

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

June 15, 2021

7:00 p.m. Remote meeting

Present:	James Huebener, Chair	Carol Anne Jordan
	Daniel Bodenski	Mary Ann Lynch
	Andrew Gilbert	Jonathan Sahrbeck
	Alton Palmer	

Also present was Maureen O'Meara, Town Planner.

As a result of the COVID-19 virus, the Planning Board will conduct the meeting via remote access as provided by Maine law. The Planning Board will use Zoom meeting to conduct the meeting and to allow the public to remotely attend and participate. Zoom will allow all Planning Board members, applicants, and members of the public to hear all discussion and hear votes, which will be taken by roll call, as required by law.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of May 18, 2021. The minutes were amended and approved 6-0 (one abstain). The minutes of the June 1, 2021 workshop meeting were amended and approved, 7-0.

OLD BUSINESS

Town Farm Trail Resource Protection Permit - The Town of Cape Elizabeth is requesting a Resource Protection Permit to construct 1,100 sq. ft. of boardwalk on the existing Town Farm Trail (R5-11, 13), Sec. 19-8-3 Resource Protection Permit Public Hearing.

Corinne Ketcham, representing the Conservation Committee, encouraged the Board to approve the permit. She said it is a high impact, heavily travelled trail. They are working with the DEP to obtain permits. Boy Scout Troop 30 will be helping to construct this boardwalk.

Mr. Huebener opened the public hearing.

Philip Mathieu of the Cape Elizabeth Land Trust said they hold a conservation easement on most of the Town Farm and they think this project is great and is being done with good care.

No one else came forward to speak, so the public hearing was closed.

Mr. Sahrbeck made the following motion:

Motion for the Board to Consider

Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to install 1,100 sq. ft. of boardwalk on the existing Town Farm Trails, located at the Town Farm on Spurwink Ave (R5-11, R5-13), which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The application was deemed complete at the May 18, 2021 Planning Board meeting. The completeness finding includes waivers from providing 1' topographic contours, a high intensity soil survey, and a stormwater management plan prepared by a professional engineer, which are granted due to the limited size of the project and the limited change in existing conditions, including no change to existing ground topography.
3. The boardwalk will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
4. The 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;
5. The 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;
6. The boardwalk will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
7. The boardwalk will not pose problems related to the support of structures;
8. The boardwalk will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
9. The boardwalk will not disturb coastal dunes or contiguous back dune areas;
10. The boardwalk will maintain or improve ecological and aesthetic values;

11. The boardwalk will promote vegetation recovery to support an adequate buffer area between the wetland and adjacent land uses;
12. The boardwalk will not result in removal of vegetation, and therefore 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;
13. The boardwalk will not discharge wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
14. The boardwalk is not located in a floodplain.
15. 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 Town of Cape Elizabeth for a Resource Protection Permit to alter 1,100 sq. ft. of RP1 and RP2 wetlands to install boardwalk on the existing Town Farm Trails, located at the Town Farm on Spurwink Ave be approved.

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

287 Ocean House Rd Site Plan Amendment - Michael Friedland is requesting amendments to the previously approved site plan for 287 Ocean House Rd (U22-76) to delete the finish paving coat, revise the outdoor storage and expand the outdoor display hours, Sec. 19-9 Site Plan Public Hearing.

Jamie Wagner, attorney representing the applicant, said the applicant believes the top coat is an unnecessary expense that is not required by the ordinance. The applicant is not requesting that you ignore an ordinance, but not to be economically burdened by a line item that is not required by the ordinance. He quoted sec. 19-7-8, pg. 189. The applicant has met the standards.

Brandon Binette of NCS on behalf of Yam Yam LLC said he wants to point out some changes from the last meeting. He said notes 8 and 11 of the terms and conditions have been changed. They propose adding an 8 ft. stockade fence on the north side of the building, and an 6 ft. stockade fence on the southwest side of the building so storage can be hidden in the back. They propose to use an existing concrete pad [located in front of the building] for display of potted plants. They are asking for a waiver of the top coat of paving. Three inches of

paving have been laid down. This was a gas station, so it can handle tankers moving across it. Re the VRAP, the paver did not excavate the whole site.

Mr. Huebener opened the public hearing. No one indicated a desire to speak, so the public hearing was closed.

Mr. Sahrbeck asked for renderings of the stockade fence. What will it look like?

Mr. Binette said it will be a standard stockade fence. The idea would be to store large items that are for sale. Lumber should not be outside of the gate, including the fork lift, so nothing is in the public view.

Mr. Gilbert wanted to know if note 11 b should be removed or revised. He thinks note 11 should be taken out.

Other Planning board members pointed out to him that the note is talking about the concrete pad that is only for potted plants.

Mr. Gilbert said the Town Engineer recommends the top coat, and the Public Works Director does also. It is standard engineering practice and we've already approved it.

Mr. Palmer asked if there was a geotechnical report for the approval.

Mr. Binette said there was not.

Mr. Palmer asked if there was a pavement design calculation.

Mr. Binette said there was not.

Mr. Palmer said the applicant has not met their burden.

Ms. Lynch said she will support the request with respect to the paving. She quoted 19-7-8. There is no legal requirement to have paving. There are many businesses in town that do not even have paving. She spoke of the letter from D and R Paving that said the paving will last for years to come, and does not pose a safety concern.

Mr. Sahrbeck said he will support the request for a stockade fence, but he will not support the paving request. Industry standards say it needs a surface coat for safety.

Mr. Wagner said the terms pavement and paving are not defined in the ordinance anywhere. Mr. Palmer's suggestion would raise the burden on the

applicant beyond what is in the ordinance. He also cited many other town businesses that have unpaved parking lots and driveways.

Ms. Lynch said the subdivision ordinance is specific about paving roads and sidewalks, but nothing on parking lots. The Planning Board can waive those conditions.

Mr. Palmer said we are being asked to waive a requirement. We have opinions from the Public Works Director and the Town Engineer that say they need the top coat. If the applicant wants to remove it, then they should give us more than their opinion.

Mr. Bodenski said when Northeast Civil Solutions did their original plan, why didn't they do their job? Why didn't they do an existing conditions assessment of that parking lot? Why didn't they do their job and say they don't need that top coat? He will vote against the change unless they go back and do an analysis.

Mr. Wagner said Mr. Palmer asked for a geotechnical report. This is just a small business. You are increasing the burden on the applicant beyond what is acceptable.

Mr. Huebener asked about the mention of several businesses with gravel parking lots. If they had site plan review, would the town require them to pave those parking lots?

Ms. O'Meara reviewed the businesses listed which had site plan review and they have submitted specifications for their gravel parking lots, using the private road standard in the Subdivision Ordinance. In that ordinance, you are allowed to have a gravel road if it is constructed to certain specifications.

Mr. Wagner said it is an ambiguous ordinance.

Mr. Sahrbeck noted that the town center has different ordinances than the rest of the town. When someone says they are going to pave this, he expects it will be done to engineering standards. Asking for the study is not to add a burden to the applicant, but to back up their claim that the top coat is not needed.

Mr. Huebener said he will not be approving the waiver for the top coat. He does not see a need for the fence because there is no way to fit all that stuff behind a stockade fence. Why have it if it won't all fit behind it, or change the design so it will all fit behind it. There were a few discussions about the notes on the plan. He said he does not believe they have an accurate and complete set of plans for the Code Officer. He asks if they are setting themselves up for failure?

if future applicants want these kinds of changes, will we always be forced to grant waivers.

In response to a question regarding setting precedent for waivers, Ms. O'Meara said there is no limit to what an applicant can ask for. It is up to the board to say yes or no.

Ms. Lynch said we just approved the application for the town with waivers, so we should grant this application. She will be supporting this.

Mr. Gilbert said if an applicant goes the route of paving, they should be held to the standards for paving a commercial lot. You can choose to go with a gravel lot. We should hold businesses to a higher standard for paved lots.

Ms. Jordan said she is totally in favor of the fencing. It should be able to fit everything behind it, with nothing left outside of it. As for the parking lot, she does not think their engineer did their client any service by not studying how they would pave this parking lot. She is torn, but her inclination is to support the client's request.

There was a discussion of whether to table this matter with the condition that the plans be updated.

Ms. Jordan made the following motion:

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Yam Yams LLC for amendments to the site plan approved for 287 Ocean House Rd to alter outdoor storage and eliminate a finish pavement coat be tabled to the July 20, 2021 meeting, at which time we will review revised site plans that include note revision of note 11 and that a note be added to the plan that no display items will be placed in the road right-of-way, and any additional information on the capability of the pavement will be entertained.

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

OTHER BUSINESS

Agricultural Amendments - The Town Council has referred to the Planning Board a request to amend the Site Plan Regulations (Sec. 19-9) to increase the size of agricultural buildings that do not require site plan review from 2,000 sq. ft. to 3,000 sq. ft., Sec. 19-10-3, Amendments Public Hearing.

Ms. Jordan recused.

At the May 10, 2021 meeting, the Town Council passed the following motion by a 5-0 vote:

ORDERED, the Cape Elizabeth Town Council refers to the planning board for review and report back to the town council a request to increase the size of high tunnel/greenhouse agricultural buildings, Sec. 19-9-2.

Summary

The William H. Jordan farm has requested that the maximum size of agricultural buildings that do not require site plan review be increased from 2,000 sq. ft. to 3,000 sq. ft. Under the United States Department of Agriculture (USDA) NRCS EQUIP program, a high tunnel of at least 2,100 sq. ft. in size is eligible for reimbursement. The current ordinance would require Site Plan review for a high tunnel of more than 2,000 sq. ft.

The proposed revision increases the site plan exemption cap to 3,000 sq. ft. for barns, greenhouses and storage sheds used for agriculture. The Planning Board discussed expanding the cap for greenhouses alone, but noted that non-agricultural buildings like a single family home garage would not require site plan review. The Comprehensive Plan supports “farm friendly” policies.

At the June 1, 2021 workshop, the Planning Board voted to schedule a public hearing on the agricultural amendment for June 15th. Minutes of this portion of the June 1st workshop have been prepared.

Mr. Huebener opened the public hearing. No one indicated a desire to speak, so the public hearing was closed.

Mr. Gilbert is concerned about the unintended consequences of covering all farm buildings, not just greenhouses. He would like to limit the expansion to just greenhouses.

Mr. Sahrbeck would like to be able to visualize a 2,000 sq. ft. and a 3,000 sq. ft farm building.

Ms. O'Meara said it is always a balance between being farm friendly and not allowing things that might result in traffic or other issues. Going to 3,000 makes it possible for farmers to take advantage of this program to get subsidies.

Mr. Bodenski said the town council is asking us for high tunnels. He would like to have them broken out in the ordinance into c-1 and c-2. He asked if there is

a limit to the number of greenhouses, barns or storage sheds can be placed on a property.

Ms. O'Meara said there is not a limit. There is a property that has multiple greenhouses that do not exceed 2,000 sq. ft. She also said someone could build a garage on a single family home, that exceeds 2,000 sq. ft. and that would not trigger site plan review.

Mr. Palmer said these structures are typically 24-30 ft. in width. It would most likely it would mean it would get longer. It could go from 80ft. to 120 ft.

Ms. Lynch said that we could have a garage on a house that is 4,000 sq. ft.

Mr. Sahrbeck said he would like to tailor this to greenhouses.

Ms. Lynch made the following motion:

BE IT ORDERED that, based on the draft amendment and the facts presented, the Planning Board recommends the agricultural Amendment to the Town Council for consideration.

Mr. Sahrbeck seconded the motion and it passed 4-2.

The Board voted unanimously to adjourn at 8:45 p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary