

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

April 24, 2017

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair      Jonathan Sahrbeck  
          Josef Chalat                            Henry Steinberg  
          Peter Curry                            Victoria Volent  
          James Huebener

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan opened the meeting and called for the approval of the March 21, 2017 minutes. The minutes were approved, 6-0.

NEW BUSINESS

**Great Pond Preserve II Resource Protection Permit** – The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to alter 1,960 sq. ft. of RP2 wetland and RP1 Buffer to construct boardwalk for trail crossings at the Great Pond Preserve II property located adjacent to Sweet Fern Rd (R3-1), Sec. 19-8-3 Resource Protection Permit Completeness and Public Hearing.

Ms. O'Meara said this is an extension of the trails. They are owned by the Land Trust. The Conservation Committee has reviewed the project and supports this permit. There are three sections of proposed boardwalk over RP-2 wetlands. Ms. O'Meara has suggested adding a fourth section over an RP-1 wetland buffer.

Cynthia Krum, Executive Director of the Land Trust, showed a map of the trails that are proposed. Some of the trails have been there a long time. She outlined on the map the areas that will have the new boardwalks. She said the wetlands have been delineated by a soils scientist. They are asking for a waiver of the requirement for a stormwater runoff plan since they are not altering the topography. She also showed an area where they are not sure what

type of boardwalk they will put in. They might put in a boardwalk that could accommodate horses if they can afford it.

Ms. Jordan asked the Board if anyone had comments on completeness. No one had questions or comments.

Ms. Jordan opened the public comment on completeness and no one came forward, so the comment period was closed.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Cape Elizabeth Land Trust for a Resource Protection Permit to construct 1,920 sq. ft. of boardwalk and bridging in RP2 wetlands and an RP1 Wetland Buffer be deemed complete.

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

Ms. Jordan opened the public hearing on the merits. No one came to speak, so the public hearing was closed.

Ms. Volent questioned some of the calculations of the square footage that were presented. She urged the applicant to ask for more than they need, so they won't have to reapply for a greater number. The Board and the applicant agreed to request 2144 sq. ft. and the total length of the boardwalk would be 536 ft.

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

Mr. Huebener made the following motion:

#### Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to construct 2144 sq. ft. of boardwalk and bridging in RP2 wetlands and

an RPI Wetland Buffer, which requires review for compliance with Sec. 19-8-3, Resource Protection Regulations.

2. The proposed boardwalks will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed boardwalks 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;
4. The proposed boardwalks 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;
5. The proposed boardwalks will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed boardwalks will not pose problems related to the support of structures;
7. The proposed boardwalks will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed boardwalks will not disturb coastal dunes or contiguous back dune areas;
9. The proposed boardwalks will maintain or improve ecological and aesthetic values;
10. The boardwalks are a use permitted to be located in a wetland area and therefore do not need a buffer from the wetland;

11. The boardwalks will be installed without vegetation removal and therefore will not trigger the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission.
12. The boardwalks 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; and
13. The proposed boardwalks are not in a Floodplain.
14. 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 construct 2144 sq. ft. of boardwalk and bridging in RP2 wetlands and an RP1 Wetland Buffer be approved with the following condition:

1. That any required permits from the Maine Department of Environmental Protection or the Army Corps of Engineers be obtained prior to any installation of boardwalks.
2. That the plat be updated to show the correct square footage and lengths of all the proposed boardwalks.

Mr. Sahrbeck seconded the motion and it was approved, 7-0.

**Holt Private Road Review** – Dr. William Holt is requesting a private road review (to upgrade his existing driveway) to provide frontage for a new lot to be created at the end of Running Tide Rd (U14-40), Sec. 19-7-9 Completeness.

Robert Metcalf of Mitchell and Associates was there on behalf of Dr. Holt. He showed a plan of where the current driveway is, where the 250 ft. setback from the RP-1 wetland lies, and the 75 ft. stream setback, and the view easement. There is a private tote road for the access to the Duffett property, and for others to have access down to the beach.

He showed the map of the proposed lot and the existing driveway. He spoke about the drainage from the driveway down to an existing stream.

They are asking for a waiver of the road width from 22 ft. down to 14 ft. with 2 ft. grass shoulders. They are also asking for a waiver of the curbing and the culvert because of the width of the proposed road. They want a waiver from the alignment of the road. The offset from the centerline is minimal.

Mr. Metcalf showed the building envelope on the plan and said it is 1.84 acres. He said he will iron out the problem with the graphics on the plan and make sure they are legible. The Police Chief has approved the name of the road to be Vineyard Lane.

Ms. Jordan opened the public comment period on completeness.

Thomas McNaboe of Cumberland represents one of the abutters, Robert Flaherty. He questions the designation of the wetlands. He wants to know if those designations are correct. The Town map shows it all as RP-1 and the applicant's map shows part as RP-2. If it were all RP-1, the building envelope could not exist.

Ms. O'Meara said that completeness does not necessarily mean adequate. You can call it complete and expect the applicant to come forward with information to prove their claim. She also noted that there is a study of the wetlands that was done in the field, and that is the best method for such mapping.

Ms. Volent said that Al Frick has written that they have determined the wetlands are indeed RP-2, and that is in the packet of materials submitted. She therefore thinks this application is complete.

The public comment period was closed.

Mr. Curry asked for a topo map. The lines are too faint to read.

Mr. Metcalf said he will work with the printer to get a solution to that problem.  
Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. William Holt to upgrade an existing driveway to provide frontage for a proposed lot located at 15 Running Tide Rd be deemed complete, with a waiver granted from providing the following information:

1. Aesthetic, cultural and natural information;
2. Groundwater information; and
3. A stormwater management plan.

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

The Board scheduled a site walk for Thursday April 27, 2017 at 5:30 p.m.

Mr. Steinberg asked about the dead end road, and said Broad Cove is a dead end system.

Ms. Jordan said there is a gated access at Jordan Farm Road, so it has two means of egress.

Mr. Sahrbeck asked if there are any buildable lots in that area. Can there be any access to Hannaford Cove Road.

The other lots in the area that could be built on are in the Broad Cove subdivision, not part of this lot.

Mr. Huebener thinks Dr. Holt could have access to Hannaford Cove Road.

It was said that there are numerous other property owners between this property and Hannaford Cove Road.

Mr. Sahrbeck asked about the RP-2 wetlands between the building envelope and the Begin property.

Ms. O'Meara said it is a small RP-2 wetland and it is not a vernal pool. Since it is RP-2, you may come close to it, as long as you don't alter it, you do not need a resource protection permit.

Ms. Volent questioned the waiver requests for the drainage and curbing.

Mr. Metcalf agreed that they have ironed these out with Mr. Malley and the Town Engineer.

Ms. Volent also has questions about the necessity of DEP approval.

Mr. Metcalf said he had conversed with the DEP by phone, but does not have any specifics in writing.

Ms. Jordan said there was a concern about the property at 7 Running Tide Road. The owners are worried about the inability to remove dead and dying trees.

Mr. Metcalf said that dead and diseased trees can be removed if they are a safety hazard. They do need approval from the Code Enforcement Officer.

Ms. Jordan opened the public comment on the merits of the project.

Trish Wasserman of 3 Running Tide Road wants to know how many houses on Running Tide Road can be built in addition to the 21 that are already there. She thinks that will trigger the dead end road standard.

Nancy Bagin of 7 Running Tide Road is concerned that the building envelope is higher than her house. She wants to know if there is any protection there, who is responsible for excess runoff to her house.

No one else came forward, so the public comment was closed.

Ms. O'Meara explained that the dead end rule is part of the subdivision ordinance. It only applies when you are reviewing a subdivision. This is just a private road application, so the dead end road rule does not apply here. For example, there could be 15 more houses on Running Tide Road, and it would not matter.

Ms. O'Meara also replied to a question about whether Dr. Holt has created a subdivision by selling off lots. She explained how the subdivision ordinance has not been triggered in this case due to exemptions in the state subdivision law.

Ms. Volent asked about the possible runoff onto the neighboring property.

Ms. O'Meara replied that she has asked the Town Engineer to pay close attention to that issue. He has not yet found any evidence that water is moving towards the Bagin's lot.

Mr. Metcalf said they will put a note on the plan prior to grading on the building envelope.

Mr. Curry made the following motion:

BE IT FURTHER ORDERED, that the application be tabled to the regular May 16, 2017 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Sahrbeck seconded the motion and it was approved, 7-0.



**Nelson Private Accessway Permit** – Don Nelson is requesting a Private Accessway Permit to make an existing lot with insufficient frontage buildable and located at 4 Silva Drive (U46-2), Sec. 19-7-9, Private Accessway Completeness and Public Hearing.

Don Nelson of 1180 Sawyer Road said he owns 4 Silva Drive. He would like to build a residence on that lot.

The Board had no questions on completeness.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Donald Nelson for a Private Accessway Permit to make an existing nonconforming lot with insufficient frontage located at 4 Silva Drive (U46-2) buildable be deemed complete.

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

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

The Board did not need a site walk.

Ms. Volent asked if the applicant is agreeable to making a trench as requested by the Town Engineer.

He said he is agreeable.

Mr. Sahrbeck made the following motion:

#### Findings of Fact

1. Donald Nelson is requesting a Private Accessway Permit to make an existing nonconforming lot with insufficient frontage located at 4 Silva

Drive (U46-2) buildable, which requires review under Sec. 19-7-9, Private Accessways.

2. The Fire Chief is waiving the requirement for a turnaround.
3. The Code Enforcement Officer supports provision of an HHE-200 form designing the septic system as part of the building permit.
4. A road maintenance agreement is not needed due to the short length of the driveway serving only one lot.
5. The lot is in a developed neighborhood where a physical inspection of the site demonstrates adequate site distance.
6. The applicant will likely be making utility connections in Silva Drive, which was paved last year. The Public Works Director prefers that a single, wider trench be used for utility connections instead of multiple trenches.
7. 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 Donald Nelson for a Private Accessway Permit to make an existing nonconforming lot with insufficient frontage located at 4 Silva Drive (U46-2) buildable be approved, subject to the following conditions:

1. That an HHE-200 form designing the subsurface wastewater disposal system be submitted and approved by the Code Enforcement Officer prior to issuance of a building permit;
2. That the curb radii of the driveway be of adequate size to allow access for the Fire Department ladder truck.

3. That a single trench across Silva Drive be used to establish utility connections to the new lot.

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

There was no one in the audience for public comment.

The Board has agreed to move the May 16 Planning Board meeting to May 18, 2017, because of possible quorum issues.

The Board voted unanimously to adjourn at 8:35 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary