

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

December 16, 2014

7:00 p.m. Town Hall

| | | |
|----------|------------------------|-------------------|
| Present: | Victoria Volent, Chair | Carol Anne Jordan |
| | Josef Chalat | Liza Quinn |
| | Peter Curry | Henry Steinberg |
| | Elaine Falender | |

Also present was Maureen O'Meara, Town Planner.

Ms. Volent opened the meeting and called for the approval of the November 18, 2014 Minutes. They were approved without correction 7-0.

OLD BUSINESS

Rams Head Boardwalk Resource Protection Permit - Rams Head Partners LLC is requesting a Resource Protection Permit to construct 2,046' of boardwalk at 20 Rams Head Road (R9-49-4), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Ms. O'Meara said this project is in an area of Resource Protection, sand dune, RP-1 Wetland and the 100 year floodplain. It has already received permits from the State. The Planning Board's focus is only for the Resource Protection Permit. At some point before construction there will need to be a flood permit.

Stephen Mohr was there on behalf of Rams Head Partners. He said the project is a little more than 2000 linear feet of boardwalk and a 34 ft. bridge. They have the DEP and Army Corps permits for wetlands and sand dunes etc. The Conservation Commission has no problems with the project. Steve Harding is in agreement with the plans.

Ms. Volent asked for clarification that the 2046 ft. is including the bridge, and not just the boardwalk.

Mr. Mohr said that is correct.

Mr. Steinberg is concerned about the deer being able to leap over a walkway that is 3 ft. tall and also 3 ft. wide.

Mr. Mohr said they have found that deer can leap up to 4 ft. horizontal distance as long as the height is less than 4 ft. He thinks they can clear that, but they expect the deer will migrate on one side or another, but not actually choose to leap over it. The sand dune regulations prohibit the lowering of the boardwalk to below 3 ft.

Mr. Curry asked about the location of the observation deck, and the decking material on the bridge.

Mr. Mohr said the observation deck has not been firmly located yet, but will be on the loop, and the bridge will be aluminum with cedar decking.

Ms. Jordan was questioning the location of the bridge anchors in relation to the bank.

Mr. Mohr said they have not specified the distance from the top of the bank on the drawings.

Ms. Jordan would like that distance to be specified on the plans.

Ms. Volent opened the public hearing. No one was in the audience, so the public hearing was closed.

Ms. Falender made the following motion:

Findings of Fact

1. Rams Head Partners is requesting a Resource Protection Permit to construct 2,046 linear feet (6,138 sq. ft.) of boardwalk in an area of RP1 wetland and sand dune, located at 20 Rams Head Rd, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The boardwalk will be located in the 100-year floodplain.
3. 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 Rams Head Partners for a Resource Protection Permit to construct 2,046 linear feet (6,138 sq. ft.) of boardwalk in an area of RP1 wetland and sand dune, located at 20 Rams Head Rd, be approved subject to the following conditions:

1. The note regarding the bridge shown on the plan shall be amended to provide that the bridge deck planking shall be cedar and that the anchors for the bridge shall be installed not closer than 4 feet from the existing top of bank.
2. That the applicant obtain a Floodplain permit from the Code Enforcement Officer.

Ms. Jordan seconded the motion and it was approved, 7-0.

OTHER BUSINESS

Planning Board Rules of Procedure Amendments - The Planning Board is recommending updates to its rules to allow procedural votes at workshops, document standard practice at a site walk and create a procedure for research.

Ms. O'Meara introduced the topic. There was a recommendation from the Council that the regulations allow a procedural vote at a workshop. That vote can be about a member's conflict of interest, or a decision to schedule an item for a public hearing at the following regular meeting. The other item concerns internet research by a Board member. Any research needs to be sent to the Planner, who will send that research along to the rest of the Board and to the applicant. The Town Attorney considers this to be a reasonable approach that preserves due process rights.

Ms. Volent opened the public comment period. No one was present to make a comment, so the public comment period was closed.

Ms. Volent opened the discussion on the first portion, the procedural votes at workshops.

Ms. Quinn did not think there was a specific phrase that says a procedural vote is allowed.

It was pointed out that the language in Section 6 Item 3 does allow for a procedural vote, and only on the issues of a potential conflict of interest or to schedule a public hearing at the next regular meeting.

Mr. Curry was concerned about whether minutes would be required for more than just the procedural vote itself, or need to be more detailed.

After a brief discussion it was decided to only record the procedural vote.

No one had any comment about the section on site walks.

Regarding research, Mr. Curry asked about whether a reference was sufficient to the research, or did they need to provide a copy of the text. He proposed that the language be: *information sufficient to identify and locate the research shall be made available.*

Ms. Quinn was concerned that if the research was not available online, that the text should be provided.

After a brief discussion, the Board agreed to incorporate Mr. Curry's language.

Mr. Chalot noted that he sends questions to the Planner that he wants the applicant to answer.

Ms. O'Meara said she does not consider that to be at all inappropriate. As long as the Board members are not talking with each other, she is fine with telling the applicant that they will be getting a question about a particular facet of their project.

Ms. Quinn made the following motion:

BE IT ORDERED that the 2014 Planning Board Rules and Regulations Amendments as amended be recommended to the Town Council for consideration.

Ms. Jordan seconded the motion and it was approved, 7-0.

Land Use Amendments Status Report - The Planning Board will provide the Town Council with a status report on the Land Use Amendments package in process.

Ms. O'Meara said they are very close to having this completed. They are only missing two items. One is the comments from the Town Attorney. He has said he will have them to her by the end of the week. The other item is the recommendations from their consultant. He has said they will be ready by the January workshop. She is asking the board to approve sending this status report to the Town Council.

Ms. Jordan moved that they send this status report to the Town Council.

Mr. Chalot seconded the motion and it was passed, 7-0.

Ms. Volent opened the public comment period on items not on the agenda. No one was in attendance, so the public comment period was closed.

Mr. Steinberg was concerned about possible incorrect facts being in the public testimony from the applicants or others.

Ms. Volent said they have the ability to ask the Town Engineer, or another resource to check these things out.

Ms. O'Meara said that if you want an item to be in there, you need to have it as a condition, because once an item is approved, there is no backtracking or revisiting permitted.

The Board voted unanimously to adjourn at 7:50 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary