

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: May 18, 2017  
SUBJECT: Maxwell Woods Subdivision, Cottage Brook Subdivision Amendment

### Introduction

Joel FitzPatrick, dba Maxwell Woods LLC, is requesting Major Subdivision Review and a Resource Protection Permit to construct a 46 unit project consisting of 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave. He is also requesting amendments to the Cottage Brook Subdivision to accommodate grading changes related to the construction of Aster Ln. The application was deemed complete and a public hearing has been scheduled for this evening. The project will be reviewed for compliance with Sec. 16-2-4, Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit regulations, and Sec. 16-2-5, Amendments to a previously approved Subdivision.

### Procedure

- The applicant will summarize any changes made to the plans since the last meeting.
- The Board should then open the public hearing.
- Once the public hearing is closed, the Board may begin discussion of the application.
- At the end of discussion, the Board has the option to approve, approve with conditions, table or deny the application.

### Subdivision Review (Sec. 16-3-1)

#### (a) Pollution

The proposed subdivision is not expected to generate undue water pollution. The construction is not located in a floodplain. The slope of the land has been incorporated into the applicant's stormwater management plan. Applicable state and local health and water resource regulations are addressed in more detail below.

#### (b) Sufficient Potable Water

The Portland Water District is continuing to refine the proposed public water infrastructure to be constructed for the subdivision and has confirmed that a clean and healthful supply of public water can be provided to the project.

(e) Erosion

The applicant has provided an Erosion and Sediment Control Plan for the subdivision.

(d) Traffic

1. Road congestion and safety. The applicant has submitted a traffic study, prepared by Maine Traffic Resources (March 2, 2017), which concludes that the anticipated traffic from the project can be accommodated on the existing road system without creating safety hazards.
2. Comprehensive Plan. The comprehensive plan promotes safety and connectivity of the road system, both of which are included in the proposed road network for the project.
3. Connectivity. The proposed road network completes a loop that is consistent with the Comprehensive Plan goals for connectivity. Maxwell Woods Road has been designed to comply with the Dead end road Standard.
4. Safety. The traffic study recommends that brush and ledge removal on Spurwink Ave be completed to achieve adequate site distance and the applicant has included this work in the project proposal.
5. Through traffic. Through traffic from the adjacent Cottage Brook development is expected. The alignment of Aster Lane was previously planned to provide a loop connection to Spurwink Ave and this project has been designed in compliance with those earlier planning efforts.
6. Topography. Roads have been laid out to avoid cuts and fills when possible.
7. Block Length. Block lengths are planned to minimize topographical changes and also to satisfy the Dead end road standard.
8. Lot Access. All lots and units have vehicular access to the proposed road network.

9. Sidewalks/pedestrian connections. A sidewalk is proposed along one side of Aster Lane and connecting to Spurwink Ave. No sidewalk is proposed on Maxwell Woods Rd, which will be a private road maintained by the condominium association. In addition, a greenbelt trail network is proposed that connects open space to adjacent town open space and trails.

10. Road Name.

The Police Chief has approved the road names Aster Lane and Maxwell Woods Rd.

11. Road Construction Standards.

Aster Lane will be constructed as a 22' wide road to town standards. Maxwell Wells Woods Rd is a private road and will also be constructed to local road standards of 22', with no sidewalk, which is not required for private roads.

The applicant will also be constructing the portion of Aster Lane located in the Spurwink Woods/Cottage Brook Subdivision which connects to the Aster Lane in this development.

(e) Sewage Disposal.

The entire development will be served by a gravity public sewer system and the Town Sewer Superintendent has confirmed there is adequate capacity in the public sewerage system to handle the anticipated flows.

(f) Solid Waste Disposal.

Solid waster generated by the project will be handled through a private contractor similar to the Eastman Meadows and Cottage Brook condominium developments.

(g) Aesthetic, cultural and natural values

1. Scenic. The site is not located in a vista or view corridor as identified in the Visual Impact Study conducted by the town.

2. Wildlife. No significant wildlife habitats have been identified by the Maine Department of Inland Fisheries and Wildlife.

3. Natural features. The property includes a mature wooded forest, fields and a small wetland in the southwest corner. Most of the forest will be removed to accommodate the development. Over 45% of the gross land area will be permanently preserved as open space and most of the 45% is wooded areas.
4. Farmland. The property is owned by a farming family and a small portion of the property is actively used for farming and farm support activities. 2.07 acres will be set aside as a permanently protected agricultural easement.

(h) Conformity with local ordinances

1. Comprehensive Plan. The development has been designed to comply with the Open Space Zoning Provisions, which require that 45% of the gross land area be set aside as permanently protected open space. When development occurs, the Comprehensive Plan supports this type of clustering instead of traditional subdivision design because it saves more land as permanently protected open space, reduces future municipal maintenance costs, and reduces impervious surface.
2. Zoning Ordinance. The development has been designed in accordance with Sec. 19-7-2, Open Space Zoning, including the newly adopted and upgraded multiplex housing standards. A Resource Protection Permit is also required to rebuild an existing farm road into Aster Lane, a portion of which is located in the RP1 wetland buffer.
3. Multiplex Housing. Both the condominium units and the multiplex housing have been designed to comply with the multiplex design requirements.
4. Addressing Ordinance. The Police Chief has approved the names of Aster Lane and Maxwell Woods Drive.

(i) Financial and Technical Capability

The applicant has provided a letter of financial commitment from Biddeford Savings Bank and a list of technical consultants with experience in development.

(j) Surface Waters

The project is not located in the Shoreland Zoning. Erosion control and stormwater management are included in the project design to protect surface water quality.

(k) Ground Water

The development is not proposed within a significant aquifer recharge area.

(l) Flood Areas

The subdivision is not located in the floodplain.

(m) Wetlands

The alignment of Aster Lane is located on an existing farm road which runs adjacent to a farm pond which is classified as an RP1 wetland. The wetland regulations permit the reconstruction of an existing road within an RP1 buffer, subject to issuance of Resource Protection Permit. The RP permit standards are discussed below. An RP2 wetland is located in the southwest corner of the property and the applicant is not proposing to alter that wetland.

(n) Stormwater

The Town Engineer has reviewed the stormwater plan and supports this approach.

(o) Lake Phosphorus concentration

The proposed construction is not within the watershed of a great pond.

(p) Impact on adjoining municipality

The development is located in the Town of Cape Elizabeth.

(q) Land subject to Liquidation Harvesting

Not applicable.

(r) Access to Direct Sunlight

All proposed units will have access to sunlight.

(s) Buffering

The buffering of the project is a combination of preservation of existing vegetation and new plantings. Permanently protected open space is proposed for most of the boundaries of the project.

Where the Maxwell Woods condominiums abut the Cottage Brook condominiums, compact development and topographical changes make preservation of existing trees problematic. In this area, the applicant has prepared a buffering plan that features a greenbelt trail extending from Aster Lane to the Canterbury open space. This plan utilizes a combination of boulder walls to transition topographical changes, and plantings that include evergreen trees (canadian hemlock, white pine, balsam fir, white fir) and lower growing shrubs (sumac, maiden grass).

In the area of the fourplex buildings, 3 frasier fir are proposed between the parking lot and the adjacent town owned open space. There is a slope from the parking lot down to the boundary of the town open space. The Planning Board may want to discuss if this buffer is sufficient. The Board may also want to revisit the street trees proposed across Aster Lane from the fourplexes. At this location, there is a retaining wall separating the road from the pond and this topography may not be advisable for street trees.

Along both Aster Lane and Maxwell Woods Rd are proposed street trees. A cluster of evergreens are proposed between the 2 Maxwell Wood intersections with Aster Lane to enhance separation. Planting beds are proposed on the inside loop of Maxwell Woods Rd and located to provide buffering for the units and also avoid stormwater filtering beds.

Feature landscaping is proposed in front of each condominium unit and in front of the fourplex buildings.

(t) Open Space Impact Fee

When the Open Space Zoning provisions are met, the open space impact fee is considered met.

The open space calculations are shown on Sheet 2 of 39, Note 15. The applicant is proposing to provide 8.47 acres of open space (gross area 18.19 acres x 45%=8.19 acres) as follows:

Open space to be conveyed to the town: 1.52 acres  
Agricultural conservation open space: 2.07 acres  
Condominium ownership/Permanently protected: 4.88 acres

All of this land will be visible to the public and most will be accessible to the public through a public pedestrian easement to be conveyed to the Town.

Written documentation setting out the terms of preservation for all the above open space must be submitted by the applicant as part of the Final Subdivision Review process.

(u) Utility Access

The applicant has provided letters that there will be adequate public water, public sewer, electric and telephone capacity to serve the subdivision.

(v) Phasing

No phasing is proposed.

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

The project requires a Resource Protection Permit to reconstruct the farm road into Aster Lane adjacent to the pond. Below is a summary of the Resource Protection Permit standards of review and how they may be met.

1. Flow of surface/subsurface waters

Within the RP1 buffer, 2 30" culverts will be installed under Aster Lane to continue the flow of water from the pond to the stream and wetland complex on the Cottage Brook open space.

2. Impound surface waters

The culverts to be installed under Aster Lane will prevent the impoundment of surface waters.

3. Increase surface waters

Stormwater will increase with the reconstruction of the farm road to a road built to town standards. A stormwater management plan has been prepared to manage, filter and discharge at predevelopment levels has been designed by the applicant's engineer and reviewed by the town engineer.

4. Damage to spawning grounds

The applicant has submitted information from the Maine Department of Inland Fisheries and Wildlife that there are no significant spawning grounds on the property.

5. Support of structures

The culvert has been sized and designed to allow for flow under Aster Lane without undermining the road.

6. Aquifer recharge/groundwater

No significant aquifer recharge area is located in the area. The flow of water from the pond to the wetland complex will be preserved.

7. Coastal dunes

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

8. Ecological/aesthetic values

The work within the RP1 buffer has been designed to minimize the alteration area. The road construction will include filling and changing the grade, resulting in a significant downslope east of Aster Lane.

9. Wetland Buffer

No buffer is proposed as the work, by its nature, will be located entirely in the wetland buffer.

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 in the RP1 buffer.

12. Floodplain Management

No floodplains are located in the project area.



## Motion for the Board to Consider

### Findings of Fact

1. Joel FitzPatrick, dba Maxwell Woods LLC, is requesting Major Subdivision Review and a Resource Protection Permit to construct a 46 unit project consisting of 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Cottage Brook Subdivision to accommodate grading changes related to the construction of Aster Ln, which require review for compliance with Sec. 16-2-4, Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit regulations, and Sec. 16-2-5, Amendments to a previously approved Subdivision.
2. The subdivision (will/will not) result in undue water pollution. The subdivision (is/is not) located in the 100-year floodplain. Soils (will/will not) support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations (will/will not) be compromised by the project.
3. The subdivision (will/will not) have a sufficient quantity and quality of potable water.
4. The subdivision (will/will not) cause soil erosion, based on the erosion control plan provided.
5. The subdivision (will/will not) cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The subdivision (provides/does not provide) for road network connectivity while discouraging through traffic. Roads (are/are not) laid out to conform to existing topography as much as is feasible. All lots (are/are not) provided with vehicular access. Roads (are/are not) designed to meet town standards.
6. The subdivision (will/ will not) provide for adequate sewage disposal.
7. The subdivision (will/will not) provide for adequate solid waste disposal.
8. The subdivision (will/will not) have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline.
9. The subdivision (is/is not) compatible with applicable provisions of the Comprehensive Plan and town ordinances.

10. The applicant (has/has not) demonstrated adequate technical and financial capability to complete the project.
11. The subdivision (will/will not) adversely impact surface water quality.
12. The subdivision (will/will not) adversely impact the quality or quantity of ground water.
13. The subdivision is not located in a floodplain.
14. The subdivision (is/is not) in compliance with the Town wetland regulations in the Zoning Ordinance.
15. The proposed subdivision (will/will not) provide for adequate stormwater management.
16. The subdivision (will/will not) unreasonably increase the phosphorus concentration of Great Pond.
17. The subdivision (is/is not) located in more than one municipality.
18. The subdivision is not located on land where liquidation harvesting was conducted.
19. The subdivision (does/does not) provide for access to direct sunlight.
20. The subdivision (does/does not) provide a vegetative buffer throughout and around the subdivision and screening as needed.
21. The subdivision (will/will not) comply with the open space impact fee with the preservation of 8.47 acres of open space.
22. The multiplex units (will/will not) be provided with access to utilities.
23. The subdivision plan will not be phased.
24. The proposed subdivision (will/will not) materially obstruct the flow of surface or subsurface waters across or from the alteration area;
25. The proposed subdivision (will/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;

26. The proposed subdivision (will/ 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;
27. The proposed subdivision (will/ will not) result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
28. The proposed subdivision (will/ will not) pose problems related to the support of structures;
29. The proposed subdivision (will/ will not) be detrimental to aquifer recharge or the quantity or quality of groundwater;
30. The proposed subdivision will not disturb coastal dunes or contiguous back dune areas;
31. The proposed subdivision (will/ will not) maintain or improve ecological and aesthetic values;
32. The proposed wetland alternations are located in the wetland buffer.
33. The proposed subdivision (will/ will not) be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
34. The proposed subdivision (will/ will not) be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
35. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1 and 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 Joel FitzPatrick, dba Maxwell Woods LLC, for Preliminary Subdivision Review and a Resource Protection Permit to construct a 46 unit project consisting of 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Cottage Brook Subdivision to accommodate grading changes related to the construction of Aster Lane be approved, subject to the following condition:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated May 15, 2017;