

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: October 17, 2017  
SUBJECT: Maxwell Woods

### Introduction

Joel FitzPatrick, doing business as Maxwell Woods LLC, is requesting Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominium units and 8 apartments in 2 buildings, and amendments to the previously approved Spurwink Woods Subdivision related to the road extension, greenbelt trail and condominium lighting. The application will be reviewed for compliance with Sec. 16-2-4, Major Subdivisions, Sec. 19-8-3 Resource Protection Permit, Sec. 19-9 Site Plan review and Sec. 16-2-5, Amendments to previously approved subdivisions. The application was deemed complete September 19th and a public hearing has been scheduled for this evening.

### 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 and Spurwink Woods Subdivision Amendments are not expected to generate undue water pollution. The construction is not located in a 100-year 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 has confirmed that there is a clean and healthful supply of public water to serve the project.

(e) Erosion

The applicant has provided an Erosion and Sediment Control Plan for the subdivision and an Erosion and Sediment Control Plan was included in the original approval of the Spurwink Woods 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 road loop that was planned as part of the Spurwink Woods (now known as Cottage Brook) development. During the Spurwink Woods review, the Planning Board directed the developer to make provision for a road connection to the abutting vacant land, which is a decades old requirement in the Subdivision Ordinance. The developer met with the abutting land owner, the Maxwell family, and proposed a road connection that lined up with an existing farm road on the Maxwell property. The Planning Board required that this road right-of-way be conveyed to the town to preserve the opportunity for a road extension. When the condominium minimum lot size requirement became an impediment to obtaining the road right-of-way, the Planning Board recommended and the Town Council adopted a Zoning Ordinance text amendment in order to obtain the right-of-way.

Subsequently, as part of the Maxwell Family estate planning, the Maxwells created a private road right-of-way connecting to the Spurwink Woods right -of-way, along the alignment of the old farm road, and connecting to Spurwink Ave. This private right-of-way also established access for a rear lot created as part of the estate planning. The portion of the private right-of-way located within 100' of the pond must be located along the farm road alignment to be permitted under Resource Protection Permit regulations. The expectation that Aster Lane would eventually be extended to Spurwink Ave also influenced the Planning Board in where the required emergency access gate would be placed (at Killdeer Rd).

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. This small amount of through traffic has been included in the Traffic study.
6. Topography. Roads have been laid out to minimize cuts and fills when possible. Pedestrian trails have been designed with topographical changes in mind. The trail connector located between Cottage Brook and Maxwell Woods includes rock wall features and vegetation to transition between grade changes. The pedestrian trail located in Open Space B can be located to take advantage of bluff overlooks.
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.

The project includes a formally designed trail connector located between Cottage Brook and Maxwell Woods (Sheet 26). This trail connects to the Canterbury trails to the south and the Spurwink connector to the north. The plans should be revised to confirm that the trail extending north from Aster Lane is not blocked by a continuous guardrail.

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. As requested at the site walk, the applicant has evaluated the consequences of shifting the Aster Lane intersection with Spurwink Ave to the northeast for the purpose of reducing headlight

wash onto the existing home located across from the intersection on Spurwink Ave. More information will be presented at the meeting, however, shifting the road may have the following impacts:

- Minimum sight distance requirements may now result in a greater removal of ledge and existing vegetation to the southwest on Spurwink Ave;
- Reduction in the size of stormwater treatment feature located to the northeast of Aster Lane, which may require redesign of the project stormwater management plan in order to make up for the lost treatment area;
- Redesign/recalculation of the open space set aside as the road is shifted into an open space area;
- Increase of headlight wash onto the Spurwink Ave home from vehicles turning south from Aster Lane;
- Transfers of deeds between 3 parties to relocate the existing private road right-of-way;

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 waste 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 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 projected 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 zone. 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 100-year floodplain.

(m) Wetlands

The alignment of Aster Lane follows an existing farm road which runs adjacent to a farm pond 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). Two of the proposed plantings, canadian hemlock and river birch, are prohibited and should be replaced with plantings allowed in Appendix C, Road Tree List (See Sheet 26).

In the area of the fourplex buildings, 3 frasier fir are proposed between the parking lot and the adjacent town owned open space. In order to raise the proposed buildings to street level, fill will be added. This results in a relatively steep slope at the rear of the parking lot to get back to original grade at the property line and a somewhat challenging area for plantings. The buffering for the rear of Building B is the existing woods on the adjacent 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 41, 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 in fee 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.

Easements and restrictions on the open space have been submitted by the applicant and are under review by the town attorney. Most of the Open Space (Open space B, 4.88 acres) will be retained by the condominium association with restrictions that prevent development and removal of vegetation, except for a strip of lawn adjacent to the condominium units. Within Open Space B will be a public pedestrian access easement held by the Town. The Town will also take fee ownership of Open Space A (1.55 acres) which is adjacent to Town owned open space from the Spurwink Woods project. Finally, an agricultural easement will cover 2.07 acres of land that will remain part of the Maxwell Farm. The agricultural easement will be held by the town, has been reviewed by the Town attorney, and provides for the land to be converted to public access open space if agricultural activities end.

(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.

Site Plan Review Standards, Sec. 19-9-5

Below is a summary of application compliance with the Site Plan standards, Sec. 19-9-5.

1. Utilization of the Site



The existing site is wooded. The 2 fourplex buildings are proposed adjacent to and facing a proposed public road. (See Sheet 5 of 41).

2. Traffic Access and Parking

- a. Adequacy of Road System- A traffic study has been conducted which concludes that there is adequate capacity in the existing road system to accommodate the proposed development.
- b. Access into the Site- The 2 fourplex buildings will share a driveway that connects to Aster Lane.
- c. Internal Vehicular Circulation-The driveway extends to the back of the fourplex buildings where parking is provided the rear of each building.
- d. Parking Layout and Design- Two parking areas, each with 7 parking spaces including a handicapped space, are proposed. The Off Street Parking requirements (Sec. 19-7-8) require 2 spaces for each 3-bedroom multiplex unit (8 apartments x 2 spaces = 16 spaces). Two additional parking spaces need to be provided. The parking aisle is 24' wide.

3. Pedestrian Circulation

Multiplex residents will be able to use a walkway that connects the front of the building to the sidewalk along Aster Lane. Residents will also have access to the greenbelt trail network.

4. Stormwater Management

A stormwater management plan has been submitted for the project and reviewed and accepted by the Town Engineer.

5. Erosion Control

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

6. Utilities

The applicant has provided letters that there will be adequate public water, public sewer, electric and telephone capacity to serve the subdivision. Two dumpster areas are proposed which will be screened by a 6' high stockade fence and gate.

7. Shoreland Relationship

The property is not located in the Shoreland Overlay Performance District.

8. Landscaping and Buffering

A landscaping plan has been proposed for the front of the fourplex buildings (Sheet 24) that includes groupings of shrubs, perennials, and 2 ornamental trees. Specific species have not been provided.

At the rear of the buildings, buffering is provided by existing wooded vegetation located on the development property and the abutting town open space.

9. Exterior Lighting

The applicant has proposed typical residential style lighting. The Planning Board may want to see examples of light fixtures and demonstration that lighting will not exceed .5 footcandles at the property line.

10. Signs

No signs for the multiplex buildings are proposed at this time.

11. Noise

The applicant has stated that the residential nature of the buildings will result in being a low noise generator.

12. Storage of Materials

Two 8' x 16' exterior storage buildings are proposed, to be built in a design and materials to match the fourplexes.

13. Technical and Financial Capacity

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

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

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 area.

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.

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 Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Spurwink Woods Subdivision to accommodate grading changes related to the road extension, greenbelt trail and condominium lighting, which requires review for compliance with Sec. 16-2-4, Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit regulations, Sec. 19-9 Site Plan review 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 100-year 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 plan for the development (reflects/ does not reflect) the natural capabilities of the site to support development.
36. Access to the development (will/will not) be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site (will/will not) be safe. Parking (will/will not) be provided in accordance with Sec. 19-7-8, Off-Street Parking.
37. The plan (does/does not) provide for a system of pedestrian ways within the development.
38. The development (will/will not) locate, store or discharge materials harmful to surface or ground waters.
39. The development (will/will not) provide for adequate disposal of solid wastes.
40. The development (will/will not) adversely affect the water quality or shoreline of any adjacent water body.
41. The development (will/will not) provide for adequate exterior lighting without excessive illumination.
42. The development (will/will not) provide a vegetative buffer throughout and around the site and screening as needed, including buffering of Building B with existing woods located on the abutting town open space.
43. The development (will/will not) substantially increase noise levels and cause human discomfort.
44. Storage of exterior materials on the site that may be visible to the public (will/will not) be screened by fencing or landscaping.

45. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1, Resource Protection Regulations, Sec. 19-8-3, and Site Plan Regulations, Sec. 19-9.

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 Final Subdivision Review, a Resource Protection Permit and Site Plan Review of the Maxwell Woods development, including 38 condominiums and 8 apartments (in two buildings) located at 112-114 Spurwink Ave, and amendments to the Spurwink Woods Subdivision related to the road extension, greenbelt trail, and condominium lighting be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated September 13, 2017;
2. The proposed canadian hemlock and river birch be replaced with trees allowed on the Road Tree List, Appendix C, Subdivision Ordinance;
3. That the trees proposed to be planted between Aster Lane can be replaced with alternative plant material best suited for the planting location, subject to approval of the Tree Warden.
4. That easements and deeds be provided in a form acceptable to the Town Attorney and Town Manager and signed by the applicant.
5. That the parking areas for the multiplex buildings be expanded to provide for 8 parking spaces per building. The parking shall be shown on sheet 5 of 41 and reviewed by the town planner and town engineer.
6. That lighting be installed at the fourplex building entries and that information be provided that the fixtures will not produce lighting in excess of .5 footcandles at the property line.
7. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.