

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

September 18, 2018

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair James Huebener
 Josef Chalot Jonathan Sahrbeck
 Peter Curry Victoria Volent
 Andrew Gilbert

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Ms. Jordan called the meeting to order and asked for the approval of the minutes of June 25, 2018. They were approved as presented, 5-1 (1 abstain).

OLD BUSINESS

69 Beach Bluff Terrace Private Accessway Permit - Peter Weare is requesting a 90-day extension of the approval granted December 19, 2017, and extended April 23, 2018 for a private accessway to create access for a lot located at the rear of 69 Beach Bluff Terrace, Sec. 19-7-9, Private Accessways.

Peter Weare is asking for an extension to have more time to get everything in order.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials previously submitted and the facts presented, the request of Peter Weare to extend the previous approval of a Private Accessway Permit for 69 Beach Bluff Terrace be approved with a 90-day extension to December 17, 2018.

Mr. Huebener seconded the motion.

Mr. Gilbert said he would not like to have another extension. He would like to add the condition that this will be the last renewal.

Ms. Volent wants to say that if the applicant does not proceed in the next 90 days, the Board will not agree to another delay. She is not in favor of an amendment to the motion.

Mr. Curry asked the applicant why he is seeking this extension.

Mr. Weare said they are winding things up with the surveyor.

Ms. O'Meara said the Board had granted the approval with conditions and the plans have not been revised to reflect those conditions.

There was general consensus that another extension is discouraged but no condition was placed on the motion.

The motion passed, 6-0.

NEW BUSINESS

Sarka Sewer Service Area Amendment - The Cape Elizabeth Town Council has referred to the Planning Board a request to add 33 Wells Rd to the sewer service area, Sec. 15-1-4(i), Sewer Ordinance.

Since no one was present to introduce this item, Ms. O'Meara said the ordinance states that the Planning Board is to be asked for its opinion if the sewer service area is extended, so that is what is being asked for.

Ms. Volent said she supports this change.

Mr. Huebener asked if they need to postpone this item until someone arrives to present it.

Ms. Jordan said they should just proceed. She then opened the public comment period. No one came forth to speak, so the public comment was closed.

Sue Sarka of 33 Wells Road arrived to speak. She said they are putting an addition onto their home and the existing septic system needs to be replaced or updated. They want to get onto the sewer system.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the request made Sue and Greg Sarka and the facts presented, the Planning Board recommends that 33 Wells Rd be added to the Sewer Service Area.

Mr. Chalot seconded the motion and it passed, 6-0.

185 Spurwink Ave Site Plan Amendment - Elsie Maxwell is requesting an amendment to an existing site plan approval for 185 Spurwink Ave to create a lot around the existing building, Sec. 19-9, Site Plan Completeness and Public Hearing.

Daniel Maxwell represented Elsie Maxwell. He said they have added lot lines to create a separate lot for the day care center. He showed the plan and pointed out the former lot lines and the easement for the storm drain. He said there is no change to the building or its usage or landscaping, just the lot lines will change.

Ms. Jordan asked if anyone in the audience wants to speak on the completeness of the application. No one spoke, so the public comment was closed.

The Board had no comments on completeness, so Ms. Volent made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Elsie Maxwell for an amendment to the previously approved site plan for the property located at 185 Spurwink Ave to create a separate lot for the day care facility be deemed complete, with the following waivers granted.

1. A waiver from providing an erosion control plan because no ground disturbance is proposed;

Mr. Curry seconded the motion and it was approved, 6-0.

Ms. Jordan opened the public hearing. No one spoke, so the public hearing was closed.

Mr. Gilbert was concerned that there is a structure on the easement area.

Mr. Maxwell said it is a temporary structure, not a permanent one.

Mr. Chalot made the following motion:

Findings of Fact

1. Elsie Maxwell is requesting an amendment to the previously approved site plan for the property located at 185 Spurwink Ave to create a separate lot for the day care facility, which requires review under Sec. 19-9, Site Plan Regulations.
2. The amendments are compatible with the natural capabilities of the site to support development.
3. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within

the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.

4. The plan does provide for a system of pedestrian ways within the development.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, because ground disturbance is not proposed as part of this amendment.
7. The development will be provided with an adequate quantity and quality of potable water.
8. The development will provide for adequate sewage disposal.
9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The development will provide for adequate disposal of solid wastes.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.
15. The development will provide a vegetative buffer throughout and around the site and screening as needed.
16. The development will not substantially increase noise levels and cause human discomfort.
17. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
18. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Elsie Maxwell for an amendment to the previously approved site plan for the property located at 185 Spurwink Ave to create a separate lot for the day care facility be approved with the following condition:

1. That the proposed easements be in a form acceptable to the town attorney and signed and recorded in the Cumberland County registry of deeds within 1 year of this approval.

Ms. Volent seconded the motion and it passed, 6-0.

Haines Private Accessway - Stephen and Jennifer Haines are requesting a Private Accessway Permit to create frontage for an existing lot located at 28 Woodland Rd, Sec. 19-7-9, Private Accessway Permit Completeness.

Ms. Volent recused herself.

Mr. Sahrbeck arrived.

John Mitchell of Mitchell and Associates spoke on behalf of the applicant. He said it is a nonconforming lot on Woodland Road that does not have the required road frontage, so they need a private accessway. He showed a plan and an aerial survey of the property. The lot is just a little under 1/2 acre with 40 ft. of frontage on Woodland Road, and the requirement for a private accessway is 30 ft. wide.

Mr. Mitchell showed a plan and explained how the drainage flows. There is an 8 in. sewer and an 8 in. water line and natural gas in Woodland Road. The house will be built on a knoll on the property. He spoke about the construction of the accessway and that it meets the town standards. He also said the turnaround does not exactly meet the specifications, so the Fire Chief has required a sprinkler system for the house.

They have planned a rain garden to capture the majority of the runoff from the property. Mr. Mitchell described the drainage proposal and the direction of the flow. He said the drainage will be significantly enhanced from what it is now. He described the utilities and the vegetation. They are requesting one waiver, the letter from the water district, because the letter will not come until the sprinkler system is designed.

Mr. Mitchell reviewed the letter from the Town Engineer and their responses. He responded to the letters from the abutters and said it is not the entire lot that is the low point in the area. It is just where the catch basins are. He said the neighbors are not going to lose their private rights to use the right of way.

Mr. Curry asked if the accessway will be gravel with the possibility of paving it in the future.

Mr. Mitchell said that is what is planned. It will be gravel and the applicant wants to reserve the right to pave it in the future.

Mr. Chalot asked about the ditch along the south side of the property, and if it gets drainage from other properties.

Mr. Mitchell said it does get some runoff, and it all flows into the catch basin. They are planning the rain garden to capture about 2/3 of it.

Ms. Jordan opened the public comment period on completeness.

Brad Norris of 26 Woodland Road said it was his understanding that they were seeking a waiver for the stormwater runoff. He passed around a picture of his yard and some standing water. This house will be in the backyards of about 9 homes. He is concerned about the dust from a gravel road. He is concerned that there is no landscaping plan. He does not think this is complete.

Mark Mesereau of 17 Charles Road is concerned about stormwater runoff, especially during rain events. He does not agree with the depiction of the low point. He sees standing water at the end of the driveway and that is where he sees the low point. He says there is not a great communication with the catch basin in that area. He then passed a picture that shows where he thinks the low point is.

Dave Connor of 13 Charles Road said the storm drain is in his yard. He does not recall water running into the storm drain. He said he hears water running through there, but water doesn't physically spill into it. He is wondering if the plan was going to have water physically spill into it.

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

Mr. Gilbert asked about the waiver on storm management.

Ms. O'Meara said it is her understanding that the applicant is requesting a waiver of storm water calculations. Those calculations are not a requirement for a private accessway.

Mr. Mitchell is only requesting a waiver on the stormwater calculations. He pointed out the drainage arrows and said they are enhancing the existing drainage. They are directing the majority of the runoff into the rain garden.

Mr. Sahrbeck asked how much new impervious surface will be added.
Mr. Mitchell replied that 2,500 square feet will be added.

Mr. Sahrbeck also would like Mr. Mitchell to locate the areas shown in the pictures that were passed out.

There was a discussion between Mr. Mitchell and a member of the public to locate what is on the picture.

There was a further discussion of the drainage.

Ms. Jordan said the buffering is something they will want to see in further submissions.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Stephen and Jennifer Haines for a Private Accessway Permit to create adequate road frontage for an existing lot located at 28 Woodland Rd be deemed complete. A waiver from submitting a letter from the Portland Water District as a part of completeness is granted because it is in process and we expect to receive it prior to approval.

Mr. Huebener seconded the motion and it was passed, 6-0.

A site walk is scheduled for Wednesday, September 26, 2018 at 4:30 pm.

Mr. Chalot made the following motion:

BE IT ORDERED that the above application is tabled to the regular October 16, 2018 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Sahrbeck seconded the motion and it was approved, 6-0.

Ms. Volent rejoined the Board.

Old Mill Rd Private Road Amendments - Malcolm Poole, on behalf of the Poole family, is requesting amendments to the previously approved Old Mill Rd located off Old Ocean House Rd, Sec. 19-7-9, Private Road completeness.

John Mitchell of Mitchell and Associates said this is an amended plan of an existing private road. He showed a map and said it is 22 acres off Old Ocean House Road. There are 7 lots on the prior approved plan from 2005. They will

reconfigure the property lines and extend the private road. They have created a small lot (approximately 1/4 acre) to contain the septic system for Victoria Poole's house which is located across the private road.

They have created a 50 ft. wide pedestrian easement from the end of the private road to the waterfront.

Mr. Mitchell spoke about the utility easement and the location of the high water line in accordance with the new definition. The pond lot will be relabeled as part of lot 7. The road will be renamed to be Elephant Rock Road.

They are requesting two waivers. They want a waiver of the stormwater management plan because no impervious surface is associated with these changes. They also ask for a waiver of the erosion control plan because there is no soil disturbance.

Ms. Jordan opened the public comment on completeness. No one came to speak, so the public comment was closed.

Mr. Curry made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Malcolm Poole, manager of the Poole family property, for amendments to the previously approved Old Mill Rd Private Rd be deemed complete. Waivers have been granted from submitting an Erosion Control Plan and Stormwater information because no disturbance of soil is proposed as part of this application.

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

The Board does not need a site walk.

A public hearing is not required, and the Board does not feel the need to schedule one.

Ms. Volent said they had a letter from someone who does not want to change the name of the road.

Mr. Mitchell said he has spoken with the person and she will go along with it.

Ms. O'Meara said she had also spoken with Mrs. Wickham, who is not happy with the inconvenience associated with the road name, but is willing to concede to the family's preference.

Mr. Gilbert asked if the name change is part of the Board's purview.

Ms. O'Meara said it is their duty as part of the Subdivision Ordinance.

Mr. Curry would like the road labeled as formerly known as Old Mill Road.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Malcolm Poole, manager of the Poole family property, is requesting amendments to the previously approved Old Mill Rd Private Road which include formalizing the septic system location for lot 3, creating frontage for lot 2 and creating a public access easement to the ocean for the benefit of the lots, and these amendments require review under Sec. 16-2-3 of the Subdivision Ordinance.
2. The private road amendments will not result in undue water pollution. No construction is proposed in the 100-year floodplain. No disturbance of soil is proposed. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the private road amendments.
3. The private road amendments make no changes to potable water supply.
4. The private road amendments will not cause soil erosion, because no soil disturbance is proposed.
5. The private road amendments will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The private road provides for road network connectivity while discouraging through traffic. The private road is laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. No construction changes to the private road are proposed.
6. The private road amendments include an easement to connect Lot 3 to an existing septic system.
7. The private road amendments will not alter solid waste disposal.
8. The private road amendments 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 private road amendments, with conditions proposed below, are compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant has demonstrated adequate technical and financial capability to complete the project.
11. The private road amendments will not adversely impact surface water quality.
12. The private road amendments will not adversely impact the quality or quantity of ground water.
13. The private road amendments do not include alteration to the floodplain.
14. The private road amendments do not include alteration to wetlands.
15. The private road amendments do not include construction and will therefore not impact stormwater.
16. The private road amendments are not located within the watershed of Great Pond.
17. The private road amendments are not located in more than one municipality.
18. The private road amendments are not located on land where liquidation harvesting was conducted.
19. The private road amendments do not alter existing access to direct sunlight.
20. The private road amendments do not alter existing vegetative buffers throughout and around the subdivision and screening.
21. The private road amendments do not create a lot which might be subject to the open space impact fee.
22. The private road amendments do not include construction and consequently do not include access to utilities.
23. The private road amendments do not include a phasing plan.
24. The applicant has substantially addressed the standards of the 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 Malcolm Poole, manager of the Poole family property, for amendments to the previously approved Old Mill Rd Private Rd be approved, subject to the following conditions:

1. That this portion of Old Mill Rd (north branch of the existing Old Mill Rd) be renamed in accordance with the Addressing Ordinance;
2. That the plan be revised to represent the "septic lot" as a portion of lot 3, rather than a separate lot;
3. That the plan be revised to represent the "pond" lot as a portion of lot 7 rather than a separate lot;
4. That a road maintenance agreement in a form acceptable to the town attorney be signed and recorded with this plan.
5. That the plans be revised to note the new name, Elephant Rock Road, replacing the existing Old Mill Road.
6. That the plans be revised and submitted to the town planner for compliance with the above conditions before the plan is signed by the Planning Board and recorded in the Cumberland County Registry of Deeds.

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

Pollack Brook bridge and boardwalk Resource Protection Permit - The Town of Cape Elizabeth is requesting a Resource Protection Permit to install 80 sq. of boardwalk over an RP2 wetland and replace an existing pedestrian bridge with a 4' wide by 70' long pedestrian bridge in the same location, Sec. 19-8-3, Resource Protection Permit Completeness and Public Hearing.

Jeremy Gabrielson, Chair of the Conservation Committee, is representing the Town's application to replace the bridge across Pollack Brook. The bridge has washed out and they propose to replace it with a new aluminum structure. The new bridge will be a bit higher and tie into a new trail. They consulted with an engineer and he recommended that they move the bridge back from the edge of the wetland.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of The Town of Cape Elizabeth for a Resource

Protection Permit to install 80 sq. ft. of boardwalk in an RP2 wetland and replace an existing 51' long pedestrian bridge with a 70' long pedestrian bridge across Pollack Brook be deemed complete. Waivers granted include one foot contours of the wetland where two foot contours have been provided and waiver of the stormwater runoff plan due to the small amount of impervious surface proposed.

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

Ms. Jordan opened the public hearing. No one came to speak, so the public hearing was closed.

Mr. Gilbert is concerned about the location of the bridge and if it is too close to a salt marsh.

Mr. Gabrielson said they have been in consultation with the Army Corps and the DEP and the Town Engineer.

Ms. O'Meara noted that she also provides staff support to the Conservation Committee. She said the town has received a permit from the DEP for the bridge. There will be no bridge support in the salt marsh. The bridge goes from dry land to dry land on each side of the stream.

Mr. Gilbert then said nothing is supposed to be within 25 ft. of the cemetery. The proposed trail is within 25 ft. of the cemetery. He is concerned about whether this is considered development.

There was further discussion about the trail and Ms. O'Meara said the board is not being asked to approve the trail, just the bridge and the boardwalk.

Mr. Sahrbeck asked if the new bridge is going to be a different design from the old bridge.

Mr. Gabrielson said the new bridge will be made of material that will float and it will be securely anchored on each side at the banking.

The Board does not want a site walk.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to install 80 sq. ft. of boardwalk in an RP2 wetland and replace an existing

51' long pedestrian bridge with a 70' long pedestrian bridge across Pollack Brook, which requires review under Sec. 19-8-3 Resource Protection Permit Regulations.

2. The proposed bridge and boardwalk will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed bridge and boardwalk will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
4. The proposed bridge and boardwalk will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
5. The proposed bridge and boardwalk will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed bridge and boardwalk will not pose problems related to the support of structures;
7. The proposed bridge and board walk will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed bridge and boardwalk are not located in, and therefore will not disturb, coastal dunes or contiguous back dune areas;
9. The proposed bridge and boardwalk will maintain or improve ecological and aesthetic values;
10. The bridge and boardwalk will disturb a minimal amount of ground area and otherwise will maintain an adequate buffer area between the wetland and adjacent land uses;
11. The bridge and boardwalk, by not removing vegetation or disrupting ground surface, will 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;
12. The bridge and boardwalk will 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;

13. The bridge and boardwalk, subject to the conditions below, is not located in the 100-year floodplain; and
14. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of The Town of Cape Elizabeth for a Resource Protection Permit to install 80 sq. ft. of boardwalk in an RP2 wetland and replace an existing 51' long pedestrian bridge with a 70' long pedestrian bridge across Pollack Brook be approved, subject to the following conditions:

1. That the MDEP permit for the boardwalk be obtained;
2. That the anchor for the south side of the bridge be revised to elevate the lowest horizontal member of the bridge to at least 1' above flood elevation 9'.
3. That the boardwalk be relocated upland of flood elevation 9'.
4. That there be no alteration of the site until plans have been revised and submitted to the town planner to satisfy the above conditions.

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

The board voted 7-0 to adjourn at 8:55 pm.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary