

MINUTES OF THE PLANNING BOARD  
TOWN OF CAPE ELIZABETH

April 23, 2018

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Ms. Jordan called the meeting to order and asked for the approval of the minutes of February 26, 2018. They were approved 6-0, (1 abstain). The minutes of the April 3, 2018 Planning Board Workshop were approved, 6-0 (1 abstain).

CONSENT AGENDA

**69 Beach Bluff Terrace Private Accessway Permit** - Peter Weare is requesting a 90-day extension of the approval granted December 19, 2017 for a private accessway to create access for a lot located at the rear of 69 Beach Bluff Terrace, Sec. 19-7-9, Private Accessways.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, that the approval granted to Peter Weare for a Private Accessway Permit to create access for a lot located at the rear of 69 Beach Bluff Terrace at the December 19, 2017 meeting be extended 90 days to July 22, 2018.

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

OLD BUSINESS

Ms. Jordan recused herself. Mr. Chalot took over as Chair.

**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, Sec. 19-8-3, Resource Protection Permit and Sec. 19-8-2, Shoreland Zoning Performance Standards Request to Table.

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 May 15, 2018 meeting of the Planning Board.

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

#### NEW BUSINESS

Ms. Jordan returned as Chair.

**Cross Hill Boardwalk RP Permit** - The Town of Cape Elizabeth is requesting a Resource Protection Permit to construct up to 600' of 4' wide boardwalk on existing greenbelt trail located northeast of Tiger Lily Ln, Sec. 19-8-3, Resource Protection Permit Completeness and Public Hearing.

Jim Tasse, a member of the Conservation Committee, outlined the project. They propose to build a boardwalk not to exceed 2400 sq. ft. The area is extremely muddy and they want to stop encroachment on private property and the degrading of the soils.

He showed the map of the trail and pointed out the area in question.

Ms. Jordan opened the public comment period on completeness. Since no one came to speak, the public comment period was closed.

The board had no questions.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for a Resource Protection Permit to build up to 600 linear feet of 4' wide boardwalk on an existing trail located northeast of Tiger Lily Ln be deemed complete.

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

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

Ms. Volent said this project has been thoroughly looked at and she supports it.

Mr. Huebener made the following motion:

#### Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to build up to 600 linear feet of 4' wide boardwalk on an existing trail located northeast of Tiger Lily Ln., which requires review for compliance with Sec. 19-8-3, Resource Protection Regulations.
2. The Town Engineer recommends that the applicant confirm the need for any state or federal permits.
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 the application of the Town of Cape Elizabeth for a Resource Protection Permit to build up to 600 linear feet of 4' wide boardwalk on an existing trail located northeast of Tiger Lily Ln be approved, with the following condition:

1. That the applicant obtain any required state or federal permits.

Ms. Volent seconded the motion.

Mr. Chalot noted that they had not decided if they would have a site walk. The Board agreed that they did not need a site walk.

The motion was approved, 7-0.

**8 Aster Ln Private Road review** - Margaret Birlem is requesting a private road review to create frontage for a lot located at 8 Aster Lane, Sec. 19-7-9, Private Rd completeness.

Margaret Birlem said she and her spouse have purchased a buildable lot in the neighborhood they live in and are applying for a private road extension to acquire the road frontage they need.

Steve Bradstreet of Ransom Consulting said the lot has 20 ft of frontage now and needs to have 100 ft. They propose to extend the private road by 80 feet.

They will replace the gravel base that exists and provide for drainage in the 80 ft. extension.

They will have public water and sewer and underground utilities in the driveway. They have discovered that there is no monumentation for the Cottage Brook subdivision in this location, so they will provide them.

He showed a plan. He said there are no wetlands on the site. He said Dick Sweet had walked the land prior to his passing and said that there were no wetlands on the property. Recently, Ben McDougal, Code Officer, walked the site and confirmed that there are no wetlands.

Ms. Jordan opened the public comment on completeness.

Henry Steinberg of 13 Hunts Point Road and 4 South Street said there is a waiver requested for a traffic study. If the gate is removed, there will be lots of potential traffic, and a traffic study is needed.

Bob Danielson, Attorney, represents Chris and Julie Munz of 5 South Street. He is also concerned about the traffic. There is a gate that runs across the road and he is uncertain if the gate is going to be relocated or removed. The driveway is not shown on the plan, and he wants to know where they propose to locate it. If the gate is removed, there will be traffic from Aster Lane and these roads are not designed for it. He said his client's property exists under a private accessway that is limited to one lot.

Chris Munz of 5 South Street said there is no depiction of where the gate will be. He is concerned about the safety of his child who has epilepsy. They have emergency vehicles coming to their house and need to have the turnaround. It is critical for his child.

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

Mr. Gilbert said he lives on Aster Lane and wants the Board to decide if that could be a conflict. He lives on the other end of Aster Lane and does not know the applicant. He asserted he can base his decision on the review standards. He said he had seen Facebook posts about the project, but has not spoken to anyone about the project since he joined the Planning Board. After discussion, the Planning Board agreed by consensus that he could participate in the review.

Mr. Chalot said the gate is not shown on the plan, and the hammerhead is not shown either.

Mr. Bradstreet showed the plan and noted that the plan will be changed to remove the gate. He said the Fire Chief would like there to be no gate there at all. On Aster lane, you can see the turnaround.

Mr. Steinberg spoke up and was told he was out of order. He repeatedly made comments and was reminded that there would be other opportunities to speak.

Mr. Curry wanted to clarify that as far as the applicant is concerned they are happy to remove the gate.

Mr. Bradstreet said that is correct, that after a discussion with the Fire Chief, they will remove the gate.

In response to a question from the Planning Board, Ms. O'Meara responded that there was only one gate approved for the Cottage Brook subdivision, and it is on Chicory Way. There were some concerns about people getting lost and driving on South Street, so the Police Chief decided that the chain across the end of South Street would be installed.

Mr. Gilbert noted that a maintenance, repair and plowing agreement is not on the plan.

Mr. Huebener asked about the turnarounds on both sides of the road.

Ms. O'Meara outlined the history of the Munz property and how they needed a turnaround as part of their approval for a private accessway.

There was a brief discussion about the need for a turnaround if there would be a chain and no need for one if no chain was proposed.

Mr. Huebener has doubt about the adequacy of the proposed rain pond.

Mr. Sahrbeck said the public has requested a traffic study.

Mr. Chalot said if the gate will be open, they would need a traffic study.

Ms. Volent said she does not see a need for a traffic study. She thinks the only people who would use this route would be the immediate neighbors.

The audience had a large negative response to that suggestion.

Mr. Curry said that if there will be a barrier, they do not need a traffic study, but if there will be no barrier, they should need a traffic study.

Ms. O'Meara said even if the Board finds the application complete, they can order a traffic study later because of a change to the plans.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Birlem for review of a private road extension from Aster Ln to create road frontage for the lot located at 8 Aster Ln be deemed complete.

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

Ms. Volent asked about the Engineer's letter.

Mr. Bradstreet then went through each of the letter's items and spoke about his replies to them.

Ms. Volent said she is concerned about the drainage.

Mr. Gilbert wants to know where the Town will put the snow. And how is the private maintenance agreement going to handle the snow removal. They are going from a public road to a private road.

Mr. Bradstreet said the plows will "wing it" to each side of the road instead of piling it all at the gate as they do now.

Mr. Sahrbeck was concerned about where the gate would be located and if it would affect the Munz' access to South Street.

Ms. Volent wants the plan to show what is the existing 20 ft. of frontage and what is the 80 ft. proposed extension.

Mr. Sahrbeck asked Ms. O'Meara if they can put a gate in the middle of a private accessway.

Ms. O'Meara said they can only have one house on a private accessway. There is no rule that forbids a gate on a private accessway.

Mr. Huebener wants to know if the width of the private road can be reduced to 18 ft. from 22 ft.

Ms. O'Meara said the Planning Board can waive requirements in the name of better neighborhood design.

Mr. Chalot said he thinks a waiver would depend upon whether or not the gate will be there, and whether or not it becomes a through street.

Mr. Gilbert is concerned about how Aster Lane, a public way will become a private way and still be called Aster Lane? Is this a public safety issue? Ms. O'Meara explained that the town has an Addressing Ordinance, which provides for the Town Assessor to determine street addresses. The Planning Board does not have a role in that ordinance.

Mr. Curry wants a site walk. The board concurred.

A site walk was scheduled for Monday April 30, 2018 at 5:30 pm.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Birlem for review of a private road extension from Aster Ln to create road frontage for the lot located at 8 Aster Ln be tabled to the regular May 15, 2018 meeting of the Planning Board, at which time a public hearing will be held.

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

**2 Old Ocean House Rd Subdivision Amendment** - Margaret Angell and Nathaniel Fick are requesting an amendment from the previously approved Hidden Court Subdivision to replace buffering removed outside the building envelope, Sec. 16-2-5, Amendment to a Previously Approved Subdivision Completeness and Public Hearing.

Margaret Angell of 2 Old Ocean House Road said they disturbed trees in the buffer zone. The building they planned was right up against the buffer zone and the excavation disturbed 3 trees in the buffer. They are proposing to replace 2 trees for each one lost in the same area where they were lost. It was recommended that she consult with the Town Tree Warden on the species of the trees and that she consult with her neighbors for their approval. She has done those things and is now seeking approval of the plan.

Public comment was opened and no one came forth, so it was closed.

Ms. Jordan raised Ms. O'Meara's memo and whether there were any questions about completeness.

Mr. Curry said he was fine with the application.

Ms. Volent said she was pleased that the applicant was working with the neighbors, and is fine with the application.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Angell and Nathaniel Fick for review of an amendment to the Third Amended Hidden Court Subdivision plan to replace trees removed from the buffer be deemed complete.

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

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

Mr. Chalot made the following motion:

#### Findings of Fact

1. Margaret Angell and Nathaniel Fick are requesting review of an amendment to the Third Amended Hidden Court Subdivision plan to replace trees removed from the buffer, which requires review under Sec. 16-2-5, Amendments, of the Subdivision Ordinance.
2. The replanting plan must be accomplished in a manner that promotes survival of the new trees, that does not cause erosion or impact potential underground utilities.
3. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Angell and Nathaniel Fick for review of an amendment to the Third Amended Hidden Court Subdivision plan to replace trees removed from the buffer be approved, subject to the following conditions:

1. That the planting sizes shall be the minimum size required at the time of planting.
2. That the planting be done consistent with sound arboricultural standards and that any disturbed soil be mulched or loamed and seeded after the plantings are installed.



3. That, prior to planting, the applicant confirm that no utilities are located in the planting area.

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

#### OTHER BUSINESS

**Used car sales Zoning Amendment** - The Town Council has referred to the Planning Board an amendment to the Business A District (Shore Rd) to allow used car sales in conjunction with a repair garage, Sec. 19-10-3, Zoning Ordinance Amendments Public Hearing.

Ms. O'Meara explained the applicant wants to sell a small number of used cars at his repair garage. Under the current zoning, that is not allowed. There are two proposed amendments to the Zoning Ordinance, one is to add a definition of a repair garage. The second part is a recommendation to allow sales of used cars only if it was related to a repair garage and only in the BA District that is located on Shore Road. There may be up to 3 vehicles for sale at any time.

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

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the draft amendments and the information presented, the Planning Board recommends the Used car sales amendments.

Mr. Sahrbeck seconded the motion.

A brief discussion of the language re. cars or vehicles ensued. The Board agreed to let the language stand as read. They passed the motion, 7-0.

The Board voted unanimously to adjourn at 8:30pm.

Respectfully submitted,

Hiromi Dolliver  
Minutes Secretary

