Dolan seconded and the motion was passed. 5-0.

Mr. Huebener moved:

25. As shown on the plan, each property is provided with vehicular access to each lot by an abutting public or private road.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved:

26. The project has been designed to place most of the new units in a former farm field and retain most of the existing vegetation in permanently preserved open space. The cluster development has been designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character.

Ms. Quinn seconded and the motion passed, 5-0.

Mrs. Schenkel made the motion:

27. Per the proposed plan and in an effort to blend the new development with the existing neighborhood, sidewalks and/or curbing have been provided where they are necessary for maintenance and public safety.

Mr. Dolan seconded the motion and it was approved, 5-0.

Ms. Quinn moved:

28. 26.5 acres of open space, including RP1 and RP2 wetlands, will be permanently preserved. Of that amount, 16.54 acres will be retained by the condominium association and 9.96 acres will be donated to the Town of Cape Elizabeth. The applicant, whenever practical, has preserved natural features such as water

courses or bodies, existing trees of 10 inches or more in diameter (base height), marshes, swamps or other areas identified on the official wetlands map, open space, scenic points, historic spots, and unusual or striking topographic features which add to the attractiveness of the subdivision. The applicant has agreed to dedicate 9.96 acres of open space to the Town itself, conveyed through appropriate legal instruments, reviewed by the Town Attorney.

Mr. Huebener seconded and the motion passed, 5-0.

Mr. Huebener made the motion:

29. The applicant will permanently preserve 26.5 acres of open space, which is 65% of the total acreage of the project. 72% of the 26.5 acres is considered usable. The Open Space Zoning standards require that 40% of the gross area be preserved as open space and that at least one-third of that amount be usable open space. Where the project has not been designed in accordance with the Open Space Zoning provisions, the Open Space impact fee in the Subdivision standards requires an open space dedication of 12,937 sq. ft. per lot/unit for a total of 13.95 acres. The applicant has donated land to comply with the Open Space Impact Fee.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved:

30. Proposed deeds have been submitted that prohibit development on the donated open space and the condominium documents prohibit development on the open space to be retained by the condominium association. Common open space shall be maintained to ensure that its use and enjoyment is not diminished or destroyed, with the applicant submitting written documents identifying that the Town shall own the 9.96 acres to be donated and be responsible for said maintenance.

Mr. Huebener seconded the motion and it was passed, 5-0.

Mrs. Schenkel made the motion:

31. No subsurface systems are proposed for the disposal of sewage for the development.

Mr. Dolan seconded and the motion passed, 5-0.

Ms. Quinn moved:

32. According to the wetland assessment by Dale Knapp, Stantec, the preserved open space areas include three possible vernal pools, all of which are located in the preserved open space areas. The 9.96 acre parcel to be donated to the town is

adjacent to 70+ acres of town owned open space and will enhance the wildlife habitat values of those areas. The project makes adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.

Mr. Huebener seconded and the motion passed, 5-0.

Mr. Huebener moved:

33. Based on the plans and the requirements of the Addressing Ordinance, the numbering of the individual residential dwelling units will be clearly visible. Signs clearly identifying the house numbers in each set of dwelling units will be placed along the road leading to each set of units.

Mr. Dolan Seconded and the motion passed, 5-0.

Mr. Dolan moved:

34. The applicant has submitted letters from Central Maine Power, Time Warner Cable and the Portland Water District regarding provision of services to the subdivision. All utilities, including but not limited to the provision of water, gas (not applicable in this area of Cape Elizabeth) and electricity is adequate for the proposed development.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mrs. Schenkel made the motion:

35. The applicant proposes to market the single story, 2 bedroom units to persons 55 years old and older. An analysis by planning staff found that from the existing 296 condominiums in town, 11 children were enrolled in the Cape Elizabeth school system. The Planning Board finds that the majority of expected residents in the project will be within the target market.

Ms. Quinn seconded and the motion was approved, 5-0.

Ms. Quinn moved:

36. The wetland alterations shown on the plan include filling to move a road away from the existing home of an abutter, to landscape an area with new wetland plantings, and to enlarge an existing pond. The project will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;

Mr. Dolan seconded and the motion passed, 5-0.

Mr. Huebener moved:

37. Based on the Storm Water Management plan prepared and reviewed by professional, licensed civil engineers, the project will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved:

38. Based on the Storm Water Management plan prepared and reviewed by professional, licensed civil engineers, the project will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;

Ms. Quinn seconded and the motion passed, 5-0.

Mrs. Schenkel moved:

39. Based on the review conducted by Dale Knapp, Stantec, Rod Howe, U.S. Army Corps of Engineers, and Bob Greene, Maine Department of Environmental Protection, the project will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;

Ms. Quinn seconded and the motion was approved, 5-0.

Ms. Quinn made the motion:

40. No structure is proposed to be constructed within a wetland. The project will not pose problems related to the support of structures;

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Huebener moved:

41. The project area does not include coastal dunes or contiguous back dune areas;

Mr. Dolan seconded and the motion passed, 5-0.

Mr. Dolan moved:

42. The plans include preservation of open space to be preserved in its natural state through a conservation restriction included in the deed of the land to the Town and restrictions in the condominium documents. The project will maintain or improve ecological and aesthetic values;

The motion was seconded by Ms. Quinn and passed, 5-0.

Mrs. Schenkel moved:

43. The plans include a 250' buffer from RP1 wetlands, some of which will be used to install a bioretention filter bed to cleanse stormwater before it enters Trout Brook. The project will maintain an adequate buffer area between the wetland and adjacent land uses;

Mr. Huebener seconded and the motion carried, 5-0.

Ms. Quinn made the motion:

44. The plans include an Erosion and Sediment Control Plan reviewed and found acceptable by Town Engineer Steve Harding. The project will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Huebener moved:

45. The Public Works Director, acting as Sewer Superintendent, and the Town Engineer have revised and found acceptable the sewer infrastructure construction plans. The project will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance.

Ms. Quinn seconded and the motion was approved, 5-0.

Mr. Dolan moved:

46. The applicant has provided a Net Residential Acreage calculation as follows:

Total Area: 40.82 acres
minus
Roads: 1.43 acres
Right-of-way: 513 sq. ft.
Ledge Outcrop: 8,712 sq. ft.
Ponds: 23,462 sq. ft.
Existing easements: 2,350 sq. ft.
Floodplain: 4,397 sq. ft.
RP1 wetland: 304,920 sq. ft.
Equals net residential area of 31.48 acres

Allowing for 45 units, of which 5 will be moderate income affordable, plus 1 moderate income affordable housing bonus unit and 1 market rate unit for a total of 47 units, to be built as 46 condominiums and 1 single family home lot. The net residential acreage and density does comply with the Zoning Ordinance.

Ms. Quinn seconded and the motion passed, 5-0.

Mrs. Schenkel moved:

47. The project substantially complies with the requirements of Sec. 16-3-1, Subdivision Standards, and Sec. 19-8-3, Resource Protection Permit Standards.

Mr. Dolan seconded and the motion carried, 5-0.

Mr. Dolan made the following motion:

THEREFORE, 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, Private Road Review and a Resource Protection Permit for Eastman Meadows, a 46 unit condominium with clubhouse and 1 single family lot, located at 68 Eastman Rd, be approved, subject to the following conditions:

1. That there be no alteration of the site until a performance guarantee has been submitted in a form acceptable to the Town Attorney, an amount acceptable to the Town Engineer and all acceptable to the Town Manager.
2. That an easement for parking and maintenance of the area located at the end of the northerly easement and adjacent to Eastman Road as shown on the attached plan be provided;
3. That two connections points from the northerly easement be provided to Winnick Woods and field located by the applicant and the Conservation Commission to minimize the length of trail over wet areas and maximize privacy for the condominium units; and
4. That the applicant be allowed to install a split rail fence along the southern edge of the northern pedestrian easement.

Mrs. Schenkel seconded the motion and it was approved, 5-0.

Dawe Rd Extension Private Road Review - Nicholas Tammaro is requesting a private road review to extend Dawe Rd to a new lot located in the vicinity of Dawe Rd and Valley Rd in compliance with the road standards in the Subdivision Ordinance, Sec. 16-3-2, Road Design and Construction Standards Public Hearing.

Nick Tammaro of 64 Two Lights Road spoke about his proposal. He said he is joined by Steve Blais, professional engineer, Nate Maxwell, the current landowner, and the neutral facilitator, David Plimpton. He spoke about the numerous changes that had been made to the plan since the last Board meeting (Feb 23, 2009). These changes include adding sight distances, locating utilities, changing arrows on the plan that indicate the emergency turnaround. They have added a culvert and pipe to divert water away from the neighbor's houses. Monuments have been added to the plan, and the right of way has been expanded from 30 ft. to 40 ft. in width. The wearing surface has been changed from 3 in. to 6 in.

Mr. Tammaro listed the waivers they have requested, including sidewalks, paved width of the roadway, curbing, trees and landscaping, paving of the turnaround and dimensions of the road.

Mr. Tammaro has met with Oest Associates and Bob Malley and as an outcome of the meeting he has agreed to hire an engineer to help with the stormwater and drainage issues. He hired Steve Blais, engineer for that help.

Steve Blais told the Board he looked at the stormwater and grading. He told of the changes made to the plan for the grading and construction of the roadway and the drainage ditches and culverts to be employed to divert the stormwater. He gave a great deal of detail of the drainage and roadway construction.

Mr. Tammaro also said Mr. Malley has approved the ditches. And the neighbor has granted a grading easement on his property.

Ms. O'Meara then read a letter from Steve Harding evaluating the project.

There was a discussion of whether the emergency turnaround, as designed was wide enough. After some discussion, it was decided that the turnaround would be enlarged from 14 ft. to 24 ft. wide.

Mr. Hatem opened the public hearing.

Penny Jordan, one of the owners of Jordan's farm on Wells Road, asked the Board to support this project. Mr. Tammaro wants to create a farmstead, and this will serve the whole community. She is in favor of this project.

Frank Strout of 1184 Shore Road spoke in support of the project. He has seen a decline in farmland in Town. He feels it is inspiring to see a young resident willing to commit creating a new working farm on the Maxwell property. He wants the Town to do more to encourage this type of development in the Town. He thanks the Board and the Town officials for helping this project along.

John Holmes of 27 Valley Road is an abutter to the property. He was concerned about the possibility of water coming into his basement. He has had his concerns met and is in support of this project.

The public hearing was closed when on one else came forward to speak.

Mr. Dolan made the following motion:

Findings of Fact

1. Nick Tammaro is requesting Private Road Review under the Subdivision Ordinance to extend Dawe Rd to a new lot, which requires review under Sec. 16-3-2, Road Design and Construction Standards.
2. The Town Engineer has recommended that additional information is needed to confirm that water will not migrate to abutting properties.
3. The applicant is proposing to build a road that looks more like a private accessway than a private road. Consequently, the following waivers are included as part of this application:
 - a. Waiver from maximum 3% slope to a maximum 5% slope.
 - b. Waiver of paving the first 50' to paving the first 10'.
 - c. Waiver of a 22' wide traveled surface to a 14' wide traveled surface.
 - d. Waiver from installing monumentation of the private road right-of-way.
 - e. Waiver from installing curbing
 - f. Waiver to not pave the emergency turnaround.
4. The application substantially complies with Sec. 16-3-2, Road Design and Construction Standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tammaro for Private Road Review of the extension of Dawe Rd to a new lot be approved, subject to the following conditions:

1. That the plans be augmented by the comments of the Town Engineer in his letter dated 3/16/09, inclusive;
2. That related maintenance agreements and drainage easement deed be signed by the applicant and submitted in a form acceptable to the Town Attorney; and
3. That there be no issuance of a building permit or alteration of the site until the above conditions have been met.

Barbara Schenkel seconded the motion and it was passed, 5-0.

Creteau Private Accessway Permit - Jeannette Creteau is requesting a Private Accessway Permit for a vacant lot located at 112 Delano Park (u7-12), Sec. 19-7-9, Private Accessway Permit Public Hearing.

Bob Metcalf of Mitchell and Associates was there to represent Ms. Creteau along with her daughter and Bob Danielson, her attorney. He told the Board about the changes to the project since the last presentation on Feb, 23, 2009. He said they had added to the plans in response to the Town Engineer's comments.

They are requesting a waiver to 14 ft. width with a 12ft. paved road and a 2 ft. shoulder. As for the sight distance, he said it is 75 ft to the left and 80 ft to the right.

Mr. Danielson spoke to the Board about the requirement of a sprinkler system to be installed. He requests that the issue be delayed until a building permit is applied for. He wants the requirement to be reconsidered when the fire hydrants are tested at the time of a building permit and not to be a condition of this approval.

There was a question of whether this is outside of the purview of the Board and is really an item for the Code Enforcement Officer.

Mr. Hatem opened the public hearing. Since no one came forth to speak, the public hearing was closed.

Mr. Dolan said he had a conflict of interest and would abstain from consideration of this project.

Ms. Quinn asked if the sprinkler issue is out of the Board's purview.

Mr. Hatem replied that it is the Board's job to see that the project will be safe.

Mrs. Schenkel suggested they make it a condition for when the building permit is applied for.

Ms. O'Meara said it will need to be referred back to the fire chief, not the Code Enforcement officer, because the Code Enforcement Officer does not routinely check for water pressure to fight fires.

Mr. Huebener made the following motion:

Findings of Fact

1. Jeanette Creteau is requesting a Private Accessway Permit to make an existing vacant lot without frontage on a town road buildable. The lot is the second to the last lot at the end of Delano Park Entrance #1 and requires review under Sec. 19-7-9, Private Accessways.

2. The Town Engineer and Fire Chief have concerns that the driveway for lot 4 will not provide access for the ladder truck.
3. Sight distance information has been provided.
4. Compliance with the Public Accessway Standards has been achieved, in part, by placement of facilities on private property.
5. 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 Jeanette Creteau for a Private Accessway Permit to make an existing vacant lot without frontage on a town road buildable, located second to the last lot at the end of Delano Park Entrance #1, be approved subject to the following conditions:

1. That the plans be revised per the Town Engineer's letter dated 3/9/09, paragraphs 2 and 4;
2. That the sight distance be added to the plans;
3. That the 10' easement deed, turnaround easement and maintenance agreement be signed and submitted in a form acceptable to the Town Attorney;
4. That no building permit be issued until either (a) building plans are submitted showing the installation of residential sprinkler system or (b) the fire chief determines that there is adequate water flow from the closest hydrant; and
5. That there be no recording of the plan until the plans and other materials have been revised and submitted to the Town Planner and the above conditions have been met.

Mrs. Schenkel seconded the motion and it carried, 4-0.

OTHER BUSINESS

2009 Shoreland Zoning Amendments - The Cape Elizabeth Town Council has referred to the Planning Board the update of the State Mandatory Shoreland Zoning, which includes amendments to the Zoning Ordinance and Official Zoning Map, Sec. 19-10-3, Zoning Ordinance Amendments.

Mr. Dolan made the following motion:

BE IT ORDERED, that, based on the proposed amendments, the Planning Board tables the 2009 Shoreland Zoning Amendments and map changes to the Zoning

Ordinance to the April 27, 2009 meeting of the Planning Board, at which time a public hearing will be held.

Mrs. Schenkel seconded and the motion passed, 5-0.

Mr. Dolan moved to adjourn, seconded by Mrs. Schenkel. It was voted 5-0 to adjourn at 9:10 pm.

Respectfully submitted,

Hiromi Dolliver
Board Secretary