



September 29, 2017
15071-01

Ms. Maureen O'Meara, Town Planner
Town of Cape Elizabeth
320 Ocean House Road
Cape Elizabeth, ME 04107

Maxwell Woods Multi-plex Development – Final Plan Review

Dear Ms. O'Meara:

On behalf of Maxwell Woods, LLC, we appreciated the opportunity to meet with the Planning Board on September 18, 2017 for the final plan completeness review and for a site walk on September 28, 2017.

Our final plan submittal dated August 30, 2017 contained the final plan documents and project plans as part of the final plan review process. At this time, we are not aware of any updates to the August 30, 2017 submittal apart from the Maine DEP Site Location of Development Act permit that is attached.

On behalf of Maxwell Woods, LLC, we look forward to meeting with the Planning Board to complete the final plan review in October. In the interim, if there are any questions, please feel free to contact us.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink, appearing to read "Owens A. McCullough".

Owens A. McCullough, P.E., LEED A.P.
V.P. of Engineering and Project Development

OAM: oam
Enc.

cc: Joel Fitzpatrick, Maxwell Woods, LLC



DEPARTMENT ORDER

IN THE MATTER OF

MAXWELL WOODS LLC) SITE LOCATION OF DEVELOPMENT ACT
Cape Elizabeth, Cumberland County)
MAXWELL WOODS & COTTAGE BROOK)
MULTIPLEX CONDOMINIUMS)
L-22723-87-D-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapters 375, 500, 501, and 502 of Department rules, the Department of Environmental Protection has considered the application of MAXWELL WOODS LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order L-22723-NJ-A-N/L-22723-TB-B-N, dated August 11, 2006, the Department approved a stormwater management system for a project called Spurwink Woods that included a 23-lot single family residential subdivision, 19 condominium units and approximately 2,000 feet of access roadway. This order also approved 7,798 square feet of forested wetland impacts. In Department Order L-22723-NJ-C-T, dated August 31, 2015, the Department approved a partial transfer of Phases 4 and 5 of the project to the applicant under the name Cottage Brook LLC. The portion of the project transferred consisted of 19 condominium units in 10 buildings to be constructed on the westerly end of South Street. The project transferred was renamed Cottage Brook. The applicant submitted a Natural Resources Protection Act (NRPA) Permit-by-Rule Notification Form (PBR #60466) to transfer Department Order L-22723-TB-B-N.

B. Summary: The applicant proposes a 46-unit residential condominium project with 23 buildings consisting of 17 duplexes, 2 quadraplexes and 4 single units, and associated roadways, utilities, and lawn development on a 17.7-acre parcel of land that is abutting the Cottage Brook project. The proposed project includes approximately 11.61 acres of new developed area for a total of 19.52 acres of developed area. Within the developed area will be 5.5 acres of new impervious area for a total of 7.66 acres of impervious area. The project includes extending Aster Lane to connect to Spurwink Avenue from the Cottage Brook project. The project also includes constructing a loop road called Maxwell Woods. The project includes one single family house lot with frontage on Spurwink Avenue. Open Space A (1.51 acres) is to be conveyed to the town. Open Space B (4.88 acres) is to be retained by the owners’ association and includes 3.25 acres of lawn area. The project also includes an Agricultural Conservation Open Space (2.07 acres) that is to be retained by William and Lois Bamford. The proposed Aster Lane will be constructed on an existing berm that created a man-made farm pond; the

outlet of the pond is a stream. The project is shown on a set of plans, the second of which is titled "Subdivision Plan of Maxwell Woods, Spurwink Avenue, Cape Elizabeth, Maine for Maxwell Woods LLC, 18 Ocean Street, Suite 3, South Portland, ME 04106," prepared by Sebago Technics, and dated October 14, 2016, with a last revision date of July 14, 2017. The project site is located on the southeast side of Spurwink Avenue in the Town of Cape Elizabeth.

The applicant submitted a Natural Resources Protection Act Permit-by-Rule Notification Form (PBR #63534) pursuant to Chapter 305 Sections 2 and 10 for activities adjacent to protected natural resources and a stream crossing that was accepted by the Department on April 20, 2017.

C. Current Use of Site: Most of the site of the proposed project is currently forested with the exceptions of a farm road on the berm of the farm pond, and an existing agricultural field on the agricultural open space area.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$1,370,000. The applicant submitted a letter from Biddeford Savings Bank, dated November 16, 2016 that states that Biddeford Savings Bank has completed a preliminary review of Fitzpatrick Associates proposed condominium project called Maxwell Woods and based on that analysis and experience with Fitzpatrick Associates, believes the business and its principals possess the financial capacity to successfully complete the proposed project. Prior to the start of construction, the applicant must submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land Resources (BLR) for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided that prior to the start of construction, the applicant submits evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval.

3. TECHNICAL ABILITY:

Maxwell Woods LLC is a subsidiary of Wyley Enterprises LLC and also does business as Fitzpatrick Associates. The applicant provided a list of projects successfully constructed by the applicant. The applicant also retained the services of Sebago Technics, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

Sound produced by residential developments is not a regulated source of noise pursuant to Department rules, Chapter 375 Section 10. The applicant proposes to limit any construction to the hours between at 7:00 a.m. and 7:00 p.m. Noise from the construction of developments between the hours of 7:00 a.m. to 7:00 p.m. or during daylight hours, whichever is longer, is not regulated pursuant to 38 M.R.S.A. § 484(3)(A).

The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The Cottage Brook condominium project, which is partially constructed, is located on the northeast side of the proposed project. The southeast side of the project is mostly wooded except for a club house-like structure with a large pool and a tennis court. On the southwest side of the project is a condominium development. On the northwest side of the project is a farm. The proposed condominiums will be surrounded by open space areas with an easement for a public trail system. The project includes tree plantings along the street, landscaped areas and retained forested areas along the perimeter of the project.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated it found no records of any Essential Habitats, Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site. No fisheries concerns were identified. The applicant stated that tree clearing activities will be completed outside of the bat maternity roosting pup season which is between June 1 and July 31. There is a wetland on the south corner of the site that contains a small portion of a vernal pool. Department staff visited this wetland area on April 27, 2017. Department staff did not find any amphibians, egg masses, fairy shrimp, or rare, endangered or threatened species in the portion of the vernal pool depression located on the property that would qualify the pool as a significant vernal pool.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission reviewed the proposed project and stated that it will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

There is a stream that starts at the farm pond outlet at the base of the berm that creates the pond and flows north. The area adjacent to the stream is forested. There is no development proposed adjacent to the stream except for two stormwater outfall pipes and a public walking trail. A landscaped area will be provided between the proposed project and the Cottage Brook phase of the development. A 15-foot wide forested buffer will be left along the southeast property line where there are woods on the adjacent property. A forested buffer will be left along the southwest property line that will be approximately 80 feet wide. A forested buffer will be left along the west side of the project that varies in width from 20 feet to 150 feet.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted a Class B high intensity soil map and report based on the soils found at the project site. This report was prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality (BWQ).

The Department finds that, based on this report, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 11.61 acres of new developed area for a total of 19.52 acres of developed area. Included in the developed area is 5.5 acres of new impervious area for a total of 7.66 acres of impervious area. It lies within the watershed of Trout Brook, which is an urban impaired stream. The applicant submitted a stormwater management plan based on the Basic, General, Urban Impaired Stream, and Flooding standards contained in Chapter 500 Stormwater Management rules (06-096

C.M.R. ch. 500, effective August 12, 2015). The proposed stormwater management system consists of a catch basin collection system, five underdrained soil filters, roof dripline filters, a subsurface sand filtration system, and two ACF Focal Point Filtration system units.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices (BMPs) outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by the BLR and revised in response to those comments.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by the BLR and revised in response to those comments. A homeowners' association will be established that will be responsible for the maintenance of the stormwater management system. The Declaration of Covenants and Restrictions for the association was reviewed and found to meet Department requirements. Prior to the formation of the homeowners' association, the applicant will be responsible for all such maintenance. The applicant may not transfer responsibility for maintenance of the road and for the portion of the stormwater management system that is located in the road right-of-way to the Town of Cape Elizabeth, until a letter has been submitted from the Town to the BLR documenting the Town's agreement to maintain both in accordance with the terms of this Order.

Prior to the start of construction, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the ACF Focal Point filtration system units to the BLR for review. The contract is required to be with a professional with knowledge of erosion controls and stormwater management as well as a detailed working knowledge of the proposed system. Grit and sediment materials removed from stormwater structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic

Standards contained in Chapter 500(4)(B) provided that prior to the start of construction, the applicant must submit a copy of an executed long-term maintenance contract for the on-going maintenance of the ACF Focal Point filtration system and that grit and sediment materials removed from stormwater structures must be disposed of in compliance with the Maine Solid Waste Management Rules.

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential thermal impacts. This mitigation is being achieved by using Best Management Practices that will treat runoff from 99% of the impervious area and 81% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from the BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500(4)(C) and recommended that the applicant's design engineer or another qualified engineer oversee the construction of the stormwater management structures to ensure that they are installed in accordance with the details and notes specified on the approved plans. Within 30 days from completion of the entire system, or if the project takes more than one year to complete, at least once per year, the applicants must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500(4)(C).

C. Urban Impaired Stream Standard:

The proposed project is in the watershed of Trout Brook which is an urban impaired stream. The Department has approved a compensation fee utilization plan (CFUP) developed by the Town of Cape Elizabeth to accept compensation fees to reduce the impact of stormwater pollution in the watershed of Trout Brook. To comply with Chapter 500(4)(E)(2), the applicant proposes to submit a payment of \$24,630.00 to the Town of Cape Elizabeth to be utilized in accordance with the approved CFUP at other sites in the Trout Brook watershed. This amount has been reduced from \$61,575.00 in accordance with Chapter 501(3)(A)(4). The payment to the Trout Brook Compensation Fee Utilization Plan must be made and a copy of the payment receipt given the BLR project manager prior to the start of construction.

Based on making a payment to the compensation fee utilization plan, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Urban Impaired Stream Standard provided that prior to the

start of construction, the applicant pays the compensation fee and submits the receipt for the fee to the BLR.

D. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, which is a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20 from the U.S.D.A., Soil Conservation Service. The proposed stormwater management system detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency in the five underdrained soil filters, the roof dripline filters, the subsurface sand filtration system, and the two ACF Focal Point filtration systems. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving waters will not be increased as a result of stormwater runoff from the development site.

BLR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(F).

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500(4)(F) for peak flow from the project site, and channel limits and runoff areas.

11. GROUNDWATER:

The project site is not located over a significant mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

12. WATER SUPPLY:

When completed, the proposed project is estimated to use 11,700 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated December 16, 2016, stating that it will service this project. The applicant will extend water mains to provide water for the proposed project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

13. WASTEWATER DISPOSAL:

When completed, the proposed project is estimated to discharge 11,700 gallons of wastewater per day to the South Portland wastewater treatment facility. The applicant submitted a letter from Ransom Consulting Engineering on behalf of the Cape Elizabeth Public Works Department stating that the town has the capacity to convey and treat these flows and will accept these flows. This project was reviewed by the Division of Water Quality Management (DWQM) of the BWQ, which commented that the South Portland wastewater treatment facility has the capacity to treat these flows within the Cape Elizabeth's flow allocation and the South Portland wastewater treatment facility is operating in compliance with the water quality laws of the State of Maine.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

14. SOLID WASTE:

The proposed project is anticipated to generate 118 cubic yards of municipal solid waste per year. All municipal solid waste from the proposed project will be hauled by Pine Tree Waste for disposal at the ecomaine facility in Portland, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 4,400 cubic yards of stumps and grubbings. All stumps and grubbings generated will be ground and used for erosion control on site. This method of disposal is in compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 3,250 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be hauled by Pine Tree Waste, a Maine licensed non-hazardous waste transporter, to the ecomaine facility in in Portland, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The proposed project is not located within the 100-year flood plain of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

16. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-22723-NJ-A-N/L-22723-TB-B-N, and subsequent Orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that prior to the start of construction, the applicant submits evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that: grit and sediment materials removed from stormwater structures during maintenance activities are disposed of in compliance with the Maine Solid Waste Management Rules; provided that prior to the start of construction, the applicant must submit a copy of an executed long-term maintenance contract for the on-going maintenance of the ACF Focal Point filtration system to the BLR; provided that the applicant's design engineer or another qualified engineer oversee the construction of the stormwater management structures to ensure that they are installed in accordance with the details and notes specified on the approved plans and within 30 days from completion of the entire system, or if the project takes more than one year to complete at least once per year, the applicants must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review; and provided that the applicant pays the urban impaired stream compensation fee and submits the receipt for the fee to the Department prior to the start of construction.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the

development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of MAXWELL WOODS LLC to a 46-unit residential condominium project as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant shall include in all conveyances of all lots and condominiums deed restrictions making the conveyance subject to all terms and conditions of this Department permit and any applicable municipal approval. These terms and conditions may be incorporated by specific and prominent reference to the permit in the deed. All conveyances required by this approval to contain restrictions shall include in the restrictions the requirement that any subsequent conveyance shall specifically include the same restrictions.
5. The applicant shall dispose of grit and sediment materials removed from stormwater structures during maintenance activities in compliance with the Maine Solid Waste Management Rules.
6. The applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the BLR for review and approval prior to the start of construction.
7. The applicant shall execute and record all required deed restrictions, within 60 days of the date of this Order. The applicant shall submit a copy of the recorded deed restriction, including the plot plan, to the BLR within 60 days of its recording.

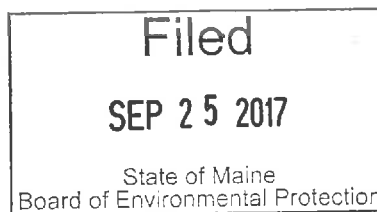
- 8. Prior to start of construction the applicant shall submit a copy of an executed long-term maintenance contract for the on-going maintenance of the ACF Focal Point filtration system to the Bureau of Land Resources for review and approval.
- 9. The applicant shall retain the design engineer or another qualified engineer oversee the construction of the stormwater management structures to ensure that they are installed in accordance with the details and notes specified on the approved plans. Within 30 days from completion of the entire system, or if the project takes more than one year to complete at least once per year, the applicants shall submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the BLR for review.
- 10. The applicant shall pay the urban impaired stream compensation fee to the Town of Cape Elizabeth compensation fee utilization plan and shall submit the receipt for the fee to the BLR project manager prior to the start of construction.
- 11. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L L-22723-NJ-A-N/L-22723-TB-B-N, and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 23RD DAY OF SEPTEMBER, 2017.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*
 For: Paul Mercer, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CGW/L22723DN/ATS#81734