

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: October 15, 2019  
SUBJECT: Cunner Lane Private Road Review

### Introduction

David Smith is requesting a private road review of a portion of Cunner Lane to amend/replace a 1997 Public Access Waiver granted by the Planning Board. A turnaround was approved on the east side of Cunner Lane and the applicant would like to relocate the turnaround.

The applicant is proceeding under the current Zoning Ordinance requirements to relocate the turnaround as part of a private road review for a defined portion of Cunner Ln (as shown on the plans) located on the south side of the lot located at 19 Cunner 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.

### 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)

The comments of the Town Engineer are attached. A summary of the Subdivision Ordinance standards that are germane to the private road review are found below.

#### (a) Pollution

The applicant is seeking to obtain private road approval for an existing driveway, so new construction is limited to installation of the storage tanks. 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

No installation of potable water is included in this application. With the relocation of the turnaround, the distance from the driveway to the nearest hydrant exceeds 1,000'. To provide water for fire protection, the applicant will be installing 2 5,000 gallon water storage tanks (cistern).

(e) Erosion

An erosion control plan has been submitted.

(d) Traffic

1. Road congestion and safety. The proposed road connects to another section of Cunner Lane and then Hannaford Cove Rd. The private road approval satisfies the road frontage requirement for 1 lot located at 19 Cunner Lane. The anticipated traffic from one single family home can be accommodated by the existing road system.
2. Comprehensive Plan. The proposed road provides access to a lot in an existing neighborhood and the Comprehensive Plan supports infill development in existing neighborhoods.
3. Connectivity. The private road is consistent with connectivity goals in that two lots will share a driveway.
4. Safety. The very low volumes anticipated on the proposed road are not expected to create a safety hazard.
5. Through traffic. Cunner Lane is a dead end.
6. Topography. Road layout is confined to the existing road right-of-way, but generally avoids high cuts and fills.
7. Block Length. Not applicable.
8. Lot Access. The private road portion of Cunner Lane under review will serve two lots. It may be possible to further divide/develop the lot located at 21 Cunner Lane. Any future development will be limited by the

extensive wetlands located south of the private road and documented in a 1992 Planning Board approval.

9. Sidewalks/pedestrian connections. No sidewalks are proposed or required on a private road.
10. Road Name. The road name Cunner Lane has been approved by the Town Assessor.
11. Road Construction Standards. The road design includes some waivers from the local road standards. The applicant is requesting that the private road not be required to be centered in the right-of-way. The proposed right-of-way exceeds the 50' wide minimum at 73+ feet. The right-of-way is proposed to encompass the existing driveway and share a common boundary line with the 19 Cunner Lane lot in order to create road frontage.

A second waiver request is to reduce the traveled way of the road from 22' to 10' pavers with an additional gravel base of 2' which is loamed and seeded on each side. This creates a total gravel base supported width of 14'.

(e) Sewage Disposal.

Not applicable.

(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. The private road is already constructed, limiting new construction to installation of the water tanks.
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.
2. Zoning Ordinance. No new lots are proposed as part of this application.
3. Multiplex Housing. Not applicable.
4. Addressing Ordinance. The Assessor has approved the proposed road name.

(i) Financial and Technical Capability

The applicant has provided evidence of technical capability.

(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. The land south of the proposed private road includes extensive wetlands that were the focus of a Resource Protection Permit granted by the Planning Board in 1992. No wetland alteration is proposed. Any future development of the 21 Cunner Lane lot should be in compliance with wetland regulations.

(n) Stormwater

The Town Engineer has reviewed the stormwater plan and supports this approach. The applicant has requested a waiver from installation of an enclosed drainage system.

(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

No new lot is proposed as part of this application.

(s) Buffering

Not applicable.

(t) Open Space Impact Fee

Not applicable.

(u) Utility Access

The applicant has shown the location on the 19 Cunner Lane lot of a 1 1/2" seasonal water line.

(v) Phasing

Not applicable.

#### Motion for the Board to Consider

#### Findings of Fact

1. David Smith is requesting a private road review of a portion of Cunner Lane to amend/replace a 1997 Public Access Waiver granted by the Planning Board in which a turnaround was approved on the east side of Cunner Lane. The applicant would like to relocate the turnaround through approval of a private road, which requires review under Sec. 19-7-9.
2. The Planning Board granted a Public Access Waiver for a lot now located at 19 Cunner Lane on February 18, 1997 and the town adopted a new Zoning

Ordinance in May, 1997. The new Zoning Ordinance revised the Public Access Waiver provisions into a Private Accessway Permit that may only be issued for access to 1 lot. The Planning Board finds that the portions of the Public Access Waiver not revised remains in effect and the revisions will be reviewed as required in the current Zoning Ordinance. The relocated turnaround is located on a driveway that provides access to 2 lots, so the private road standards will be applied to the proposed amendments.

3. The Planning Board finds that the portion of Cunner Lane located between the original turnaround and the proposed right-of-way of the Cunner Lane Private Road depicted on plans submitted September 25, 2019 is equivalent in road condition to the public access waiver granted in 1997.
4. The applicant and abutters are involved in ongoing litigation regarding Cunner Lane. This Planning Board review is limited to the proposed private road Cunner Lane as shown on the plans dated September 25, 2019 and does not address existing or pending rights that may exist in the existing Cunner Lane.
5. The Planning Board held a site visit at Cunner Lane on Tuesday, October 1, 2019 at 6:00 p.m.
6. The private road (will/will not) result in undue water pollution. The private road (is/is not) located in the 100-year floodplain. Soils (will/will not) support the private road. The slope of the land, proximity to streams, and state and local water resource rules and regulations (will/will not) be compromised by the private road.
7. The private road (will/will not) cause soil erosion, based on the erosion control plan provided.
8. The private road (will/will not) cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The private road (provides/does not provide) for road network connectivity for 2 lots while discouraging through traffic. The private road (is/is not) laid out to conform to existing topography as much as is feasible. The private road (is/is not) designed to meet town standards, with the exception of waivers granted from locating the road in the center of the right-of-way, from providing a road width of 10' pavers plus 2' loamed and gravel-based shoulders for a total of 14' instead of 22' and from installing an enclosed drainage system.
9. The private road (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.

10. The private road (is/is not) compatible with applicable provisions of the Comprehensive Plan and town ordinances.
11. The applicant (has/has not) demonstrated adequate technical and financial capability to complete the project.
12. The private road (will/will not) adversely impact the quality or quantity of ground water.
13. The private road (is/is not) located in the floodplain.
14. The private road (will/will not) provide for adequate stormwater management.
15. The applicant has substantially addressed the standards of Sec. 19-7-9, Private Road Review.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of David Smith for a private road review of a portion of Cunner Lane to amend/replace a 1997 Public Access Waiver granted by the Planning Board to relocate the turnaround be approved, subject to the following conditions:

1. That waivers are granted to allow Cunner Lane not to be centered in the proposed right-of-way, to reduce the road width from 22' to 10' wide pavers plus a 2' wide loamed and seeded gravel shoulder on each side of the road for a total of 14', and to not require an enclosed drainage system;
2. That a note be added to the plan that there shall be no alteration of the site until a performance guarantee has been provided to the town in accordance with Sec. 16-2-6 of the Subdivision Ordinance; and
3. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the private road plan.