

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

December 19, 2017

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Ms. Jordan called the meeting to order and asked for approval of the minutes of the November 21, 2017 meeting. The minutes were approved, 7-0.

OLD BUSINESS

Bailyn-Morris Resource Protection Permit - Ronald Bailyn and Patricia Morris are requesting an after the fact Resource Protection Permit to alter 1,557 sq. ft. of RP2 wetland for drainage and lawn area located at 26 Hannaford Cove Rd(U40-9), Sec. 19-8-3 Resource Protection Permit Public Hearing.

Bob Metcalf of Mitchell Associates spoke on behalf of the applicants. They have updated the plans as a result of the comments at the site walk. Al Frick had mapped the wetlands for the prior owner and they recalled him to do the wetland delineation for this permit. This is an RP-2 Wetland.

Mr. Metcalf showed pictures of the area and showed where the underdrain pipe is located. He also showed a plan of the edge of the wetland. He said they will increase the size of the underdrain pipe to 8 in. and keep it in the same location as the existing pipe. He said the stepping stones will be removed. The fence was there when the applicants purchased the property. The deck was also there at that time. The applicants added the hot tub on the concrete patio.

Ms. O'Meara had asked if they could remove some of the invasive plants from the wetlands and plant wetland plants in their place.

The DEP and the Army Corps of Engineers have said no permit is required from them.

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

Mr. Chalot asked if this is done will it improve the wetland or stop the undermining of the existing foundation.

Mr. Metcalf said it will be an enhancement because it will increase the flow through the pipe and allow the pipe to be flushed out if needed.

Mr. Steinberg wanted to know how long it would be until the pipe silts up.

Mr. Metcalf said the larger pipe and the other improvements will decrease the amount of sediment going into the pipe.

Mr. Chalot asked if they are going to remove the kennel.

Patty Morris said that they can move it since it is a temporary structure.

Mr. Curry asked if they will move the hot tub.

Ms. Bailyn said they would have to get rid of it if they move it. They want to keep it where it is. They can move the kennel.

Ms. Volent wants to help with the stability of the home, but she has concerns about the hot tub.

Mr. Huebener is not concerned about the kennel or the hot tub. Mr. Sahrbeck and Mr. Steinberg agree with Mr. Huebener.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Ronald Bailyn and Patricia Morris for an after the fact Resource Protection Permit for 1,557 sq. ft. of fill in an RP2 wetland for landscaping and an additional 275 sq. ft. of temporary alteration to replace drainage pipe located at 26 Hannaford Cove Rd be tabled to the regular January 16, 2018 meeting of the Planning Board.

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

Ms. Jordan recused herself from the next item on the agenda and from the executive session.

Mr. Chalot took over as acting chair.

Executive Session - The Planning Board may vote to go into executive session to receive legal advice from the Town Attorney regarding the Tower and Antenna Performance Standards, Sec. 19-8-12.

At 7:30 p.m., Ms. Volent made the following motion:

That the Planning Board go into executive session to receive legal advice from the Town Attorney regarding the Tower and Antenna Performance Standards, Sec. 19-8-12.

Mr. Curry seconded the motion and it passed, 4-2.

The Planning Board went into executive session.

At 8:15 p.m., Mr. Steinberg made the following motion:

That the Planning Board end the executive session and resume the normal session.

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

19 Wells Rd Telecommunications Tower - Global Signal Acquisitions IV, LLC (Crown Castle) is requesting Site Plan review, a Resource Protection Permit, and Shoreland Zoning review to construct a 180' tall telecommunications tower to be constructed at 19 Wells Rd (R5-30), Sec. 19-9 Site Plan Public Hearing, Sec. 19-8-3, Resource Protection Permit Public Hearing and Sec. 19-8-2, Shoreland Zoning Performance Standards.

Victor Manougian of McLane Middleton is representing Global Signal Acquisitions IV, LLC, Crown Castle. He introduced Bill Jordan, property owner.

Bill Jordan of 21 Wells Road said they were approached about hosting a cell tower on a piece of their property that is all ledge. It will bring in year round income and pay the taxes. He wants the Board to consider this proposal because it will help to keep the farm for future generations. They do not want to develop the property, and this will have a long term lease.

Mr. Manougian reviewed the process of their application. He spoke about why this process started. They had a tower on the Strout property and after negotiations with Mr. Strout, they were told to take their tower and go. He then outlined the steps that took place with the Planning Board, Town Council and Ordinance Committee. He quoted a letter from CE Tower, LLC, to Crown Castle that their lease will not be renewed.

It is a race to build a tower. Verizon Wireless and T-Mobile will stay with us. AT&T is a work in progress. They have offered the Cape Elizabeth Police and Fire Departments space on the tower. They have submitted a traffic study, a sound study, a light study, FAA study and RF emissions study.

Lucas Anthony, an engineer for Gorrill Palmer in South Portland, said they have revised the plans to address the issues raised at the site walk. He addressed the letter from the Town Engineer and said there were three main categories of issues, erosion control, road width and Federal and State permitting. They will meet all the conditions.

Ms. Volent asked if there is anything in the engineer's letter that they don't agree with?

Mr. Anthony said there is nothing they don't agree to.

Mr. Chalot opened the public hearing.

Nathaniel Bessey of Brann Isaacson said he has been retained by a number of resident of the Cross Hill neighborhood. He sees two key issues. Co-location needs to be taken seriously. Is there a need for the tower? One tower will be taken down, the old Crown Castle tower, and it will be replaced with two towers. The other issue is the wetlands. The road goes through an RP-1 Wetland. You are not allowed to build a new road through an RP-1 Wetland. This is not an existing road and it ends short of the tower site.

Barry Atwood of 293 North Gorham Road, Gorham said this has to do with your ordinance. The spirit of the ordinance is to prevent unnecessary towers. There is unlimited opportunity for co-location on the existing towers.

Peter Cotter of 21 Ocean House Road said he was Chair of the Tower Committee. Their charge was reasonable cell coverage without a lot of towers. This proposal violates the intent of the ordinance.

Paul Strout of 11 Timber Farm Way, Falmouth said cell carriers always want the highest place. 19 Wells Road is at a lower elevation than both of our towers. The Town will end up with worse cell coverage. Do not approve this application.

Steve Bradstreet is representing the Strouts. He said the Town's Resource Protection Ordinance says no new roads can be constructed in a protected area. Existing roads can be rebuilt. He said the timber harvest in 2012 and 2013 left skidder tracks, not a road. There are organic tire ruts, no gravel. It is not a road, it is a trail. At the pond, the edge of the road is 4 ft. from the Strout property line. They are removing 6 in. of organic material before they start the gravel for the road. There is a steep slope and they propose rip rap which is not stable at that slope.

Justin Strout, representing the Strout Trust as abutters, said the survey doesn't locate anything. It's approximately, about or near, nothing is definite. On the Resource Protection Permit, he hasn't seen comments from the Conservation Committee. That road was built for skidders when the timber was harvested. The tote road ends within the RP-1 buffer.

David Jones of 2 Algonquin Road opposes the increase of cell towers. The intent of the ordinance is being ignored. The ordinance wants fewer towers, not more. You approved antennas in Shore Acres and that did not improve my coverage.

Nick Tammaro, President of the Cape Farm Alliance, said he approves the tower project. It will help the Jordan Farm continue for future generations.

Bill Bamford of 112 Spurwink Avenue is here to support the project. It is an opportunity for the Jordans to make a long term investment in the farm.

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

Mr. Chalot asked Ms. O'Meara to comment regarding if it is an existing road.

Ms. O'Meara said yes, it is. The pond and the surroundings are a wetland. The applicant needs to take an existing road and expand it. You are allowed to reconstruct an existing road, but you are not allowed to build a new road in an RP-1 wetland or an RP-1 buffer. There is no limit to the amount of reconstruction. It is whatever the Planning Board approves. There is also no limit to what might be there to be considered an existing road. Even a walking trail can be considered a road, especially a farm road. In the Resource Protection Standards, there is nothing that says this has to be a formalized type of road.

Mr. Sahrbeck said he grew up near there. That road existed. It was definitely there and did not end at the pond. He said he used to ride his bike up the hill and ride down towards the pond, so the road went all the way up the hill.

In response to a question regarding colocation, John Wall, Town Attorney, said the co-location is in the Ordinance to allow the Town control over the number of towers that are erected. It also allows the Board to analyze the need for a tower.

Mr. Steinberg asked if the prime location is the highest point. Is that the best coverage area? Since co-location is putting multiple things on a tower, and he wants to know if that affects the coverage area.

Steve Kennedy of Goodyear Arizona, is a consultant hired by Crown to locate towers. He showed plans of coverage. He said each carrier is different, and they don't all want to be at the same height. Not every carrier wants to be on the top. He gave a longer and more technical explanation of how the cell towers work and what the cell companies need.

Mr. Huebener asked about the relative elevation of the towers.

Mr. Kennedy said the current tower is at elevation 112 ft. The proposed tower is at elevation 110 ft. He said they try to locate the tower to duplicate the existing coverage.

Mr. Curry asked if the demand for cell usage is increasing or decreasing.

Mr. Kennedy said it is increasing, we are becoming very reliant on our phones.

Mr. Chalot asked how many antennas do you need to have committed to proceed with building the tower.

Paul Peckins of Crown Castle said they would like to have all the carriers already committed to come over to the new tower. They have T-Mobile, and Verizon, as well as the police and fire departments already and they are in negotiations with A T & T.

Mr. Sahrbeck said he does not see this as a co-location, but a relocation of a tower owned by Crown Castle that is on leased property, the Strout property. One tower is coming down and another is going up. It is a different situation than one in which they are just going to put up more towers. They are moving their tower. He sees this as a wash and a need to continue the cell phone coverage they have been providing. There are 4 towers on the Strout property that are planned to come down, so we are not creating more towers.

Ms. Volent, Mr. Curry, Mr. Steinberg and Mr. Chalot all agreed with Mr. Sahrbeck. Mr. Huebener said they can't ignore the fact that they have approved a 180 ft. tower on the Strout land.

The discussion then turned to the road and Resource Protection issues.

Mr. Sahrbeck asked if the spillway was created when the Cross Hill subdivision was built.

Ms. O'Meara said she knows there were design features on the pond and the road that were included on the Cross Hill project.

Lucas Anthony explained what the spillway is and that there will be no change proposed. He also explained that the 1/10 slope is not from the road to the pond. He also said the Fire Chief has said the 14 ft. wide road across the pond will not be a problem in an emergency.

In response to questions about water standing on the road, Mr. Jordan said the spillway was built for Cross Hill and he has never seen water up over the road. It hasn't even come close.

Mr. Curry asked how they are proposing to accommodate a 14 ft. wide road over the pond.

Mr. Anthony said they will stabilize the slope with rip rap. They will bring the side slope to 2/1. The guard rail will be on a flat surface and the posts will be down 7 ft. deep. The ditch at the bottom of the slope will have 2 culverts.

He said he has had a meeting with the Town Engineer and has met all his requirements.

Ms. O'Meara said the Engineer is generally satisfied, but needs to see the plans.

There was a discussion about whether to make it a condition of approval to meet the Town Engineer's requirements, and the consensus of opinion was to wait until all the information and plans were complete before granting approval.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Global Acquisitions IV LLC for Site Plan Review, a Resource Protection Permit, and Shoreland Zoning review to construct a 180' tall telecommunications tower to be located at 19 Wells Rd be tabled to the regular January 16, 2018 meeting of the Planning Board.

Mr. Curry seconded the motion and it passed, 4-2.

Weare Private Accessway Permit - Peter Weare is requesting a Private Accessway Permit to create frontage and access for a lot located at the rear of 69 Beach Bluff Terrace (U10-37), Sec. 19-7-9 Private Accessway Public Hearing.

Dustin Roma, civil engineer, said they have had a site walk, and have focused on the access point from Beach Bluff Terrace. They have looked at a number of large trees that are along the edge of the property, and are trying to avoid them in the construction of the accessway. On the new plan, they have delineated the edge of the proposed building envelope, the leach field and the accessway.

They are going to adjust the grade at the envelope to tie into the existing grade. He also spoke about the leach field at the end of the turnaround, and that there is room there to add what is needed to the top of the leach field. They are showing a line of rocks along the edge of the buffer area.

Mr. Roma said they have reviewed the turning radius in the turnaround and altered it as needed. The road maintenance agreement, boundary survey and potential easements to the Town will be prepared and noted on the plan.

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

Ms. Volent wants the size of the boulders to be 3 ft. and to be noted on the plan. The maximum building coverage should be no more than 20% of the lot size.

Mr. Chalot asked if you could build a duplex on this lot.

Ms. O'Meara said they would need 80,000 sq. ft. per unit for a total of 160,000 sq. ft. to build a duplex.

Mr. Chalot wants the building envelope to be more clearly marked.

Ms. Jordan asked about the proposal to change the driveway from what is on the plan.

Ms. O'Meara said it is important to leave the driveway as it is until you get past the turnaround, otherwise you will have to come back for an amendment to the plan if the optional turnaround at the end of Beach Bluff Terrace is not constructed.

Mr. Chalot asked if the location of the septic was the only place it can go.

Jim Logan of Longview Partners said it cannot go too close to the stream, the setbacks from the stream and there are grading difficulties near the garage.

Ms. Jordan said note 19 should be deleted.

Ms. Volent made the following motion:

Findings of Fact

1. Peter Weare is requesting a Private Accessway Permit to create access for a lot located at the rear of 69 Beach Bluff Terrace, which requires review for compliance with Sec. 19-7-9, Private Accessways.

2. The Planning Board conducted a site visit on Wednesday, November 29, 2017 at 7:30 a.m. attended by a majority of the Planning Board and representatives of the applicant.
3. The town requires a turnaround for emergency vehicles and establishing a turnaround at the end of Beach Bluff Terrace may be a better option for public safety needs.
4. Parcel B will include the full 25' width of the Thompson Rd paper street vacated by the Town.
5. Public safety and protection of property is enhanced when wetlands are not altered and their absorptive capacity is preserved by maintaining their natural vegetation.
6. Clear delineation and labeling of a building envelope is needed for future construction and protection of wetlands.
7. The application substantially complies with Sec. 19-7-9, Private Accessways.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Peter Weare for a Private Accessway Permit to create access for a lot located at the rear of 69 Beach Bluff Terrace be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated December 13, 2017;
2. That the boundary of the building envelope be clearly marked and labeled.
3. That a road maintenance agreement be provided in a form acceptable to the Town attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds;
4. That a transfer deed conveying from Parcel A to Parcel B the entire width of the vacated Thompson Rd be provided in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds;
5. That rights of access for Parcel B over Parcel A be created in a form acceptable to the Town Attorney, signed by the applicant and recorded in the Cumberland County Registry of Deeds;

6. That the applicant may eliminate the proposed turnaround located on Parcel B if the Town obtains permission to create a turnaround at the end of Beach Bluff Terrace. If the applicant elects to eliminate the Parcel B turnaround, a turnaround easement of sufficient size to accommodate a WB40 class vehicle shall be provided to the Town by the owner of Parcel A.
7. That no building permit for Parcel B be issued until the subsurface wastewater system design has been approved by the Code Enforcement Officer.
8. That note 19 from Sheet S-1 be deleted.
9. That a note be added to the plan prohibiting structures outside the building envelope with the exception of sheds not exceeding 100 square feet in size.
10. That the boulders that will be placed on the plan be 3 feet in size.
11. That there be no issuance of a building permit, nor alteration of the site until the plans have been revised to satisfy the above conditions have been submitted to the town planner and the plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

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

Ms. Jordan opened the discussion of items not on the agenda. She said tonight is Mr. Steinberg's last meeting and she thanked him for his time on the board.

Mr. Steinberg said he has been impressed by the people he has worked with on the Board, He thanked Ms. O'Meara for her dedication to the Town. He said he has had experience with other towns and no one can hold a candle to her.

The Board voted 7-0 to adjourn at 10:15 pm.

Respectfully submitted,

Hiroimi Dolliver
Minutes Secretary