

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

October 17, 2017

7:00 p.m. Town Hall

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

Absent: Jonathan Sahrbeck

Also present was Maureen O'Meara, Town Planner.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the September 19, 2017 meeting. The minutes were approved, 6-0.

The minutes of the Planning Board workshop of October 3, 2017 were added to the agenda and approved, 6-0.

OLD BUSINESS

Maxwell Woods Residential development - Maxwell Woods LLC is requesting Major Subdivision Final Plan Review, Amendments to the previously approved Spurwink Woods Subdivision, a Resource Protection Permit and Site Plan Review of 38 condominium units and 2 4-unit apartment buildings located at 112-114 Spurwink Ave, Sec. 16-2-4, Major Subdivision Review Public Hearing, Sec. 19-8-3, Resource Protection Public Hearing, and Sec. 19-9, Site Plan Review Public Hearing.

Ms. Jordan opened the public hearing.

Paul Seidman of 21 Oakview Drive said there should be soil samples for the farm parcel. If it is not farmable, wouldn't it make sense to have it as open space?

Peter Dixon of 29 Westminster Terrace said if we change the farm parcel to open space, we all win. The Town gains public access.

Becky Fernald of Mitchell Road said the open space is a strongly valued community goal. She said the agricultural easement should be open space with public access. The land is not suitable for farming.

Diana Stern of 1 Columbus Road went to the site walk and said they could not go on the land, it was just pointed out. That is pseudo open space. She urges the Board to make it true open space, maybe it could be a dog park.

Larry Stern of 1 Columbus Road said it may be a benefit for the farm family to hold onto their land, but we need to weigh that against the benefit to the public to use it. We need to do what is best for all the community.

Andrew Gilbert of 32 Aster Lane is concerned about the road access to the project. He strongly urges the Planning Board to be sure it is clearly written that the road construction is done first. It is a safety issue. He wants the farmland used as farmland and not held as a space to store cars, farm equipment etc. He objects to using the yards around the units as open space, that is someone's back yard.

Becky Byers of 4 Franklin Circle wants the construction of the road to be done first. When they remove the trees, she wants to make sure the buffer is still a true buffer.

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

Lee Lowry, attorney for Joel Fitzpatrick spoke on his behalf. He cited all the meetings that have been held in reviewing this project. He said they have been granted DEP approval. They have been reviewing the deeds with the Town's attorney.

Mr. Lowry showed the plans and talked about the headlights from the road as it will exit the development. He said they cannot change the location of the road (Aster Lane) because it has been set as a right of way in the past. He addressed the public comments by saying that soil samples are not needed to make this land meet the code for agricultural use. It is agricultural use property and they don't want the public wandering around on it. Yards have been used as open space for many other projects.

Mr. Curry addressed the open space issue and said open space is a mathematical calculation. Open space does not equal public access, it is available to the members of the development. He asked Ms. O'Meara to explain how the agricultural land can then not be open to the members of the development.

Ms. O'Meara said that the town's open space requirements are modeled to meet the legal bar established by the U.S. Supreme Court for impact fees. For this reason, general public access cannot be required, but the open space must be open to the residents of the development. Nevertheless, the town encourages that open space be open to the general public and developers almost always

agree. She spoke about what types of land are priorities for preservation, with agricultural land being one of them. Under 2-8-B-2 there are exceptions to the activities allowed in the open space rules. She also said this farm has been tilled in the recent past, and if it is not used for agriculture in 3 years, it can become open space.

In response to a question by Mr. Steinberg, Mr. Lowry stated that Mr. Fitzpatrick will be constructing the road first. He will be bringing it from Spurwink Road and not constructing it by coming through the existing neighborhood on Aster Lane.

It was agreed that they will make this a condition of approval.

Mr. Steinberg was concerned about the safety of the children waiting for the school bus. Planning Board members agreed the designation of school bus stops is not within the Planning Board's purview.

Ms. Volent asked about the DEP approval and its requirements.

Ms. O'Meara said the State requirements are enforced by the State.

It was agreed that the plantings will be reviewed and revised according to the recommendations of the Tree Warden. This will be a condition of approval.

Mr. Chalot made the following motion:

Findings of Fact

1. Joel FitzPatrick, dba Maxwell Woods LLC, is requesting Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Spurwink Woods Subdivision to accommodate grading changes related to the road extension, greenbelt trail and condominium lighting, which requires review for compliance with Sec. 16-2-4, Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit regulations, Sec. 19-9 Site Plan review 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 100-year 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 plan for the development reflects the natural capabilities of the site to support development.
36. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
37. The plan does provide for a system of pedestrian ways within the development.
38. The development will not locate, store or discharge materials harmful to surface or ground waters.
39. The development will provide for adequate disposal of solid wastes.
40. The development will not adversely affect the water quality or shoreline of any adjacent water body.
41. The development will provide for adequate exterior lighting without excessive illumination.
42. The development will provide a vegetative buffer throughout and around the site and screening as needed, including buffering of Building B with existing woods located on the abutting town open space.
43. The development will not substantially increase noise levels and cause human discomfort.
44. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.

45. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1, Resource Protection Regulations, Sec. 19-8-3, and Site Plan Regulations, Sec. 19-9.

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, for Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Spurwink Woods Subdivision related to the road extension, greenbelt trail, and condominium lighting be approved, subject to the following conditions:

1. The extension of Aster Lane will be constructed first and it will be the access point for construction vehicles;
2. That the plans be revised to address the recommendations in the Town Engineer's letter dated September 13, 2017;
3. The proposed canadian hemlock, river birch and other plantings not in Appendix C will be replaced with trees allowed on the Road Tree List, Appendix C, Subdivision Ordinance;
4. That the trees proposed to be planted between Aster Lane and the pond can be replaced with alternative plant material best suited for the planting location, subject to approval of the Tree Warden.
5. That easements and deeds be provided in a form acceptable to the Town Attorney and Town Manager and signed by the applicant.
6. That the parking areas for the multiplex buildings be expanded to provide for 8 parking spaces per building. The parking shall be shown on sheet 5 of 41 and reviewed by the town planner and town engineer.
7. That lighting be installed at the fourplex building entries and that information be provided that the fixtures will not produce lighting in excess of .5 footcandles at the property line.
8. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

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

1226 Shore Rd office/retail/apartment building Site Plan Amendment-

1226 Shore Rd LLC is requesting an amendment to the previously approved site plan to expand the existing building to accommodate office, retail and 8 apartments, Sec. 19-9, Site Plan Public Hearing.

Ms. Volent recused herself due to a possible work conflict.

Steve Bushey of Stantec civil engineering and Katherine Dettmer of Archetype Architects represented 1226 Shore Road LLC.

Mr. Bushey showed plans of the boundary survey, and slides and reviewed the plans. The parking lot will be porous pavement to handle stormwater management. There will be 26 parking spaces and 8 garage spaces. He showed plans of the plantings. They will add at least 6 evergreens behind the garage building.

He spoke about the drainage area and that they will comply with the peer review and follow the recommendations proposed. He showed the lighting photometric plan.

Katherine Dettmer spoke about the lighting and signs. She showed the floor plans of the building. There will be 2 office spaces and a retail space on the first floor. There will be 8 apartments on the 2 upper floors (4 on each floor). She said that they need 37 parking spaces. There will be 26 in the parking lot and 8 in the garage. There will be 4 shared parking spaces for a total of 38 spaces. She went into detail about the number of parking spaces needed for each use of the building. She also showed the calculations for a possible 20 seats in the retail space.

Ms. Dettmer showed the elevations and materials for the building. She showed how the lighting would look in the evening and spoke about the signage and plantings.

Ms. Jordan opened the public hearing.

Paul Seidman of Oakview Drive asked about the height of the building.

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

Ms. Dettmer said the limit is 35 feet high. They are 8 inches below that height.

Ms. O'Meara said the Code Enforcement Officer agrees this building's height is in conformance with the Town Center Zone height limit.

Mr. Chalot asked Ms. O'Meara for more information about the parking spaces on the street in front of the building.

Ms. O'Meara said parking is not allowed on the street in the front. If this were a brand new project, it would not be allowed. There are 2 existing handicapped spaces in the front, and changing that to 3 regular parking spaces might be contrary to the intent of the Town Center requirements.

Ms. O'Meara said if there are 20 seats in the retail space, it will be classified in the zoning as a restaurant. If it is approved as a restaurant, it can be used as retail space with no additional approval.

Mr. Curry asked about the buffer with the residential zone.

Ms. O'Meara is asking for a very clear note that defines the boundary of the buffer area and limits what can be removed.

Mr. Huebener asked about the noise from the heat pump. He was also concerned about access to the dumpster.

He was told that the noise will be 49-50 DBA right next to the heat pumps.

Ms. Jordan asked for a floor plan for Building 2. She said she assumes the owner of office space is not ADA. She is also concerned about the drainage at the parking lot and the building and wants a specific plan of how they will manage that.

Mr. Huebener asked if people can park in the lot behind Town Hall.

Ms. O'Meara said that the town hall parking lot is sometimes used for overflow parking now.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 1226 Shore Rd LLC for Site Plan review of a mixed use office/retail/8 apartments building expansion located at 1226 Shore Rd be tabled to the regular November 21, 2017 meeting of the Planning Board.

The motion failed for a lack of a second.

Mr. Huebener then made the following motion:

Findings of Fact

1. 1226 Shore Rd LLC is requesting Site Plan review of a mixed use office/restaurant/8 apartments building expansion located a 1226 Shore Rd, which requires review under Sec. 19-9, Site Plan Regulations.
2. The plan for the development reflects the natural capabilities of the site to support development.
3. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
4. The plan does provide for a system of pedestrian ways within the development.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.
7. The development will be provided with an adequate quantity and quality of potable water.
8. The development will provide for adequate sewage disposal.
9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The development will provide for adequate disposal of solid wastes.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.
15. The development will provide a vegetative buffer throughout and around the site and screening as needed.

16. The development will not substantially increase noise levels and cause human discomfort.
17. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
18. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of 1226 Shore Rd LLC for Site Plan review of a mixed use office/restaurant/8 apartments building expansion located a 1226 Shore Rd be approved, subject to the following conditions:

1. That the plans be revised to satisfy the concerns of the Town Engineer in his letter dated October 12, 2017.
2. That floor plans be provided for every floor of Building #2 and the basement of building #1.
3. That the plans be labeled that the office space in Building #2 shall only be available as personal office space for the owner;
4. That parking for the site be clarified as follows:
 - No more than 2 handicapped parking spaces shall be shown in the front parking area.
 - Total parking on the site shall be tabulated on a plan note that is consistent with what is shown on the plan.
 - Use of the garage space in Building #2 shall be made clear.
 - The parking calculation table should be expanded to show all building area by floor, use and parking requirement.
5. The road easement should be reviewed for clarity in description of location. If the Town Attorney determines the description is unclear, the applicant and the town should attempt to correct the deed as needed and obtain necessary approvals;
6. Note 7 on sheet C-2 should be revised to refer to the buffer area and the buffer area should be delineated and labeled on the site plan. Applicant will label the three trees to be removed and show 6 evergreens, 6 to 8 ft at time of planting to be planted behind the garage;

7. The note regarding preservation of the 36" oak tree located on the western front of the property should be revised to specify that protection fencing be installed at the dripline of the tree and that tree trimming be done consistent with arboricultural standards;
8. That a complete set of plans and materials for the project be submitted to the town planner, which also satisfy the above conditions;
9. That there be no issuance of a building permit nor alteration of the site until the above conditions have been satisfied and a performance guarantee has been provided to the town.

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

NEW BUSINESS

75 Ocean House Rd Private Road/Private Accessway - KTO LLC are requesting review of a proposed private road and private accessway to create frontage for a new lot to be located to the rear of 75 Ocean House Rd, Sec. 19-7-9 Private Road and Private Accessway Completeness.

Peter Biegel of Land Design Solutions spoke on behalf of Kevin O'Donovan, the owner of the property. He showed a plan of the property. He showed the 35 ft. wide right of way, which is on the property of the abutters, the Clarks. There are two parcels that make up the property. The deeds to the property state that there is a right of way to access the two lots. The property is in the Residential C Zone and is 2.02 acres. There is a wetland area of 28,000 sq. ft. shown on the plan. There is an area of very poorly drained soils, (peacham soils) in the middle of the parcel. He showed the sewer line and water line.

They will reconstruct the existing driveway to private road standards, 18 ft. wide. They are also proposing to construct a private accessway, 18 ft. wide with a hammerhead at the end. They have submitted a road maintenance plan, and propose to call the road, Edgecomb Road. Mr. Biegel then spoke about the proposed location of the utilities. There will be a no disturb area outside of the building envelope and the edge of the building envelope will be marked with boulders.

They are requesting 3 waivers: 1. The reduction of the private road right of way to 35 ft. 2. Private road width reduction from 22 ft to 18 ft. 3. Driveway intersection separation reduction from 125 ft. to 116 ft.

He then reviewed and addressed the staff comments.

Ms. Jordan then opened the Public comment.

Jonathan Clark of 73 Ocean House Road would like the Board to take a site walk to see the wetlands in the back. When the second soil engineer came in to look around, he just looked at the land and took no samples. He was there for maybe an hour and told my wife that he had taken no samples and that he can just look at the soil and the topography and determine that it is fine. He wonders about the completeness of the investigation into those wetland soils. We will lose 4700 sq. ft of our land to this development. We request that the private accessway be built to the standards of a private roadway to accommodate our possibility of developing a lot. He wants the Board to do a site walk.

Craig Ashman of Purpoodock Drive is concerned about the wetlands and their possible impact.

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

Mr. Curry asked if they have an engineering report on the peacham soil.

Mr. Biegel said Mark Hampton did test pits and those are in the first report. He did not do any more test pits on his latest visit. He has his sketch.

Ms. Volent wants to know if he can submit a class A high intensity soil survey. She feels that this is a requirement.

Mr. Chalot asked how close they are to the threshold between RP-1 and RP-2.

The response was that they are half way.

Ms. O'Meara said they want to know if there are other very poorly drained soils adjacent to the peacham soils. They do not have that information.

According to Mr. Biegel, the only very poorly drained soil that Mr. Hampton found was the peacham.

Ms. Volent is concerned that we need a higher level of the soil examination.

Mr. Curry made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of KTO LLC (Kevin O'Donovan) for review to construct a Private Road and Private Accessway, to be named Edgecomb Road, to provide access to a new lot located at the rear of 75 Ocean House Rd be deemed complete.

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

Ms. Volent had several suggestions and corrections she wants to see on the final plans.

Ms. O'Meara asked if they would accommodate the Clarks by making the entire project a private road. She said they could add more base to the private accessway or ask for a waiver of that standard.

A site walk was scheduled for 5:00 pm. Monday October 23, 2017.

Mr. Curry made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of KTO LLC (Kevin O'Donovan) for review to construct a Private Road and Private Accessway, to be named Bella's Way, to provide access to a new lot located at the rear of 75 Ocean House Rd be tabled to the regular November 21, 2017 meeting of the Planning Board, at which time a public hearing will be held.

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

Since it was after 10 pm., Mr. Chalot made a motion to suspend the rules, Mr. Steinberg seconded and it passed, 6-0.

Old Sea Point Rd Pelletier Amendment - Scott and Julie Pelletier are requesting an amendment to the previously approved Old Sea Point Rd Private Road approval to replace the proposed private well with a public water line to serve the lot located at 19 Old Sea Point Rd (R2-18-4), Sec. 19-7-9 (B) New Private Road Completeness and Public Hearing.

Ms. O'Meara summarized the project and said this is the last lot on Old Sea Point Road, (it is the lot at the end of the road). The plan calls for this lot to be served by a well, so the plan needs to be amended to reflect a change to public water. The plan includes rights for this lot to install public utilities in the private right of way.

Robert Barrett showed the plan and said they will patch pavement, driveways, lawns and grass that are disturbed, back to industry standards. He addressed a prior suggestion that they bring the water line from Old Ocean House Road by saying that it would be very costly. There is ledge they would need to deal with on that route and more disruption to traffic.

Ms. Jordan opened the public comment.

Sarah Haskell of 4 Old Sea Point Road said this project will tear up her driveway. There is a 40 ft. easement on her property that would potentially take out some of her oak trees. She would like there a performance guarantee. She is concerned about the depth of the trench being a safety hazard to her young children.

Sophie Park of 12 Old Sea Point Road is concerned about a loss of access to her garage. They have an electric vehicle and the charging station is in the garage. She is concerned about the timing of the weather with winter coming on. She would like to see a timeline of completion.

Mr. Chalot asked why they have not gotten water line installation details about the project.

Ms. O'Meara said since this is a water district project, they are doing it to the district's standards.

Ms. Jordan asked about trees to be removed.

Mr. Barrett said no trees will be removed. He said the down time across the driveways will only be a few hours on one day. They plan to start in late October or early November.

Ms. O'Meara said they do not usually ask for a performance guarantee for work on private land.

Ms. Jordan said the trenches are all covered at the end of each day.

Mr. Steinberg made the following motion:

Findings of Fact

1. Robert Barrett, on behalf of Scott and Julie Pelletier, is requesting an amendment to the Old Sea Point Rd Subdivision to allow public water to be installed in place of a private well for the lot located at 19 Old Sea Point Rd (18-4), which requires review under Sec. 16-2-5, Amendments to Previously approved subdivisions.
2. Public water is a preferred source of a clean and healthful supply of water for new development.
3. The Planning Board agreed at the October 3, 2017 workshop to expedite the amendment request in order to facilitate installation and repairs to the road, driveways and lawns to be done as soon as possible before winter arrives.

4. Lot 18-4 has deeded rights of access and for installation of utilities within the Old Sea Point Rd right-of-way.
5. The application substantially complies with Sec. 16-2-5, Amendments to previously approved subdivisions.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Robert Barrett, on behalf of Scott and Julie Pelletier, to amend the Old Sea Point Rd Subdivision to extend public water to the lot located at 19 Old Sea Point Rd (18-4) be approved.

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

There was no one in the audience so there was no public comment.

The Board voted, 6-0 to adjourn at 10:20pm.

Respectfully submitted,

Hiroimi Dolliver
Minutes Secretary