

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

July 16, 2024

7:00 p.m.

Town Hall

Present: Jonathan Sahrbeck, Chair
Alton Palmer
Daniel Bodenski

Matthew Caton
Derek LaVallee
James Huebener

Absent: Andrew Gilbert

Also present: Maureen O'Meara, Town Planner

CALL TO ORDER

Mr. Sahrbeck called the hybrid meeting (in-person and virtual) to order at 7:00p.m. It was noted that the Zoom connection for virtual participation may not be working.

Mr. Sahrbeck called for approval of the minutes of the June 18, 2024 Planning Board meeting. Mr. Huebener requested minor amendment on p.1, second paragraph from the bottom of the page, replacing the word "reviewed," with "described" in the sentence beginning, "Mr. Sahrbeck introduced the agenda item . . ."

Mr. LaVallee moved to approve the minutes as amended and Mr. Bodenski seconded. With no further discussion, the minutes were approved, 5 in favor, one abstention (Palmer) and none opposed.

NEW BUSINESS

Cape Elizabeth Land Trust 2024 Trail Improvements RP Permit – The Cape Elizabeth Land Trust (CELT) is requesting a Resource Protection Permit to make trail improvements in Chapel Woods (132 sq. ft. of wetland alteration), located at 280 Ocean House Road, and Robinson Woods I (estimated 150 sq. ft [25' x 6'] of wetland alteration), located off Shore Road. The application will be reviewed for compliance with Sec. 19-8-3, Resource Protection Regulations.

Mr. Sahrbeck introduced the agenda item and asked the applicant to summarize the project.

Ardath Dixon, Stewardship Manager for CELT, addressed the Board, noting that the application includes two projects. The first project involves construction of a boardwalk in Chapel Woods, an area of trails that get very wet every Spring. The proposed boardwalk design would allow water to flow under the structure and offer a dry, defined area for pedestrians. The boardwalk would prevent further impact to adjacent vegetated areas from foot traffic.

Mr. Sahrbeck asked the Board for any comments or questions about the Chapel Woods project. Hearing none, he asked Ms. Dixon to describe the second project.

Ms. Dixon explained that the Robinson Woods project is specific to the outer loop trail near a culvert where wet areas were identified during recent maintenance on the culvert. The applicant is proposing to add gravel fill to an existing trail section. The fill will not alter the existing flow of surface and subsurface water.

Mr. Sahrbeck cited comments from the Town Engineer on the issue of granting waivers from providing 1' contours, a high intensity soil survey, and description of the management of stormwater runoff by a professional engineer. Mr. Sahrbeck noted a consensus from the Board regarding granting of waivers. He then opened the floor for public comment on the issue of completeness of the application. With no participants, either in person or virtually, Mr. Sahrbeck closed the floor for comment. He noted no further comment or questions from the Board on the issue of completeness.

Ms. O'Meara stated that draft motions for the Board to consider should be amended to reflect the square footage of the projects described by Ms. Dixon. Specifically, the area of the Chapel Woods project should be amended to 150 sq. ft. from 132 sq. ft, and the area of the Robinson Woods project should be amended to 350 sq. ft. from 150 sq. ft.

Mr. LaVallee made a motion for the Board to consider on the issue of completeness:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Cape Elizabeth Land Trust (CELT) for a Resource Protection Permit to make trail improvements in Chapel Woods (150 sq. ft. of wetland alteration), located at 280 Ocean House Road, and Robinson Woods I (estimated 350 sq. ft. of wetland alteration), located off Shore Road, be deemed complete.

Mr. Bodenski seconded the motion.

With no further discussion, the motion passed, 6-0.

Mr. Sahrbeck asked Ms. Dixon to provide more detail on the culvert described in the improvements on the Robinson Woods I outer loop trail. Ms. Dixon explained that Code Enforcement Officer Ben McDougal assessed the work done by CELT in November, 2023 to replace the existing culvert. He confirmed that the work constituted maintenance on the existing structure. Ms. Dixon further explained that the current application describes improvement to the area of trail adjacent to the culvert.

Mr. Huebener cited the comment from the Town Engineer regarding a waiver for a stormwater runoff plan from a professional engineer. The application includes an adequate description of

the minimal effects of the project on stormwater provisions; therefore, the Town Engineer supports granting of the waiver.

Mr. Sahrbeck stated that the projects are designed both to improve the enjoyment and utility of the trails and decrease the impact of foot traffic on the surrounding forest.

Mr. Sahrbeck opened the floor for public comment on the merits of the application. With no comment, either in person or virtually, Mr. Sahrbeck closed the floor.

Mr. Caton asked for clarification on the comment by the Town Engineer regarding DEP review of the projects. Mr. Caton asked if DEP review constitutes a condition for approval of the application. Discussion ensued. Ms. O'Meara suggested that the comment from the Town Engineer on the 4,300 sq. ft. exemption threshold for DEP permitting represents a courtesy reminder for the applicant on the regulation and, as such, is not a condition of the application.

With no comment from the Board, Mr. LaVallee made a motion for the Board to consider:

Findings of Fact:

1. The Cape Elizabeth Land Trust (CELT) is requesting a Resource Protection Permit to make trail improvements in Chapel Woods (150 sq. ft. of wetland alteration), located at 280 Ocean House Road, and Robinson Woods I (up to 350 sq. ft. of wetland alteration), located off Shore Road, which requires a Resource Protection Permit in accordance with Sec. 19-8-3, Resource Protection Regulations.
2. The trail improvements will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The trail improvements 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 trail improvements 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 trail improvements will not result in significant damage to spawning grounds or habitat for aquatic life, birds, or other wildlife;
6. The trail improvements will not pose problems related to the support of structures;

7. The trail improvements will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The trail improvements will not disturb coastal dunes or contiguous back dune areas;
9. The trail improvements will maintain or improve ecological and aesthetic values;
10. The trail improvements will maintain an adequate buffer area between the wetland and adjacent land uses;
11. The trail improvements 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 trail improvements 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; and
13. The trail improvements are not located in a floodplain.
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 Cape Elizabeth Land Trust (CELT) for a Resource Protection Permit to make trail improvements in Chapel Woods (150 sq. ft. of wetland alteration), located at 280 Ocean House Road, and Robinson Woods I (estimated 350 sq. ft. of wetland alteration), located off Shore Road, be approved subject to the following conditions:

1. That the plans be revised and materials submitted to address the comments of the Town Engineer in his letter dated July 8, 2024.
2. That there be no alteration of the site until the above condition has been met.

Mr. Huebener seconded the motion. With no further discussion, the motion passed, 6 in favor and none opposed.

Lot 5 Waterhouse Court Subdivision Amendment – Rachael Brown is requesting an amendment to the previously approved Waterhouse Court Subdivision to amend the boundary line for lot 5 to add land in use as a garden. The plan will be reviewed under Sec. 16-2-5, Amendment to a Previously Approved Subdivision of the Subdivision Ordinance.

Mr. Sahrbeck introduced the agenda item and described the procedure for review, noting that a workshop on the application was held on April 2, 2024. It was also noted that the questionable Zoom connection had been discontinued.

Mr. Bill Gerrish of Northeast Civil Solutions, representing the applicant, addressed the Board and reviewed the details of the site plan. Mr. Gerrish explained that the original subdivision plan for Waterhouse Court was approved by the Planning Board in 1985. There have been no amendments to the subdivision plan since that time. Rachael Brown acquired lot 5 in 2019 located at 30 Waterhouse Road (U29-26-5). In 2023, Ms. Brown acquired an abutting parcel located at 63 Spurwink Avenue (U29 – 26A). The property is in the Resident C District, requiring a 20,000 sq. ft. lot size. The proposed boundary changes would reduce the area of the 63 Spurwink Avenue property; however, the reduction would not fall below the required lot size for the District.

Mr. Sahrbeck opened the floor for public comment on the issue of completeness of the application. With no comment from members of the public, Mr. Sahrbeck closed the floor.

Mr. Sahrbeck made a motion for the Board to consider on the issue of completeness.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Rachael Brown for an amendment to the previously approved Waterhouse Court Subdivision to amend the boundary line for lot 5 to add land used for a garden be deemed complete.

Mr. Huebner seconded the motion. With no further discussion, the motion passed, 6–0.

Mr. Gerrish had no further comment on the merits of the application.

Mr. Sahrbeck noted that the Board chose not to schedule a site walk. He noted that the site plan was clear. Mr. Palmer noted a typo on the site plan specific to a label defining the Spurwink Ave property. The word, “remining” should be changed to “remaining.” Signatures will be delayed until the amendment is made to the plan.

Mr. Sahrbeck opened the floor for public comment on the issue of the merits of the application. With no comment from members of the public, Mr. Sahrbeck closed the floor.

With no further comment from the Board, Mr. Huebener made a motion for the Board to consider:

Findings of Fact:

1. Rachael Brown is requesting an amendment to the previously approved Waterhouse Court Subdivision to amend the boundary line for lot 5 to add land in use as a garden.

The plan will be reviewed under Sec. 16-2-5, Amendment to a Previously Approved Subdivision of the Subdivision Ordinance.

2. The Waterhouse Court Subdivision has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance, and the findings and decisions of that approval which are not altered by the proposed amendment remain in effect.
3. The subdivision amendment is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
4. The subdivision amendment complies with the standards of Sec. 16-3-1.
- 5.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Rachael Brown for an amendment to the previously approved Waterhouse Court Subdivision to amend the boundary line for lot 5 to add land used for a garden be approved.

Mr. Bodenski seconded the motion. With no further discussion the motion passed, 6–0.

OTHER BUSINESS

Public Comment – Mr. Sahrbeck opened the floor for public comment. With no comment, Mr. Sahrbeck closed the floor.

Mr. Huebener made a motion to adjourn the meeting. Mr. LaVallee seconded. With no further discussion, the motion passed, 6-0.

The meeting adjourned at approximately 7:35 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary