

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

January 17, 2017

7:00 p.m. Town Hall

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

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and offered thanks to Elaine Falender, who is retiring from the Board, for her years of service on the Board.

He then welcomed James Huebener to the Board, and noted that he has served on the Board in the past.

Mr. Curry then called for the approval of the minutes of the November 15, 2016 meeting. He made an addition to the minutes and they were approved, 5-0. (2 abstain)

He called for nominations for the office of Chair. Ms. Jordan was nominated and elected by unanimous vote. He called for nominations for the position of Vice Chair, and Mr. Chalal was elected unanimously.

Ms. Jordan then called for the consideration of the next item on the agenda.

NEW BUSINESS

**Maxwell Woods Subdivision-** Joel FitzPatrick, d/b/a Maxwell Woods LLC, is requesting Major Subdivision Review and a Resource Protection Permit for Maxwell Woods, a 38-unit condominium and 8 apartment unit development located 112-114 Spurwink Ave, Sec. 16-2-4, Major Subdivision Review Completeness and Sec. 19-8-3, Resource Protection Permit Completeness.

Owens McCullough of Sebago Technics presented the project. He said they are proposing 36 duplex condos and 2 multiplex units to hold a total of 8 apartments. They plan to extend Aster Lane to Spurwink Road, following the route of the existing farm road. Their intent is to market the project to the 55 and older group. The condo units will be single story and handicap capable. They will all have 2 car garages. He showed a plan of the entire development and pointed out the open spaces and the trails. Much of the open spaces and trails will connect to existing trails and open space in the Cottage

Brook development and Canterbury on the Cape. They are required to have 45% open space and they will meet that requirement.

The project will require a Site Location of Development Act permit, and they have met with the DEP for a pre-application meeting.

The project will include its own storm water management. It will have catch basins to collect the stormwater runoff and will be treated by underdrained soil filters. They will be underground and he showed the locations on the plat.

There is a ledge at the entrance to the project on Spurwink Road. They plan to remove that ledge and a knoll to improve the sight distance at the connection to Spurwink Road. They are expecting very low traffic generation.

Mr. McCullough showed a slide of Eastman Meadows and he showed a depiction of how the apartments would look. He also showed the open space areas in the vicinity. They may convey some of the open space areas into Town ownership. He also showed a parcel that will be for the Maxwells to farm. It will have an agricultural easement, and will never be able to be developed.

Ms. Jordan then opened the public comment period on completeness.

Paul Seidman of 21 Oakview Drive asked if there are opportunities for general comment at the end of the meeting.

Ms. Jordan said there are, not on this project, but on other things not on the agenda.

Becky Fernald of Mitchell Road was not clear where the open space is on the map. Is the agricultural land part of that open space? This parcel of land has some very old pine forest and a very beautiful trail system. Will that be part of the open space? Is this in compliance with the Comprehensive Plan?

Michael Layton of 17 Canterbury Way quoted from the Comprehensive Plan. He chose his home because it abuts farm land. He questioned the calculation used to determine the open space. Does it include farm land, pond, and a 15ft. wide corridor of land? They will destroy the woods and wildlife habitat. He wants approval delayed until the new Comprehensive Plan is finished. He worries about the buffer.

Kerry Gilbert of 32 Aster Lane is concerned about the number of condos going in. She is afraid there will be too many for the market to absorb. She is worried they will clearcut and then it will take a long time to build out. The agricultural land is not very attractive. The beautiful forest is not being preserved.

Adam Day of 11 Hamlin Street urges the Board to think about the environmental impacts. These are old trees and once they are cut down, they can't be replaced. He is questioning the calculation of the open space. He is also concerned about the timeline. We are currently looking at 10 years of construction with the Cottage Brook and that could easily stretch out with this. We have sand blowing from the Cottage Brook project all the time.

John Powers of 12 Aster Lane said he knew moving in that it would be 3 phases. There is one road in Cottage Brook right now. There are 60 kids in the development, and only one road is not very safe. He likes the extension of Aster Lane. He would like them to add that first. He would like the construction vehicles to use that way for the safety of the kids. He questions the calculation of the 45%. He suggested the Maxwells are not being coerced to sell this property.

Joe Baum of 85 Spurwink Avenue moved there 6 days ago and asks that you move Aster Lane extension to the other side of the pond. The headlights will shine directly into his house.

Carissa Hanratty of 111 Spurwink Avenue would prefer that she not have construction vehicles and huge trucks going through right by her house. Is the 55+ demographic set in stone? The traffic impact will be big for us. Our house is 10 ft. from Spurwink Avenue, and traffic is fast, too fast. We are flooded by car lights as it is, and there will be more traffic from this project.

Andrew Gilbert of 32 Aster Lane said the Trout Brook watershed is an important issue. It is probably part of the DEP package. He hopes it is addressed. The RP-1 wetland is not the same as on the Town's map. He is concerned about the wildlife habitat and the connectivity of the open spaces.

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

Ms. Volent wants to see the elevations and floor plans for the 4 single units. Does not see this as complete.

Mr. Sahrbeck is concerned that the traffic study does not also include the adjoining projects. It only covers the 38 condos and 8 multiplex units.

Mr. McCullough showed on the plan where the open space would be located. They propose to add a strip along the boundary of the Cottage Brook project. They will also connect to the trail system from Canterbury. He showed what would be retained as wooded areas. He showed the open space for the conservation easement. It would

have no potential for development, but could be used for agriculture. The pond is not part of the project.

The wetlands have been mapped, and they are not disturbing any wetlands. They notified the Department of Inland Fisheries and Wildlife who have identified no critical habitat or species would be disturbed. We have only got to contend with bats. They are within the Trout Brook Watershed area, and will be following the requirements of that.

This project is consistent with the Comprehensive Plan, which addressed the need for diversifying the housing.

They plan to extend Aster Lane first. All the infrastructure will be done at once, not in phases.

He addressed the traffic study and that the units are specifically designed for that demographic (over 55). They would like not to restrict the ages. He said that after the build out they would do an additional assessment if the over 55 does not materialize. It can be a condition of approval.

Mr. Huebener asked which units will be the affordable ones. He also asked if the electric design is prepared yet?

Mr. McCullough said they are not assigned yet and they will be exactly the same as the other units. He also replied that the electric design is not done yet. There will be no street lights, but the condos will have small pedestal yard lights.

He then showed the streets and trails of the adjoining developments and how they will all be connected.

Mr. Sahrbeck wants the traffic study to take into consideration the 39 units in Cottage Brook as well as the 38 in this project. Since they will be connected he feel they should be counted as well.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maxwell Woods LLC for Major Subdivision Review and a Resource Protection permit for Maxwell Woods, a 38 unit condominium and 8 unit apartment development located at 112-114 Spurwink Ave, be deemed complete, with the following waivers of submission:

1. Waiver from submitting a plan at a scale of 1"=40' and instead a plan at a scale of 1" = 60'.
2. Waiver from submitting a soils report and lot-by-lot suitability analysis and high intensity soils survey and instead connection to public sewer and wetlands mapping.

Ms. Volent seconded the motion and it passed, 7-0.

A site walk was scheduled for Saturday, January 21, 2017 at 8:00 am.

Ms. Volent had many requests for more information on the plans. She wanted changes to the plat and the notes. She was also concerned with the Town Engineer's letter, the landscape and some of the other sheets in the presentation. (See the video of the meeting for a detailed list of the items discussed.)

Mr. McCullough went through the Engineer's letter and their responses.

In response to Mr. Curry, Ms. O'Meara outlined the procedure for review of this project. There needs to be preliminary approval and then it still needs final approval. Each step will need more detail than the earlier ones.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Maxwell Woods LLC for Major Subdivision Review and a Resource Protection permit for Maxwell Woods, a 38 unit condominium and 8 unit apartment development located at 112-114 Spurwink Ave, be tabled to the regular **February 27, 2017** meeting of the Planning Board, at which time a public hearing will be held.

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

**Fusco Resource Protection Permit** - Geraldine and Ernest Fusco are requesting a Resource Protection Permit to alter 100 sq. ft. of RP2 wetland to construct a 25' x 4' boardwalk at 11 Angell Point Rd (U41-4A), Sec. 19-8-3 Resource Protection Permit Completeness and Public Hearing.

Gerry Fusco of 11 Angell Point Road was there with her husband Ernest. Ms. Fusco said Angell Point Road is a private road, and their property used to have an address on Two Lights Road. They are requesting a Resource Protection Permit to construct a walking path to connect one abutting neighbor to Angell Point Road. The total length of the path is approximately 100 ft. The part we need the Permit for is a very small

piece, 25 ft. long, at the very beginning of the wetland. Albert Frick surveyed the wetlands. It is a very small area that has no standing water. The path will be pruned vegetation that will be left to lie in the path. The easement is only for one family of 2 people. Our property is not divisible, nor is the neighbor's property. She addressed the waivers requested.

Ms. Jordan opened the public comment on completeness.

Anne Carney of 21 Angell Point Road also owns 23 Angell Point Road. She has a concern about completeness of the application. There is a lot of erosion on Angell Point Road, so she is concerned if the mulch is left it will build up a berm. She thinks the Planning Board should be concerned with how this will affect drainage and storm water runoff. She is afraid of there becoming a damming effect from the mulch and vegetation. She also pointed out that there are boards on the ground there.

Paul Seidman of 21 Oakview Drive wanted to note that an area that had been dry all summer could have been dry because we had a drought all summer.

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

Ms. Fusco said that there was a lot of trash in that area, so Mr. Fusco took his wheelbarrow there to clean it out. He put down the boards for his wheelbarrow and then the frost came and the boards were stuck there until they could be removed.

Mr. Sahrbeck asked about an easement with the neighbors.

Ms. Fusco said the neighbors have an old easement that actually goes right through their house. This path is to replace that easement with another route for the neighbors to access Angell Point Road.

Mr. Chalat asked about the boardwalk.

Ms. Fusco said they asked for the most, in case it is needed.

Mr. Curry asked about the vegetation that would be cut and left.

Ms. O'Meara said it would be shrubby growth.

Ms. Volent said this is complete, and that it does not need an engineering study,

The Board was in agreement.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Ernest and Geraldine Fusco for a Resource Protection Permit to alter 100 sq. ft. of RP2 wetland for a path/boardwalk located at 11 Angell Point Rd be deemed complete and will include waiver of submission of the following:

1. A topographic map showing contours
2. A written description of the vegetative cover
3. The location and flow direction of watercourse
4. A stormwater runoff plan
5. Delineation of building envelope

Ms. Volent seconded and it was approved, 7-0.

Ms. Jordan opened the public hearing.

Anne Carney said she would request that the Board not approve a path, but require a raised boardwalk.

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

Ms. Volent and Ms. Fusco looked at the photos and tried to delineate the topography of the area of the path.

Mr. Huebener said we are blowing this way out of proportion. It's just a path.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Ernest and Geraldine Fusco are requesting a Resource Protection Permit to alter 100 sq. ft. of RP2 wetland for a path/boardwalk located at 11 Angell Point Rd, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The proposed path/boardwalk will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;

3. The proposed path/boardwalk 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;
4. The proposed path/boardwalk 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;
5. The proposed path/boardwalk will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed path/boardwalk will not pose problems related to the support of structures;
7. The proposed path/boardwalk will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed path/boardwalk will not disturb coastal dunes or contiguous back dune areas;
9. The proposed path/boardwalk will maintain or improve ecological and aesthetic values;
10. The path/boardwalk will not damage any vegetated buffer area between the wetland and adjacent land uses;
11. The path/boardwalk will not cause erosion;
12. The path will not include discharge of wastewater; and
13. The path/boardwalk is not located in the Resource Protection-Floodplain District.
14. 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 Ernest and Geraldine Fusco for a Resource Protection Permit to alter 100 sq. ft. of RP2 wetland for a path/boardwalk located at 11 Angell Point Rd be approved.

A minor amendment to the findings was accepted.



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

#### OTHER BUSINESS

**Accessory Structures Amendment** - The Town Council has referred to the Planning Board review of an amendment that restricts overnight accommodations in accessory structures and how that impacts seasonal agricultural worker housing and more generally overnight accommodations on farms. The Planning Board is not recommending additional zoning ordinance amendments and will hold a public hearing prior to making this recommendation to the Town Council.

Ms. Jordan opened the public hearing.

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

Ms. Volent said they had a very good meeting with the Cape Farm Alliance, and they all came to the conclusion that no changes to the ordinance were needed.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the information reviewed and the facts presented, the Planning Board does not recommend amendments to the Zoning Ordinance related to the use of accessory structures for overnight accommodations.

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

The Board voted unanimously to adjourn at 10:25 p.m.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary