

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: November 15, 2011  
SUBJECT: EOIN LLC RP Permit

### Introduction

EOIN LLC, with Colin Powers as manager, is requesting a Resource Protection Permit to fill 669 sq. ft. of RP2 wetland to accommodate construction of a new single family home located at 7 Lighthouse Point Rd (U14-36G). The application will be reviewed for compliance with Sec. 19-8-3, Resource Protection Regulations.

### Procedure

- The Board may want to begin by having the applicant summarize changes to the project.
- The Board should then open the public hearing that has been scheduled for this evening.
- The Board should then resume discussion.
- At the close of discussion, the Board has the option to approve, approve with conditions, deny or table the application.

### Resource Protection Permit Standards (Sec.19-8-3(B))

The comments of the Town Engineer are attached. Below is a summary of the Resource Protection Permit standards of review and how they may be met.

1. Flow of surface/subsurface waters

The flow of surface waters is preserved around the proposed structure.

2. Impound surface waters

No impounding of surface waters is proposed.

3. Increase surface waters

Following construction, disturbed areas will be revegetated. No pavement is proposed to cover wetland areas, so that infiltration of surface waters may still occur.

4. Damage to spawning grounds

No spawning grounds have been indentified in the fill area.

5. Support of structures

The proposed wetland alteration will allow for a slope from the proposed structure to the existing grade of the wetland. This should support the structure, which is not proposed within the wetland.

6. Aquifer recharge/groundwater

The proposed fill should not alter the recharge of aquifer areas.

7. Coastal dunes

No work in coastal dunes or back dune areas is proposed.

8. Ecological/aesthetic values

The structure is proposed in an existing neighborhood.

9. Wetland Buffer

Except for the 669 sq. ft. alteration, no further alteration of wetland or buffer is proposed.

The lot is subject to a 250' wetland buffer from an RP1 wetland. The applicant has not submitted wetland mapping of the entire RP 1 wetland, but has asserted that it is less than 2 acres in size. The Planning Board has final determination of wetland boundaries. Below is an excerpt from the Zoning Ordinance.

**SEC. 19-2-5. LOCATION OF RESOURCE PROTECTION DISTRICT BOUNDARIES**

Where uncertainty exists as to the location of a resource protection district boundary, the following procedures shall be used to reach an official determination of the location:

- A.** Upon written request by a property owner, Town board or a municipal staff person, the Code Enforcement Officer shall determine, in writing, the existence of wetland areas and the location of resource protection and buffer district boundaries based on the Zoning Map, this Ordinance, documents cited in this Ordinance and similar materials, and a site visit. If a requesting property owner believes that an initial determination by the Code Enforcement Officer is in error or if a reasonable doubt exists regarding the existence, classification, or location of wetlands, the property owner may submit information on soils and/or vegetation and request a meeting with the Code Enforcement Officer to reconsider the determination. If the property owner does not concur with the reconsidered determination, the Code Enforcement Officer shall refer the issue to the Planning Board for its review and determination, to be made with the advice of the Conservation Commission.
- B.** If an applicant disputes the determination of wetlands, the boundaries of resource protection districts or buffer districts by the Code Enforcement Officer, or if the Code Enforcement Officer concludes that the location of the boundary is in doubt, the applicant shall submit the following information to the Planning Board, unless otherwise waived by the Planning Board:
- 1.** a site plan map showing the proposed use, structure or activity including a map at a scale of one inch equals fifty feet (1" = 50'), including any boundaries of Resource Protection 1-Critical Wetland Districts, Resource Protection 2-Wetland Protection Districts, Resource Protection 3-Floodplain District scaled from the Zoning Map, as well as the outer limits of Resource Protection 1-Critical Wetland Buffer Overlays, if established;
  - 2.** a topographic map showing the location and slopes for all grades within the site, by not greater than 1-foot contours;
  - 3.** a high intensity soils map as described in Sec. 19-8-3.A.2.c.6, Resource Protection Permit Procedures, showing the Wetland Upland Edge for the site as defined by wetland soils;
  - 4.** a description of the vegetative cover of the site, including dominant species and the location of the Wetland Upland Edge for the site as defined by wetland vegetation;
  - 5.** a description, supported by necessary documentation, explaining why the site is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or Resource Protection 1-Critical Wetland Buffer Overlay as defined herein; and

- 6.** additional information deemed necessary by the Planning Board.
  
- C.** In determining the existence and boundaries of particular wetland areas, district boundaries and buffer areas, the Code Enforcement Officer, the Town Planner or the Planning Board may request the Conservation Commission to inspect the site and submit its recommendations in writing.
  
- D.** In evaluating wetland or floodplain boundaries, the Code Enforcement Officer, the Planning Board or the Conservation Commission may consult with expert persons or agencies.
  
- E.** In determining wetland boundaries, the Code Enforcement Officer or Planning Board may exclude areas beyond the point where the wetland area is less than one hundred (100) feet in width for a distance of more than one hundred (100) feet.

- F. In all cases, the burden of proof shall be on the applicant to show that the site in question is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or designated Resource Protection 1-Critical Wetland Buffer Overlay.

If an RP1 wetland is less than 2 acres, it is eligible for a reduction in the wetland buffer from 250' to 100'. The applicant is showing a 100' buffer. Below is an excerpt from the Zoning Ordinance, Sec. 19-6-9, Resource Protection Districts.

2. ***Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)***

Areas that require regulation due to their proximity to Resource Protection 1 - Critical Wetland Districts, and function to protect wetland values including but not limited to wildlife habitat, pollution abatement, and erosion control are designated Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay). The RP1-CW Buffer Overlay District is an overlay zone and is located adjacent to Resource Protection 1 - Critical Wetland Districts. The RP1-CW Buffer Overlay District shall extend upland from the wetland upland edge of any critical wetland as determined by the following criteria:

- a. a two hundred fifty (250) foot buffer will be required if the critical wetland meets one (1) of the following criteria:
- (1) The wetland is rated as moderate or high value for waterfowl or wading bird habitat, including nesting and feeding areas by the Maine Department of Inland Fisheries and Wildlife and are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&F or the Department of Environmental Protection as of 2/31/08. For the purposes of this paragraph, "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river. **(Effective October 15, 2009)**
  - (2) The wetland is a marine and/or estuarine marsh; or

- (3) The Resource Protection 1 - Critical Wetland District as defined is not well separated from adjacent areas by topography or other natural features.
- b. Notwithstanding any provision of this section to the contrary, a one hundred (100) foot buffer will be required if the wetland area meets one (1) of the following criteria and the critical wetland is not rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife:
- (1) The Resource Protection 1 - Critical Wetland District is distinctly separated from the area of the proposed development by topography such that the development area, in its natural state, drains away from the wetland. An existing road or driveway shall not be considered a topographical divide if the road drains toward the wetland.
  - (2) The Resource Protection 1 - Critical Wetland District is within two hundred fifty (250) feet of densely developed areas. For the purposes of this section, an area shall be considered densely developed if at least six (6) principal buildings are located within two hundred fifty (250) feet of the center of any proposed structure.
  - (3) The Resource Protection 1 - Critical Wetland District is two (2) acres or less in size.
  - (4) The Resource Protection 1 - Critical Wetland District is a coastal sand dune as measured from the point where sand and dune grasses are replaced by upland soils and vegetation.
  - (5) The Resource Protection 1 - Critical Wetland District is located in or adjacent to a property located in the Business A District which is served by public water and public sewer.

10. Erosion Control

The applicant has submitted an Erosion Control plan that includes protection during construction and revegetation of disturbed areas upon completion of construction.

11. Wastewater discharge

No discharge of wastewater is proposed as part of the project scope. The Town Engineer has noted a possible separation of water line and septic system question.

12. Floodplain Management

No floodplains are located in the project area.

Motions for the Board to Consider

Findings of Fact

1. EOIN LLC, with Colin Powers as manager, is requesting a Resource Protection Permit to fill 669 sq. ft. of RP2 wetland to accommodate construction of a new single family home located at 7 Lighthouse Point Rd (U14-36G, which requires review for compliance with Sec. 19-8-3, Resource Protection Regulations.
2. The Town Engineer has identified a potential conflict with the water line and septic system.
3. The plans reflect the presence of an RP1 wetland of less than 2 acres which is eligible for a reduction in the wetland buffer from 250' to 100'.
4. 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 EOIN LLC, with Colin Powers as manager, for a Resource Protection Permit to fill 669 sq. ft. of RP2 wetland to accommodate construction of a new single family home located at 7 Lighthouse Point Rd (U14-36G be approved, subject to the following conditions:

1. That the plans be revised to address the Town Engineer's comments dated November 8, 2011; and
2. That there be no issuance of a building permit nor alteration of the site until the above condition has been met.