

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

May 18, 2017

7:00 p.m. Town Hall

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

Absent: Henry Steinberg

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the April 24, 2017 meeting. The minutes were approved 6-0.

OLD BUSINESS

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 Public Hearing.

Bob Metcalf of Mitchell and Associates represents Dr. Holt in this project. He gave highlights of the current plans. He has expanded the plans to be able to see all of what is going on in the road. He has changed the line weight on the map, so the contours are visible now. They added the high water line (based on the astronomical tide plus 3 ft), to the existing conditions map. They have revised the stream setback line and put it on the plan. They have met with Audi Arbo of the DEP regarding the NRPA permit by rule. She wasn't sure they needed one, but they have submitted one and haven't gotten a final determination yet.

Mr. Metcalf said Albert Frick's office has gone out and confirmed that there is no vernal pool on this land. They have also confirmed that the delineation between the RP-1 and RP-2 wetlands is accurate as shown on the plan. Albert Frick has responded to the question about that delineation by citing the town's zoning provision where the 100ft by 100ft rule is in effect. The 100ft. by 100 ft. rule is that if you have a section of wetland that is no greater than 100ft. in width by 100ft. in length it is classified as an RP-2 wetland.

Mr. Metcalf also said they have added notes to the plan about tree clearing on the building site and that large boulders will be added to delineate the setback line for the RP-1 wetland. They have also added a note that says before the issuance of a building permit a grading plan for the house lot needs to be

submitted to the Code Enforcement Officer for review. The drainage needs to be towards Vineyard Lane. There is also a note regarding the access if the Duffett property gets developed.

Ms. Jordan opened the public hearing.

Robert Flaherty of 9 Running Tide Road said he grew up in Cape Elizabeth. He has a hard time understanding how there can be an RP-2 wetland between a stream and a large body of water. He said Mr. Frick did not give any soil samples, vegetation samples or anything of the sort. He said we do not have a quantifiable determination of it being RP-2. He would like the Board to consider an independent study done to determine whether that area is legally RP-2. He would even pay for that study. He does not believe that is RP-2.

Thomas McNaboe of Cumberland was there on behalf of the Flaherty's. He said this is all about field verification. The Ordinance section 19-2-5 defines field verification. He said none of the criteria have been done to explain why this is not an RP-1. Invoking the 100 by 100 rule without an adequate survey is a very close call. You cannot build a driveway over an RP-1 wetland. He would like to have another set of eyes to look at this.

No one else came to speak, so the public hearing was closed.

Mr. Metcalf said he has worked with Al Frick for over 30 years and trusts his work. He said Mr. Frick responded to Mr. McNaboe's first letter. He knows that Mr. Frick has gone out and done the evaluation for this property. Mr. Metcalf has no question of Mr. Frick's credibility on how he came up with this delineation.

Mr. Metcalf was asked to explain the 100ft. by 100 ft. rule. He said that by the ordinance if the wetland narrows down to less than 100 ft. wide for at least 100 ft. long, that constitutes a break.

Ms. Volent asked if Mr. Metcalf has the original documentation by Al Frick from 12/11/2014. That document should show the soils report used to delineate the wetlands.

Mr. Metcalf said he did not have that report with him, but it would be in the file.

Ms. O'Meara was asked how accurate are the town's maps of the wetlands. She replied that the Town's maps cannot be applied to a specific parcel of land, but need field verification of the boundaries of those wetlands. It is not unusual for the boundaries of a wetland to differ from the town's zoning maps. She quoted from the ordinance and also explained the 100 by 100 ft. rule. It has been used before in other development. There is also an email from the Code

Enforcement Officer that he has reviewed all the plans and all the letters from Al Frick, and the ordinance, and has made the determination that this interpretation is satisfactory.

There was a further discussion of what happens if there is a disagreement with the Code Officer's determination. Ms. O'Meara said any challenge of his determination of a boundary would be heard by the Planning Board with the advice of the Conservation Committee.

Ms. Volent said she would like to make a condition to require the Dec. 11, 2014 report be provided. She wants to be sure they have looked thoroughly at this issue. She had several questions about notes on the plans.

There was more discussion about the wetlands and the possible requirement to provide the Dec. 2014 report. There was an opinion that no further evidence is needed.

Mr. Chalot made the following motion:

Findings of Fact

1. Dr. William Holt is requesting review of an upgrade of his existing driveway at 15 Running Tide Rd to a private road, Vineyard Lane, in order to provide frontage for a new lot which requires review for compliance with Sec. 19-7-9(B), New Private Road.
2. The private road will not result in undue water pollution. The private road is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the private road.
3. The private road will have public water infrastructure to provide sufficient quantity and quality of potable water for lot 2.
4. The private road will not cause soil erosion, based on the erosion control plan provided.
5. The private road will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The private road extends an existing road network and therefore supports connectivity while discouraging through traffic. The private road is laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. The private road is designed to meet town standards, with

exception of waivers granted for road width and centering in the road right-of-way.

6. The new lot 2 will have adequate sewage disposal.
7. The private road will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline.
8. The private road is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
9. The applicant has demonstrated adequate technical and financial capability to complete the project.
10. The private road will not adversely impact surface water quality.
11. The private road will not adversely impact the quality or quantity of ground water.
12. The private road is not located in the floodplain.
13. The road is not located in a wetland.
14. The private road will provide for adequate stormwater management.
15. The private road is not located in the watershed of Great Pond.
16. The private road is not located in more than one municipality.
17. The private road is not located on land where liquidation harvesting was conducted.
18. The lots served by the private road will have access to direct sunlight.
19. The new lot 2 served by the private road will include a vegetative buffer as a result of the building envelope and the restrictions on vegetation removal outside the building envelope.
20. The lots served by the private road will be provided with access to utilities.
21. The private road does not include a phasing plan that provides for emergency access during all phases of construction.

22. The applicant has substantially addressed the Private Road standards in Sec. 19-7-9(B).

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. William Holt for review of an upgrade of his existing driveway at 15 Running Tide Rd to a private road, Vineyard Lane, in order to provide frontage for a new lot which requires review for compliance with Sec. 19-7-9(B), New Private Road, be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 11, 2017;
2. That the Road maintenance agreement be signed and recorded in the Cumberland County Registry of Deeds;
3. That a note be added to the plans requiring the contractor to be certified in erosion and sediment control by the Maine DEP to work on this project;
4. That the word "protection" be changed to "suppression" on note number 11 on sheet L2;
5. That the NRPA permit by rule review is submitted and to the Town Planner, and any recommendations are completed and reviewed by the Town Planner and the Town Engineer;
6. That the field report be provided that supports the report by Al Frick Associates from December 11, 2014 be submitted to the Town Planner and Code Enforcement Officer for final determination;
7. That there be no alteration of the site nor issuance of a building permit until the plans have been revised to satisfy the above condition and submitted to the town planner for review.

Mr. Sahrbeck seconded the motion, and Ms. Volent added conditions 3 thru 6 as friendly amendments and both Mr. Chalot and Mr. Sahrbeck agreed. The motion passed, as amended 6-0.

Maxwell Woods Subdivision- Joel FitzPatrick, d/b/a Maxwell Woods LLC, is requesting Major Subdivision Review and a Resource Protection Permit for Maxwell Woods, a 38-unit condominium and 8 apartment unit development located 112-114 Spurwink Ave and amendments to the previously approved Cottage Brook Subdivision to adjust grading adjacent to the extension of Aster Lane, Sec. 16-2-4, Major Subdivision Review, Sec. 16-2-5, Amendments to a

Previously approved subdivision Sec. 19-8-3, Resource Protection Permit, and Sec. 19-9 Site Plan review.

Ms. O'Meara gave an overview of preliminary approval. She cited the Subdivision Ordinance as it relates to a major subdivision. No building can happen after preliminary approval, only after final review.

Owens McCullough of Sebago Technics spoke on behalf of Wylie Enterprises. Joel Fitzpatrick and Kylie Mason, Landscape Architect, were also there with him. He reviewed the process on this application. He noted the revisions since the last review. There will be some additional notations on the plans. The revisions for the Cottage Brook plan will be on a stand-alone plan. They will eliminate the proposed street lights.

There are no vernal pools on the property and no evidence of cottontail rabbits. There will be no wetland impact in the project. They have submitted a new buffering plan for the area between the Maxwell Woods and the Cottage Brook condos. All construction will be from Spurwink Road. They have filed an application for Site Review of Development with the Maine DEP.

Mr. McCullough then showed the plans and reviewed the project as it has been proposed. He showed the open space and said the public will have full access to the open space. This project will be like the Eastman Meadows, so he showed the plans of that project. He also addressed the agricultural easement, and that it allows the land to be preserved as farmland. This is a priority in the open space zoning.

Ms. Mason then gave an overview of the plantings proposed for the area between the two condo projects. The surface of the trail will be compacted stone dust.

Mr. McCullough reviewed the traffic study and the proposed improvements to the existing conditions along Spurwink Road.

Ms. Jordan opened the public comment period.

Becky Fernald of 313 Spurwink Road is concerned about the open space, particularly the agricultural open space. She said the 2 acre parcel is not owned by the applicant. Who owns that land? She would like to see the deed for review before preliminary approval is granted. She thinks they should table this to the next meeting.

Peter Dixon of 29 Westminster Terrace spoke about the agricultural area included in the open space. He said part needs to be farmed. He showed

photos of two different parcels of farmland, including the parcel under consideration. Is it farming, or not? Who is it going to farm it?

No one else came to speak, so the public comment period was closed.

Mr. Sahrbeck had questions about the 2.0 acres of open space that is reserved for agriculture.

Ms. O'Meara replied that the 2007 Comprehensive Plan made a priority of preserving farmland. The Plan laid out a way for farmers to continue to keep their land for farming and sell the development rights as an easement. Ms. O'Meara cited the easement held by the Cape Elizabeth Land Trust over the Jordan Farm. The Jordan family can continue to own and farm their land, and the land cannot be developed. She also quoted from the Future Open Space Preservation Plan (FOSP). This also made a priority of preserving farmland by innovative and creative means.

Ms. Volent said the Bamfords are co-applicants and the land will be restricted to agriculture. She also said farmland has different meanings. It can be woodland and wasteland or can have a barn or shed structure.

Mr. Curry said it is clear that this 2+ acres are part of this application.

Ms. Jordan said that all the documents required are to be part of the final process.

Mr. Sahrbeck thanked the applicant for the work on the buffer between Cottage Brook and Maxwell Woods.

The Board would like to have another site walk.

Ms. Volent thinks the parking areas at the multiplex units need to be landscaped, and she wants to see the back side view of them.

Mr. McCullough said that will be difficult because of drainage and stormwater treatment areas. He also asked for guidance about where to put the street trees on one side of Aster Lane, because the grading makes it too difficult to plant them there. He asked the Board for guidance.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Joel FitzPatrick, dba Maxwell Woods LLC, and Bill and Lois Bamford are requesting Major Subdivision Review and a Resource Protection Permit to

construct a 46 unit project consisting of 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Cottage Brook Subdivision to accommodate grading changes related to the construction of Aster Ln, which require review for compliance with Sec. 16-2-4, Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit regulations, and Sec. 16-2-5, Amendments to a previously approved Subdivision.

2. The subdivision will not result in undue water pollution. The subdivision is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
3. The subdivision will have a sufficient quantity and quality of potable water.
4. The subdivision will not cause soil erosion, based on the erosion control plan provided.
5. The subdivision will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The subdivision provides for road network connectivity while discouraging through traffic. Roads are laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. Roads are designed to meet town standards.
6. The subdivision will provide for adequate sewage disposal.
7. The subdivision will provide for adequate solid waste disposal.
8. The subdivision will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline.
9. The subdivision is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant has demonstrated adequate technical and financial capability to complete the project.
11. The subdivision will not adversely impact surface water quality.
12. The subdivision will not adversely impact the quality or quantity of ground water.

13. The subdivision is not located in a floodplain.
14. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance.
15. The proposed subdivision will provide for adequate stormwater management.
16. The subdivision will not unreasonably increase the phosphorus concentration of Great Pond.
17. The subdivision is not located in more than one municipality.
18. The subdivision is not located on land where liquidation harvesting was conducted.
19. The subdivision does provide for access to direct sunlight.
20. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed.
21. The subdivision will comply with the open space impact fee with the preservation of 8.47 acres of open space.
22. The multiplex units will be provided with access to utilities.
23. The subdivision plan will not be phased.
24. The proposed subdivision will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
25. The proposed subdivision 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;
26. The proposed subdivision 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;
27. The proposed subdivision will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;

28. The proposed subdivision will not pose problems related to the support of structures;
29. The proposed subdivision will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
30. The proposed subdivision will not disturb coastal dunes or contiguous back dune areas;
31. The proposed subdivision will maintain or improve ecological and aesthetic values;
32. The proposed wetland alternations are located in the wetland buffer.
33. The proposed subdivision 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;
34. The proposed subdivision 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
35. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1 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 Joel FitzPatrick, dba Maxwell Woods LLC, and Bill and Lois Bamford, for Preliminary Subdivision Review and a Resource Protection Permit to construct a 46 unit project consisting of 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Cottage Brook Subdivision to accommodate grading changes related to the construction of Aster Lane be approved, subject to the following condition:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 15, 2017;

Mr. Curry seconded the motion and it passed, 6-0.

OTHER BUSINESS

19 Wells Rd Tower Overlay District Amendment- The Cape Elizabeth Town Council has referred to the Planning Board a request by Global Signal Acquisitions IV LLC (Crown Castle) to establish a Tower Overlay District located at 19 Wells Rd (R5-30), Sec. 19-10-3, Amendments [to the Zoning Map].

Ms. Jordan recused herself as one of the owners of 19 Wells Road, and Mr. Chalot took over as Chair.

Ms. O'Meara said there is a request to establish a new Tower Overlay District. She showed the map of the proposed overlay. It appears part of overlay is in the RP-1 Buffer. They can rebuild an existing farm road, but not build a new access road located in the RP-1 buffer. The wetland area has not been mapped. The map they have used has been taken from the Town Zoning map. One option for the applicant is to do field mapping of the wetland to confirm its proximity to the tower site.

The Board had questions about the process and about the Wetland buffer.

Ms. O'Meara said the board needs to make a recommendation to the Council, one way or another as to whether or not they should re-zone this parcel. They need to schedule a public hearing for their next meeting.

It was noted by a couple of Board members that it would be possible to change the location, or configuration of the proposed new zone.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted, and the facts presented, the request by Global Signal Acquisitions IV LLC (Crown Castle) to establish a Tower Overlay District located at 19 Wells Rd as depicted on the attached map be tabled to the regular June 20, 2017 meeting, at which time a public hearing will be held.

Mr. Huebener seconded and the motion was approved, 6-0.

27 Fowler Rd BB District Zoning Amendments - The Cape Elizabeth Town Council has referred to the Planning Board a request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor, Sec. 19-10-3, Amendments [to the Zoning Ordinance and the Zoning Map].

There was no discussion of this item.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the map and materials submitted, and the facts presented, the request by Brad Pearson to change the zoning for 27 Fowler Rd (U20-10) from Residence A to Business B and to make text changes to the Business B Zoning District to permit a landscaping contractor be tabled to the June 20, 2017 meeting, at which time a public hearing will be held.

Mr. Chalot seconded and it was passed, 6-0.

No one came forward with public comment.

The Board voted 6-0 to adjourn at 9:35 p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary