

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

April 22, 2013

7:00 p.m. Town Hall

Present: Victoria Volent, Chair  
Josef Chalot  
Peter Curry  
Elaine Falender

Carol Anne Jordan  
Liza Quinn

Absent: Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the minutes of the March 28, 2013 meeting. The minutes were approved as presented, 4-0 (2 abstained).

Town Planner's Report: Ms. O'Meara said the Conservation Commission is continuing to work on the Greenbelt Plan update. The Planning Board, the Conservation Commission and the Ordinance Committee are all working on aspects of the Future Open Space Committee recommendations.

OLD BUSINESS

**Robinson Woods II Resource Protection Permit** - The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to construction trail improvements on Robinson Woods II and a lot located at the end of Canter Lane, Sec. 19-8-3, Resource Protection Permit Public Hearing.

Ms. O'Meara said the applicant is seeking a resource Protection Permit for portions of a trail that is located in the RP-1, RP-2 and the RP-1 buffer. The Board has deemed the application complete and a public hearing is scheduled for tonight's meeting. She has a copy of the floodplain map that relate to the project. The Board and the applicant have also received comments from the Conservation Commission. She said the Commission's main concern was the erosion of the muddy areas around the path.

Chris Franklin, Executive Director of the Cape Elizabeth Land Trust spoke for the project. He said he shares the Conservation Commission's concerns, and they have tried to use existing pathways rather than creating new ones. They try to get the paths onto the uplands as soon as possible in order to minimize the impact on the wet areas. They will use bridging of areas, even though they are not wet all year, so there is a structure in place to protect those areas. He then showed maps of the areas and the proposed trails.

He said they will be crossing a muddy area and they will make it better than it is now. There are rocks there now and people use them to hop from one to the other to get across. He talked about an area of crossing where they will use aluminum decking to get across the wetland and wants to have the ability to put the decking out from the edges far enough to avoid any problems and minimize impact.

The trail at Canter Lane will be moved so it does not bisect a buildable lot. They want to place some bog bridging in that area.

Ms. Volent opened the public hearing. No one came forward to speak, so the public hearing was closed.

Mr. Chalot asked where the access to the buildable lot is located.

Mr. Franklin showed a map that shows a long narrow access to the lot.

Mr. Chalot made the following motion:

#### Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to install wetland/water crossings and improve and install trails in the RP1, RP1 Buffer and RP2 wetlands located on Robinson Woods II (Shore Rd) and at the end of Morgan Lane, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The Conservation Commission is recommending hardening the trail surface in muddy conditions to minimize erosion.
3. Portions of the trail and crossing work are located in the A and A2 floodplain zone and will require a floodplain permit from the Code Enforcement Officer under Chapter 6-6, Floodplain Management Ordinance.
4. 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 Cape Elizabeth Land Trust for a Resource Protection Permit to install wetland/water crossings and improve and install trails in the RP1, RP1 buffer and RP2 wetlands located on Robinson Woods II and at the end of Morgan Lane be approved, subject to the following conditions:

1. That the applicant consider trail surface hardening and other methods when the trail surface becomes muddy to avoid erosion.
2. That the applicant obtain a floodplain permit from the Code Enforcement Officer.

Ms. Jordan seconded the motion.

Ms. Falender asked about the language of hardening surface.

Ms. O'Meara replied that they wanted to keep the language as open ended as possible to keep the options open.

Mr. Franklin said that just walking on a trail will cause it to harden. They will monitor the trail to be sure it is not getting chewed up by bicycles or other uses.

The board approved the motion, 6-0.

#### NEW BUSINESS

**Golden Ridge Subdivision Amended Minor Subdivision Plan** - Golden Ridge LLC is requesting an amendment to the previously approved minor subdivision to add two lots at the end of Golden Ridge Lane. This subdivision was previously approved by the Planning Board, however the approval was not recorded before it expired, Sec. 16-2-3, Minor Subdivision Review.

Ms. O'Meara said the Board approved two lots at the end of Golden Ridge Lane prior to October 2011. She then informed the Board about the drainage divide that exists on this property and how it affects the lots and the need for a wetland buffer. The Planning Board then approved an additional lot to make a total of a three lot subdivision. The pedestrian easement in that approval was the subject of a lawsuit and in June 2012 the Board granted approval of the subdivision without the easement. The approval was extended in October of 2012 and expired in January 2013. The applicant is here to ask the Board to grant approval of the same plans that were approved in June 2012.

Lee Lowry, Attorney, with Jensen Baird spoke for the applicant. He gave a brief summary of the project. It is a 10 acre lot of land, and an existing and approved lot on a subdivision plan. Access will be over the existing road, Golden Ridge Lane. The road will be extended to serve the additional lots and will be widened to 18 ft. The existing water utility will be upgraded and fire hydrants will be added in a couple of locations.

They have requested a waiver on the road width from 22ft. to 18ft. They say there will be very light traffic on the road and no likelihood of extending the road beyond what is now proposed.

Their client has no objections to any of the proposed conditions.

Mr. Curry asked if the Board is approving the same plan as was approved before.

Ms. O'Meara said it was the same, and all the issues that were outstanding have been resolved and this is just a reapproval of what has been done before and wasn't recorded before the approval expired.

There was a discussion about the building envelopes and the restrictions on what can be done outside the building envelopes.

Ms. O'Meara noted that there have been questions regarding what is allowed outside the building envelope. It was her understanding that the Planning Board intended for naturally occurring vegetation to be preserved rather than turning the area outside the building envelope into lawn.

Mr. Lowry said that the applicant has never raised an objection to those restrictions, so he will not do so either.

Ms. Falender said she recalled that the Board was intentional about the building envelopes and since Mr. Lowry was not asking to move them, she was disinclined to do so.

Mr. Chalot asked if there was a specific buffer zone around a subdivision. Ms. O'Meara replied that they have done that by restricting the building envelopes of each individual lot. He noted that it is typical for people to extend their lawn to the right of way along the front setback.

Ms. Volent asked about a note on the plan that refers to trails as a possible use in the buffer outside the building envelope. She asked if the applicant is reconsidering the trail.

Mr. Lowry said he is happy to leave trails so if someone who owns one of these lots wants to have a trail they may do so. They are not prohibiting it among their lot owners.

Ms. Quinn made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Golden Ridge LLC for a 3-lot subdivision located at the end of Golden Ridge Lane be deemed complete.

Ms. Jordan seconded and the motion passed 6-0.

The Board agreed that they did not need a site walk or public hearing.

Ms. Quinn then made the following motion:

#### Findings of Fact

1. Golden Ridge LLC is requesting reapproval of a 3-lot subdivision located at the end of Golden Ridge Lane which requires review under Sec. 16-2-3, Minor Subdivision Review.
2. A road maintenance agreement is needed to assure that the private road will be maintained as shown on the approved plans.
3. It is the Planning Board's intent that the entire length of Golden Ridge Lane from its intersection with Route 77 to the full length terminating at lots 3 and 4 as proposed on the plans submitted for the April 22, 2013 meeting be constructed to provide a minimum 18" gravel based, 18' wide to accommodate town emergency vehicles.
4. The applicant has provided the town with an executed performance guarantee.
5. Activities outside the building envelope shall be limited to preserve existing natural vegetation as a buffer to abutting properties.
6. The application substantially complies with Sec. 16-3-1, Subdivision review standards.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Golden Ridge LLC for a 3-lot subdivision located at the end of Golden Ridge Lane be approved subject to the following conditions:

1. That a road maintenance agreement referencing the plans approved by the Cape Elizabeth Planning Board on April 22, 2013 be recorded in a form acceptable to the Town Attorney and Town Manager.
2. That a complete HHE-200 form be submitted and approved by the Code Enforcement Officer prior to the issuance of a building permit for lot 5.

3. That activities outside the building envelope be limited to the minimal amount of vegetation removal necessary to install driveways, utilities and trails and that existing vegetation be preserved in its natural state to buffer the subdivision from abutting properties.
4. That there be no alteration of the site nor issuance of a building permit until the town planner confirms that the above conditions have been satisfied.

Ms. Jordan seconded and it was passed 5-0 (one abstain).

#### OTHER BUSINESS

**Day Camp Zoning Amendment** - The Town Council has referred to the Planning Board a request to amend the Zoning Ordinance to allow limited summer day camps, Sec. 19-10-3, Zoning Amendment Public Hearing.

Ms. O'Meara said the Town Council has asked the Board to consider an amendment to allow limited summer day camps. The reason this is before the Board is that last year the former Code Officer determined that an existing limited day camp was not a permitted use unless it was a home day care, or a day camp facility. Since that day camp had neither approval, it was not allowed.

If the Board believes that these summer day camps are not a bad thing for the town, we need to realign the ordinance to permit this usage. We are proposing a new definition called a day camp. It would limit the day camp to no more than four weeks in the summer and no more than six weeks in the year and no more than four hours a day. It would be limited to six children.

Ms. Volent said they have received a number of emails supporting this, and none were opposed.

Ms. Volent then opened the public hearing. Since there was no one in the audience, the public hearing was closed.

Mr. Chalot said it looks to be minimal in terms of time limit and limit on numbers of children. He thinks it should be a conditional use.

Ms. Falender replied that they had discussed that and wanted to keep it limited so that there would not need to be a conditional use permit.

Mr. Chalot said he likes the conditional use permit because it goes before the Zoning Board and they will look at the traffic issues. It seems that the most problematic part is the drop off and pick up on small crowded roads.

Ms. Volent asked if he would then be looking at increasing the number of children allowed.

Mr. Chalot said yes, that on some properties you could easily accommodate more children, but on a small lot you could only accommodate six.

Mr. Curry is concerned about the insertion of something into a residential neighborhood. We seem to think by shrinking it we will not have created a problem. He thinks Mr. Chalot has the right idea that it should be dependent upon the individual property. He is not sure about this. It will be run by high school kids on top of all the other potential issues.

Ms. Falender was asking about whether we would have any difference between a day camp and a day care if we go with a conditional use. Would this fall into a definition we already have.

Mr. Chalot said that he would see differences, but he wants the Zoning Board to have a look at all the potential problems.

Ms. O'Meara said that if the Board goes with this approach they are pretty much shutting this use down. This is something that is run by teenagers and college students, who will not go through a Zoning Board process for something they are running for a couple of weeks in the summer. She said this has been going on for years and they have never gotten a complaint.

Ms. Volent said they have received this item from the Council. They asked for small and limited, so she is taking her cue from the Council. She has looked up the licensing regulations in the State Code and those call for a regular program. These are limited and not regular. By limiting hours and duration we are not sliding into something that needs State licensing.

Mr. Curry asked if limiting the number to six children would kill off most of these day camps.

Ms. O'Meara replied that she does not know. These have been so low key she had not heard of them before this came up.

Mr. Chalot said he likes a ten child limit better than six.

Ms. Falender said she doesn't want to raise it to ten because of the noise and the lack of requirements for supervision.

Mr. Curry wants a limit on campers to be under 16 years, and hours and noise to be restricted. He thinks between 9 am. and 3 pm. would be a good limit.

Ms. Jordan thinks any 4 hour block between 8 am. and 4 pm. would be acceptable.

Ms. Falender is not inclined to restrict the hours, since it is limited to 4 hours.

Ms. Quinn said she is not comfortable with this in a residential area, and we have come up with a compromise.

The Board agreed not to add a restriction on the hours of possible operation.

Mr. Curry wants to add an age restriction to have children age 16 or younger. He was supported on that.

Ms. Volent summarized her reasons for supporting this amendment.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the information presented and the comments received, the Planning Board recommends the day camp amendments, as amended, to the Town Council for consideration.

Ms. Falender seconded the motion and it was passed, 6-0.

The Board voted 6-0 to adjourn at 8:15 pm.

Respectfully submitted,

Hiroimi Dolliver  
Minutes Secretary