

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

May 15, 2018

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair James Huebener
 Josef Chalal 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 April 23, 2018. They were approved as presented, 7-0.

OLD BUSINESS

Ms. Jordan recused herself and Mr. Chalal 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 asked how many times they can table this item.

Ms. O'Meara said there is no limit to how many times they may table it, but the Board can tell the applicant that this is the last time they can do so and shut off further delay.

The board declined set a limit, so 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 June 25, 2018 meeting of the Planning Board.

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

Ms. Jordan returned as Chair.

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 public hearing.

Maggie Birlem briefly outlined the project.

Steve Bradstreet of Ransom Consulting gave an update on the project. He showed the plan. He said they have removed the proposed rain garden. The driveway needs to be shown on the plan. He talked about the drainage and stormwater flow. They will remove 2 ft. of the paved berm to improve the drainage. He said they will place two granite monuments that were not placed at the end of Aster Lane when the adjoining subdivision was created. They will put a note on the plan that says what can and cannot be done in the setback area.

They have requested several waivers. They want to reduce the width of the road from 22 ft. to 18 ft. The existing gravel road is 18 ft. and they will replace all the gravel. There are no shoulders on that section of the road, and they would like a waiver so they can leave it as it exists. The road does not go along the centerline, so they are requesting a waiver to leave it as it exists. The gate is being removed.

Bill Bray, a professional engineer, has done a traffic study. He concluded that if a driveway was constructed at that end of Aster Lane, a small amount of traffic may go down in that direction. His opinion was that because of the gravel and the condition of the gravel, there would not be much traffic that would choose to use the gravel road when a paved road is available. Because of the gate, any misdirected traffic has to turn around. Without the gate, there will be one trip rather than two. Aster Lane will be connected to Spurwink Road when a new development is built.

Mr. Chalot asked about the requested waiver of a closed drainage system.

Mr. Bradstreet said since it will be a gravel road without a curb, you cannot have a closed drainage system.

Mr. Gilbert asked about the waiver of the road width and why it needs to be granted.

Mr. Bradstreet replied that the existing culverts would have to be moved.

Attorney Scott Anderson of Verrill Dana, representing the applicant, talked about the gate. He said Ms. Birlem's lot is part of an older subdivision, and all the lot owners on that plan have rights in the roads shown on the plan. They

have rights to go up to the line of Aster Lane, which is a public road. You cannot prevent them from going onto a public road. It is an illegal gate because no one has the right to prevent the other lot owners in the subdivision from using that road, and no one on Aster Lane has the right to prevent access to Aster Lane. The gate is really irrelevant to the Planning Board's review of the project. He also spoke about the road maintenance agreement and snow removal.

Mr. Chalot asked about the applicant's right to access South Street, and the right of the general public to access South Street.

Attorney Anderson replied that the public does not have a general right to access South Street. This is a private way.

Mr. Sahrbeck asked how he concluded that the gate has no right to be there.

Attorney Anderson said all these lots are part of an old 1925 subdivision. This is the South Street right of way that is shown on that plan. In Maine when you buy a lot on a recorded plan, you have a right to improve and use that right of way. All the lot owners have a right to use the rights of way right up to the edge of the old subdivision, which is right at the end of Aster Lane. Since Aster Lane is a public road, no one has the right to prevent them from continuing on to a public road. He does not know the origin of that gate, but as a legal matter, it should not be there.

Mr. Curry said he thinks anyone in the subdivision could petition to have the gate removed.

Attorney Anderson said if all the lot owners agreed, that would be so. He said the Planning Board is not being asked to take up a private matter between lot owners, but to be sure the private driveway and private road standards are being met.

Mr. Sahrbeck asked Ms. O'Meara if the Town Attorney had been consulted on this.

Ms. O'Meara replied that she has not asked the Town Attorney for his opinion on this.

Ms. Jordan opened the public hearing.

Bob Danielson represents Chris and Julie Munz. He said the gate was installed by the Police Chief. He said police power trumps zoning power.

Laura Rideout, attorney with Preti Flaherty, is here on behalf of Meghan and Josh Nappi who live at 7 Stephenson St. She does not feel that the applicant has met the subdivision ordinance requirement that the adjacent road can accommodate the additional traffic. The traffic study did not give supporting basis for the assumption of what the drivers would do. Can the road support the additional traffic? There is not enough evidence to support his conclusions. She would like a third party review of the traffic study.

Constance Babcock of 6 Stephenson Street said she has a responsibility to maintain the road. Now the top of Stephenson is public and 3 houses have assumed the responsibility for the road maintenance. The road was not built to sustain a greater volume of traffic, there is only one lane in places. She opposes the proposal to eliminate the gate. They will be using 2 private roads to access a public road.

Tony Irace of 3 Stephenson Street is concerned about the removal of the chain barrier. Increased traffic on Stephenson St. will damage the road. He said the barrier was put there by the police when Aster Lane was built. No one has addressed the problem of the many large trucks that come down Stephenson and South Streets due to GPS directions. We have a big sign saying dead end road. The road is not designed to handle 2 vehicles, they can't pass. Signs are not enough, we need a barrier.

Jill Frame of 4 Dermot Drive at the corner of Aster Lane, is in support of the application. She has no intention of using a private road for access. If the gate is removed, it will allow emergency vehicles to travel more freely when needed. She recommends more signage when the gate is removed.

James Steinberg of 4 South Street said the gate should not be removed. The neighbors on Stephenson and South Streets have a unanimous vote and any decision should be weighted by that.

Meghan Nappi of 7 Stephenson Street is concerned about the safety of the children. She sees large trucks, delivery trucks etc. go by. The construction trucks for Maxwell Woods will be coming through. This is a private road, we have to pay for that road. The barrier is needed to protect our children and our privacy. The roads are very difficult to navigate.

Mary Ivers lives at the corner of Stephenson Street and Hamlin Street. She said the traffic will go by no matter what. She is concerned about people from Aster Street. She wants the safety and fairness of our living on this private road. She wants a barrier so this is not a through street. GPS rules the day.

Rebecca Little of 4 South Street was concerned that the buildable lot is on 6 South Street and that the applicants have a maintenance agreement recorded in

the registry of deeds. Our home is the direct abutter and we are concerned about the stormwater increase of 30-60% onto our lot. There is an incorrectly issued building permit. The applicant bought a lot on South Street on our private road in our community, safe from traffic by a mere plastic chain gate. We are unanimously asking you to not remove that gate.

Chris Munz of 5 South Street said these two lots are part of the South Portland subdivision. They were not part of the Cottage Brook Subdivision, nor were they added in an amendment to that subdivision. They do not have any road frontage on Aster Street. We live on an accessway and it is not a private road. What will happen to us? Will we be part of an Aster Lane maintenance agreement? He requests the Board to deny this application.

Bob Danielson said he wants a peer review of the traffic study. He said the gravel road is soft in the spring. He wants them to meet all the standards outlined in the memo from the staff. He wants to know if the road maintenance agreement will include all owners on South Street, or only the 80 ft. of the approval. He is concerned about the waiver, and read section 16-3-5. Safety relies on that traffic study and he does not think that traffic study is everything is was meant to be.

John Powers of 12 Aster Lane and representing the Carrolls of 10 Aster Lane said that they will not use South Street and Stephenson Street. He would like the gate to stay. If the gate comes down, he would like clear signage to be placed.

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

Chief Gleeson was asked to speak. He said that as a rule they do not like anything that impedes their access to any development or neighborhood. The gate is not a problem for him. They access from Stephenson and South Street. He said gates slow them down.

Ms. Volent asked if the hammerhead on South Street is adequate.

Chief Gleeson said that they do not turn around there.

Mr. Curry asked for a response to the statement that police power trumps zoning.

Attorney Rideout said the issue is not whether or not the gate is there, but whether the adjacent roads can safely accommodate the additional traffic.

Ms. O'Meara said she has asked the Police Chief, Public Works Director and the Fire chief, and no one is owning the gate.

Mr. Curry asked how we should consider this gate, or the absence of the gate with regards to this application.

Ms. O'Meara said she was the one quoted in the Cape Courier saying the Police Chief had asked for the gate. He says he has no recollection of that, so there is no "police power" on that gate. It is an orphan gate.

Mr. Huebener asked if the Board has the power to waive the 100 ft. road frontage.

Ms. O'Meara said they do not have that authority.

Mr. Gilbert asked if a private accessway is always a dead end.

Ms. O'Meara said the standards for private accessway and private roads were developed to ensure access for the police and fire vehicles. She outlined the historical development of these standards.

Mr. Curry noted that the only complaints were about the gate. No other complaints were raised except for the orphan gate.

Mr. Sahrbeck said he can understand the concerns about additional traffic, and that GPS is routing traffic through their neighborhood. The applicant bought property with rights to the roads. Now the Town is saying the gate is not theirs, so the applicant has the right to remove the gate. He thinks that as far as stormwater drainage etc, there is no problem with the application.

Ms. Volent summarized the correspondence they had received. She said there were many comments about how bad the roads are, narrow, icy etc. She said there is a maintenance agreement that says they are responsible to keep the roads passable. When it comes down to the application, she feels the project is meeting the standards.

Mr. Chalot said he thinks you could put the gate at the end of the road and put in a turnaround. Our job is to see if this complies with the zoning requirements, not to be involved in the private agreements of the owners on South Street.

Mr. Huebener asked if you could put the gate at the other end of Stephenson Street. You have an existing hammerhead at the end of Aster Lane extension.

Ms. Jordan said she agrees with Ms. Volent. She said it is sad that this opportunity came up and the neighborhood did not come together to say how can we upgrade this road. She personally is opposed to gates. This is not a

sanctioned gate. There is no place to put this gate, and I approve its removal. The gate seems to be on Aster Lane, a public road.

Mr. Curry said the traffic is still going to come in because of GPS. He doesn't think the absence of the gate will cause a lot of traffic.

Ms. Jordan asked how many road maintenance agreements are there in this neighborhood?

Ms. O'Meara said there are 3.

Attorney Anderson spoke about private agreements and how this applies to this project. He spoke about the issue of snow plowing at the end of Aster Lane and how it will only apply to this parcel, none of the other agreements will be affected.

Ms. Volent asked about the comment that this project would increase the flow of stormwater onto an abutter.

Mr. Bradstreet replied that they addressed the flow from the road and the driveway.

Mr. Gilbert said there is no logical place to put the gate.

Ms. O'Meara said all lot owners have rights in the 80 ft. section. If you put in a gate, you may be exposed to a legal challenge. This is a private road, and it is up to the owners to manage it.

There were a couple more comments from the Board about the gate.

Mr. Chalot made the following motion:

Findings of Fact

1. Margaret Birlem is requesting review of an 80' long private road extension from Aster Ln, a public road, to create road frontage for the lot located at 8 Aster Ln, which requires review for compliance with Sec. 19-7-9, Private Road review, and related Subdivision Ordinance road construction standards.
2. The Planning Board deemed the application complete on April 23, 2018 and held a site walk on April 30, 2018.

3. The Planning Board finds that the waivers from the road width, shoulder, center line and enclosed stormwater requirements are consistent with the Waiver provision, Sec. 16-3-5, Subdivision Ordinance.
4. The applicant is removing a chain across South Street that might allow a minimal amount of traffic volume increase which could be avoided or reduced with prominent signage. Removal of the chain will enhance access for emergency vehicles.
5. The Planning Board finds that Sec. 19-7-16, Creation of a Short-cut via developed residential street, is not applicable because a short-cut between two separate points of an arterial, rural connector or feeder street will not be created.
6. The 2007 Comprehensive Plan states " The Town should promote connectivity between neighborhoods when it benefits public safety, traffic circulation or developments with a neighborhood character."
7. The Town Engineer is recommending replacement of a section of silt fence or haybales with additional check dams.
8. The applicant has substantially addressed the standards of the Private Road review, Sec. 19-7-9, and 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 Birlum for review of an 80' long private road extension from Aster Ln, a public road, to create road frontage for the lot located at 8 Aster Ln, be approved, subject to the following conditions:

1. That the plans be revised to address paragraph #6 in the Town Engineer's letter dated May 9, 2018;
2. That a road maintenance agreement be provided for the 80' private section of Aster Ln in a form acceptable to the Town Attorney and Town Manager, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
3. That the approval includes waivers from the road width, shoulder width, center line and enclosed stormwater requirements, consistent with the requirements of Sec. 16-3-5, Waivers.
4. That a MUTCD compliant sign, or otherwise as approved by the Public Works Director, be installed by the applicant in the right of way of Stephenson St at the intersection of Stephenson St and Hamlin St and in

the right-of-way of Aster Ln/South St at the beginning of the private portion of Aster Ln that states "Private Road, access for Stephenson St and South St residents only."

5. That a note be added to the plan that there shall be no road construction until a performance guarantee has been provided to the town in accordance with Sec. 16-2-6 of the Subdivision Ordinance;
6. That the following note replace note #1 on Sheet C-100:

Activities outside the building envelope are restricted to the installation of a driveway and installation of utilities. The extent of driveway and utility installation within the buffer be shown on the plans, be the minimal amount of disturbance and also limited to no more than 1,300 sq. ft. of disturbed area within the buffer. No structure shall be constructed within 10' of the edge of the building envelope. No vegetation removal other than for the above activities is allowed, except at follows:

Hazard (dead or storm damaged) trees in areas outside of the building envelope may be removed after consultation with the Code Enforcement Officer in compliance with the following conditions. The removal of standing dead trees, resulting from natural causes, or storm damaged trees is permissible without the need for replanting as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. The area shall be required to naturally re-vegetate and/or be planted with native plants within one year if natural vegetation has not been established. For the purposes of this provision, dead trees are those trees that contain no foliage during the growing season.

7. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the plan.
8. There shall be no disturbance of the site nor issuance of a building permit until the plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

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

OTHER BUSINESS

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

14 Strout Rd Tower Overlay District Amendment - Tower Specialists Inc, representing the Strout family, are requesting reduction in the size of the existing Tower Overlay District located at 14 Strout Rd, Sec. 19-10-3, Zoning Map Amendment schedule public hearing.

Justin Strout, representing the Strout Trust, spoke on behalf of the project. He said they are looking to amend the current overlay to make it smaller. He has addressed the changes the Board requested in workshops and he feels he has addressed the standards. He showed the plan of Phase 1 which shows the setbacks for all 3 of the towers that will be there until 2019. Phase 2 shows how they will shrink the southern boundary after the tower is removed.

Mr. Chalot opened the public comment period and no one came to speak, so the public comment period was closed.

Mr. Huebener asked about whether the phased approach is doable.

Ms. O'Meara said she had consulted the Town Attorney. He said it must be very clear when you switch over from Phase 1 into Phase 2. Ms. O'Meara said they will have a specific date, and if the tower is still there you do not switch over to Phase 2, you stay in Phase 1. If you want a change at that point you need to begin the process again. They have chosen April 1, 2020 as the date.

Mr. Strout asked if they can have the line redrawn if the tower is removed prior to April 1, 2020.

Ms. O'Meara agreed that they could and will word the proposed Amendment to reflect that.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and the facts presented, the 14 Strout Rd Tower Overlay District Zoning Amendment be tabled to the regular June 25, 2018 meeting, at which time a public hearing will be held.

Ms. Volent seconded the motion and it was approved 6-0.

The Board voted unanimously to adjourn at 8:55 pm.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary

