

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: May 15, 2018  
SUBJECT: 8 Aster Ln Private Road Review

### Introduction

Margaret Birlem is requesting review of an 80' long private road extension from Aster Ln, a public road, to create road frontage for the lot located at 8 Aster Ln. The application was deemed complete and a public hearing has been scheduled for this evening. The plan will be reviewed for compliance with Sec. 19-7-9, Private Road review, and related Subdivision Ordinance road construction standards.

### 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 80' of private road construction proposed is not expected to generate undue water pollution. The construction is not located in a floodplain and no proposal for subsurface waste disposal is submitted for approval in this application. The slope of the land has been incorporated into the applicant's stormwater management plan and no direct discharge to a stream is proposed. Applicable state and local health and water resource regulations are addressed in more detail below.

#### (b) Sufficient Potable Water

The applicant has provided a letter from the Portland Water District affirming that the lot can be served with public water.

#### (e) Erosion

The plan includes an erosion control plan including placement of silt fencing, and installation of check dams to slow stormwater from the road following construction.

(d) Traffic

1. Road congestion and safety. The applicant has provided a traffic study that concludes "The proposed removal of the existing chain (gate) across South Street at Aster Lane will very minimally increase the volume of traffic on South Street. There are very few benefits to a motorist to alter their current travel route to travel across a gravel road versus a paved road."

Correspondence and testimony from Stephenson St and South St residents confirm that non-resident vehicles are currently using the private roads and then reversing direction at the chain. This is 2 trips down the private roads. If the chain is removed, even with incidental access by non-resident vehicles, it is possible total trips will decline on the private roads.

The applicant has provided a draft road maintenance agreement, which should be finalized and recorded. Questions have been posed regarding snow removal where the public portion of Aster Ln transitions to a private road. This is not a unique condition in Cape Elizabeth. The Public Works Director said that the town and the private snow plow operator would need to coordinate. He expects the town would plow Aster Ln and swing to the right toward the applicant's lot to reduce the amount of snow left at the end of Aster Ln. The private snow operator should use a similar technique to minimize the amount of "snow plow wash" in the street.

2. Comprehensive Plan. The proposed road extension improves an existing gravel area to private road standards, subject to waivers the Planning Board may grant. The Comprehensive Plan supports maintaining the current status of legal nonconforming lots as potentially developable and also supports infill development in existing neighborhoods. The comprehensive plan also supports road network connectivity.
3. Connectivity. The proposed road extension is adjacent to a public road accepted by the town and constructed to provide access to a subdivision approved by the Planning Board. The Fire Chief has confirmed that access for emergency vehicles will be the same or improved with removal of the chain.

Sec. 19-7-16 in the Zoning Ordinance regulates the creation of "short-cuts." A "short-cut" is defined as creating a shorter distance for vehicular travel between any two points on an *arterial, collector, rural connector or feeder street.*" (emphasis added). The removal of the chain across South Street might only create a shorter travel distance between Spurwink Ave (rural connector) and Aster Ln (local road), therefore, the Short cut provision does not apply in this instance.

4. Safety. The very low volumes anticipated on the proposed road are not expected to create a safety hazard. (See Traffic Solutions Traffic Study, 5-5-2018).
5. Through traffic. The removal of the chain will make it possible for traffic to access Spurwink Ave from 8 Aster Ln using South Street and the private portion of Stephenson St. The traffic study concludes that minimal additional traffic will use the private road because a public, paved road of approximately the same length is available.

Residents of South and Stephenson Streets have expressed concern with use of their private road by non-residents. The Planning Board may want to require the applicant to install an MUTCD (Manual on Uniform Traffic Control Device) compliant sign within the right-of-way of Stephenson Street and South Street (both ends of the private roads) that states the road is private and limited to residents of Stephenson and South Street only.

6. Topography. There is little opportunity to vary the location of the road because it is proposed within an existing private road right-of-way. The applicant has proposed minimizing the width of the road to match into the existing gravel road.
7. Block Length. Not applicable.
8. Lot Access. The vacant lot located at 8 Aster Lane currently has access from South Street. The lot does not meet the current road frontage requirements to be buildable. In order to meet the road frontage requirements, the applicant can create a minimum of 100' of frontage on a public road or a private road which has received Planning Board approval. The applicant is proposing to use 20' of town accepted Aster Ln and then extend a private road an additional 80' from the end of Aster Ln. This work will create adequate frontage for the lot located at 8 Aster Ln. No other lots appear to become buildable with the private road extension.

9. Sidewalks/pedestrian connections. No sidewalks are proposed or required on a private road.
10. Road Name. The road name has been approved by the Police Chief and the address assigned by the Town Assessor, in accordance with the Addressing Ordinance.
11. Road Construction Standards. The road design includes some waivers from the local road standards. Full depth construction with an 18" deep gravel base is consistent with town standards. Width construction has been modified from 22' wide to 18' wide. Traveled way surface has been modified from 22' wide to 18' wide with no shoulders. The applicant is also requesting a waiver from providing a shoulder, centering the road (instead matching existing gravel) and providing an enclosed drainage system (instead providing ditching adjacent to the road).

Sec. 16-3-5 of the Subdivision Ordinance authorizes the Planning Board to grant waivers as follows:

**Sec. 16-3-5. Waivers.** Where the Planning Board finds that undue hardship, practical difficulties or restriction upon imaginative and otherwise desirable design may result from strict compliance with this Ordinance, it may waive one or more of the requirements of this Ordinance, in favor of a proposed alternative upon a showing that, as compared with strict compliance, such alternative (1) will not create more hazardous traffic conditions or less sanitary sewage disposal conditions than strict compliance, (2) will provide more varied and imaginative subdivision layout and design, (3) will secure substantially the standards of road design and construction required by this Chapter and the Zoning Ordinance, and (4) will not have the effect of nullifying the intent and objectives of the Comprehensive Plan or this Ordinance; provided that in granting such waiver the Planning Board may impose such conditions as they deem necessary to secure the foregoing objectives.

- (e) Sewage Disposal.

The applicant will be connecting to the public sewer system and provided a letter from the Sewer Superintendent Bob Malley that connection will be permitted.

- (f) Solid Waste Disposal.

Not applicable.

- (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.
3. Natural features. Road construction will occur almost completely in an existing gravel area.
4. Farmland. No farmland is included in this application.

(h) Conformity with local ordinances

1. Comprehensive Plan. No portion of the application appears in direct conflict with the Comprehensive Plan. The comprehensive plan promotes street connectivity.
2. Zoning Ordinance. Two nonconforming lots have been merged to create 1 lot that exceeds the current minimum lot size of 20,000 sq. ft.
3. Multiplex Housing. Not applicable.
4. Addressing Ordinance. The Police Chief has approved the proposed road name and the Town Assessor has assigned the address 8 Aster Ln.

(i) Financial and Technical Capability

The applicant has provided communication from Town Manager Matt Sturgis recommending that the applicant has adequate financial and technical ability to complete the project.

(j) Surface Waters

Not applicable.

(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

No wetland alteration is proposed.

(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

Not applicable.

(q) Land subject to Liquidation Harvesting

Not applicable.

(r) Access to Direct Sunlight

The proposed house may be oriented to maximize solar potential.

(s) Buffering

The plans depict a building envelope on the lot and note describing activities allowed outside the building envelope. The Planning Board has developed an enhanced note regulating activities outside and adjacent to building envelopes to more comprehensively preserve buffer areas. The board may want to replace note #1 on sheet C-100 with the enhanced note.

(t) Open Space Impact Fee

Not applicable.

(u) Utility Access

The applicant has provided communication from the Portland Water District regarding installation of utilities in the proposed road. Electric, telephone and cable TV will be installed underground.

(v) Phasing

Not applicable.

Motion for the Board to Consider

Findings of Fact

1. Margaret Birlem is requesting review of an 80' long private road extension from Aster Ln, a public road, to create road frontage for the lot located at 8 Aster Ln, which requires review for compliance with Sec. 19-7-9, Private Road review, and related Subdivision Ordinance road construction standards.
2. The Planning Board deemed the application complete on April 23, 2018 and held a site walk on April 30, 2018.
3. The Planning Board finds that the waivers from the road width, shoulder, center line and enclosed stormwater requirements are consistent with the Waiver provision, Sec. 16-3-5, Subdivision Ordinance.
4. The applicant is removing a chain across South Street that might allow a minimal amount of traffic volume increase which could be avoided or reduced with prominent signage. Removal of the chain will enhance access for emergency vehicles.
5. The Planning Board finds that Sec. 19-7-16, Creation of a Short-cut via developed residential street, is not applicable because a short-cut between two separate points of an arterial, rural connector or feeder street will not be created.
6. The 2007 Comprehensive Plan states " The Town should promote connectivity between neighborhoods when it benefits public safety, traffic circulation or developments with a neighborhood character."
7. The Town Engineer is recommending replacement of a section of silt fence or haybales with additional check dams.
8. The applicant has substantially addressed the standards of the Private Road review, Sec. 19-7-9, and Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Margaret Birlem for review of an 80' long private road extension from Aster Ln, a public road, to create road frontage for the lot located at 8 Aster Ln, be approved, subject to the following conditions:

1. That the plans be revised to address paragraph #6 in the Town Engineer's letter dated May 9, 2018;
2. That a road maintenance agreement be provided for the 80' private section of Aster Ln in a form acceptable to the Town Attorney and Town Manager, signed by the applicant and recorded in the Cumberland County Registry of Deeds.
3. That the approval includes waivers from the road width, shoulder width, center line and enclosed stormwater requirements, consistent with the requirements of Sec. 16-3-5, Waivers.
4. That a MUTCD compliant sign, or otherwise as approved by the Public Works Director, be installed by the applicant in the right of way of Stephenson St at the intersection of Stephenson St and Hamlin St and in the right-of-way of Aster Ln/South St at the beginning of the private portion of Aster Ln that states "Private Road, access for Stephenson St and South St residents only."
5. That a note be added to the plan that there shall be no road construction until a performance guarantee has been provided to the town in accordance with Sec. 16-2-6 of the Subdivision Ordinance;
6. That the following note replace note #1 on Sheet C-100:

Activities outside the building envelope are restricted to the installation of a driveway and installation of utilities. The extent of driveway and utility installation within the buffer be shown on the plans, be the minimal amount of disturbance and also limited to no more than 1,300 sq. ft. of disturbed area within the buffer. No structure shall be constructed within 10' of the edge of the building envelope. No vegetation removal other than for the above activities is allowed, except at follows:

Hazard (dead or storm damaged) trees in areas outside of the building envelope may be removed after consultation with the Code Enforcement Officer in compliance with the following conditions. The removal of standing dead trees, resulting from natural causes, or storm damaged trees is permissible without the need for replanting as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. The area shall be required to naturally re-vegetate and/or be planted with native plants within one year if natural vegetation has not been established. For the purposes of this provision, dead trees are those trees that contain no foliage during the growing season.



7. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the plan.
8. There shall be no disturbance of the site nor issuance of a building permit until the plan has been signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.