

MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

August 16, 2022

7:00 p.m.

Town Hall

Present: James Huebener, Chair Matthew Caton
 Derek LaValle Daniel Bodenski
 Alton Palmer

Absent: Andrew Gilbert and Jonathan Sahrbeck

Also present was Maureen O'Meara, Town Planner.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of July 19, 2022. The minutes were amended for typos and approved 4-0-1 (Bodenski abstained).

OLD BUSINESS

Gull Crest Temporary Ice Rink Site Plan Amendment – The Cape Community Arena Group is requesting a Site Plan amendment to the Gull Crest site plan to construct a Temporary Ice Rink adjacent to the athletic fields parking lot (R05-10), Sec. 19-9, Site Plan Public Hearing.

Michael Tadema-Wielandt of Terradyn Consultants spoke about the changes since the last presentation. They have added a berm on the west. They have added erosion control. They have added signage at the end of Gullcrest Drive and Cooper Drive to direct the parking to the proper place. They can add physical barriers if needed. They have added jersey barriers on each side of the changing tents. They are removing trees with a reforestation plan and a buffer plan. They have added back 8 parking spaces and repositioned the Zamboni to make a total of 57 spaces. They assume a maximum of 50 people with 2 people per car. They have given more detail about meeting the noise standards.

They are having supply chain glitches so they do not expect this project to be ready for this winter. It will be in winter 2023-2024. There is a small chance it will be available this year. He asked if the Board has the ability to grant approval for 18 months.

Ms. O'Meara said site plan approval is valid for 12 months and expires if work is not commenced, with an option to request a 1-year extension. Because you are seeking an amendment to the original approval, and that original approval was constructed, any site plan amendment approval would not expire so an extended approval is not needed.

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

Mr. Caton made the following motion:

Findings of Fact

1. The Cape Community Arena Group (CCAG) is requesting an amendment to the previously approved site plan for Gull Crest to construct a temporary ice rink adjacent to the athletic fields parking lot located on Gull Crest Drive, which requires review under Sec. 19-9, Site Plan Regulations.
2. The Town of Cape Elizabeth has previously received Site Plan approval for the Gull Crest site and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.
3. The Planning Board deemed the application complete at the July 19, 2022 meeting and held a site walk on July 23, 2022.
4. The plan for the development reflects the natural capabilities of the site to support development.
5. 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.
6. The plan does provide for a system of pedestrian ways within the development.
7. The plan does provide for adequate collection and discharge of stormwater.
8. The development will not cause soil erosion, based on the erosion plan submitted.
9. The development will be provided with an adequate quantity and quality of potable water.
10. The development will provide for adequate sewage disposal.
11. The development will be provided with access to utilities.
12. The development will provide for adequate disposal of solid wastes.
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. 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 the Cape Community Arena Group (CCAG) for an amendment to the previously approved site plan for Gull Crest to construct a temporary ice rink adjacent to the athletic fields parking lot located on Gull Crest Drive be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated August 10, 2022;
2. That the planting plan be revised to replace oaks and maples with tree species included in the Road Tree List, Appendix C, Subdivision Ordinance;
3. That there be no alteration of the site nor issuance of a building permit until the plans are revised to address the above conditions and submitted to the town planner.

Mr. LaValle seconded the motion and it was approved, 5-0.

Carr Woods Condominium Development - Andrew Carr is requesting Preliminary Major Subdivision Review for creation of a single family lot and 18 condominiums and a Resource Protection Permit for alteration of 11,449 sq. ft. of wetland on combined lots located in the vicinity of 10 Deep Brook Rd (U6-91, 91A, 92, 94A, 95), Sec. 16-2-4, Major Subdivision and Sec. 19-8-3, Resource Protection Permit.

Bill Gerrish of Northeast Civil Solutions spoke about the changes since the last meeting. At the last board meeting, the outstanding issue was the open space. He showed the updated open space plan. The westerly boundary of the Carr lot has been moved in to enhance the open space. Also, the southern boundary has been moved to accommodate an existing trail. Roughly 1/3 of the former area has been moved into the open space.

Mr. Gerrish then discussed the trails. There is the existing Plaisted Park Trail through the woods and on the applicant's property. There is a trail through wetland D. They propose to have a boardwalk through that wetland. There is the proposed Wood Road trail. They have an easement from the edge of Wood Road to the applicant's property. There was a shed there that has been removed. There is a significant grade there and they will add some fill to the 2:1 slope. The easements will be provided to give access to the trail. The open space is now 60%.

Jim Fisher of Northeast Civil Solutions said they are looking for preliminary approval. All the issues have been addressed. There are 3 separate trails. They have been before the Board many times. Some people will do anything to stop the project. At every step along the way we have provided professionals to show what is applicable or not. The project works and it works well.

Attorney David Sherman said there is a legal connection for access from Wood Road.

Mr. Huebener opened the public comment.

Lise Pratt of 32 Wood Road said that there are 2 new trails to a dead end. One is suitable for mountain goats, and the other crosses the wetland. This will further disturb the wetlands. The trails run right behind the abutters' houses. The buffer plantings are now undermined. The proposed trails result in considerably further environmental impact and a loss of privacy for the abutters.

Brandon Mazer, attorney for Perkins Thompson, represents the Johanssons. He said there are deficiencies in the plan. What has happened to the landscape plan? The Conservation Committee needs to give an opinion on this plan. The buffering for the abutters has changed. If they proposed fewer units, they would meet the open space requirements. Is a paved driveway part of open space?

Attorney Andre Duchette is here on behalf of Sheila Wellehan. The issues continue to come up because they use the band aid approach. New information has come to light regarding the technical capability of the developer. He encouraged the Board to look further into it.

Kate Blackburn of 14 Rocky Hill Road is concerned for the safety and privacy of the abutters on the Rocky Hill side. She said two companies missed the bedrock behind her house. She is concerned about the path behind her house is on her land. She said her claim is based on adverse possession.

Pat McBride of 18 Wood Road is the owner of the lot where the easement is. She had a survey done in 2007 and that land is part of 18 Wood Road. The easement is for use as a driveway. Wood Road trail is not in existence currently. There is no trail there.

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

Jim Fisher said there are trails next to people's property all over town. There are no haphazard lines on this plan, it is precisely engineered. The deed to access to Wood Road is in the packet. People do not automatically have adverse possession. It comes from a court decree.

Mr. Palmer said that with the new trails, the updated grading and landscaping plans were not provided.

Mr. Gerrish said the plans will be provided.

Mr. Palmer said the two new trails are a substantive change. He said it appears that the trails are there so 50 ft. wide parcels can be counted as open space. He is struggling to see that those spaces meet the intent of the open space. He wants a site walk to see how the trails work and impact the neighbors. He has concerns about encouraging public trails within 5-10 ft. of abutting properties.

Mr. Huebener said buffering is a concern and he would like a site walk.

In response to a question about scheduling another site walk, Ms. O'Meara said it is common for the Planning Board to have another site walk when a project is submitted for final approval. The Board could also schedule a second site walk as part of preliminary approval.

Mr. La Valle asked about the role of the Conservation Committee and their opinion.

Ms. O'Meara said the Conservation Committee has a role in reviewing the Resource Protection permit. They are also involved in reviewing and commenting on open space in subdivisions.

Mr. Bodenski asked about the maintenance of the trails.

Mr. Gerrish said the town would rake the trails.

Ms. O'Meara said earlier discussions about the open space indicated it would be held privately by the condo association. If it is publicly held, the Conservation Committee would maintain them.

Mr. Palmer asked who is going to hold the open space?

Ms. O'Meara said that needs to be clearly identified on the plans, with deeds provided as part of final subdivision review. She referred to the applicant to confirm open space ownership.

Mr. Fisher said the major elements are done. There are lots of little items to be done for final approval. It is an option for the town to take the trails, or not. If the condo association owns the trails, we will maintain them.

Mr. Caton asked if the path to Plaisted Park exists there?

Bill Gerrish said there is physical evidence of a path in that area.

Mr. Caton asked if land owned by the town can be called open space?

Ms. O'Meara said yes, it can. She referenced the town Greenbelt and Open Space Management Plan, which includes an inventory of town open space that includes these parcels.

Mr. Caton asked if open space labeled as #2 should be included as open space?

Mr. Gerrish said it has been included as open space. It is not usable open space [per town definition of open space to meet the standards], but it is allowable open space.

Mr. Caton asked if any portions of the lot are subject to an easement?

Mr. Sherman said yes, there is a sewer easement.

There was further discussion about the sewer easement, including adjusting the deed to match the actual location of the sewer line, and that the easement was not included in the open space required calculation.

Mr. Huebener said he has trouble seeing how the trails can be buffered well. He noted that if they give preliminary approval, they aren't locked in.

Mr. Caton agreed with Mr. Huebener and said he is concerned about the buffering and the privacy of the abutters.

Mr. Palmer said he understands the basis of moving forward. He thinks block 2 is subjective to be considered open space. If you remove that, it becomes 46% and then if you remove one of the trails, they will be below the 45% required. Assuming the Board decides to move forward, he would add some items to the conditions of approval. He noted the triangle at the beginning of the road at Shore Road. We have no answer about what they plan to do about that. He is concerned about the pedestrian access. He is also concerned that there is a right of way issue at Shore Road.

Ms. O'Meara said the applicant has verbally agreed to contribute a right of way as part of the Shore Road project, and that would be finalized as part of final approval.

Mr. Palmer added that the Shore Road project has allocated \$1 million for erosion at Casino Beach. He feels this project should be paying for part of that. Then there was discussion about the Conservation Commission and what is their role, advisory or decisive. Ms. O'Meara provided an ordinance citation on the Conservation Committee role.

Mr. Bodenski said he is open to preliminary approval.

Mr. Palmer made the following motion:

Findings of Fact

1. Andrew Carr is requesting Preliminary Major Subdivision Review for Carr Woods, an 18- unit condominium development and 1 single family lot and a Resource Protection Permit to alter 11,449 sq. ft. of RP2 wetland, located at 10 Deep Brook Road, which requires review for compliance with Sec. 16-2-4, Major Subdivision, Sec. 19-8-3, and Resource Protection Permit Public Hearing.
2. The application was deemed complete on August 17, 2021, a site visit was held on September 2, 2021 and public hearings held on September 21, 2021 and April 19, 2022.
3. The subdivision will not result in undue water pollution. The subdivision is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
4. The subdivision will have a sufficient quantity and quality of potable water.
5. The subdivision will not cause soil erosion, based on the erosion control plan provided.
6. The subdivision will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic based on the conditions of approval. The subdivision provides for road network connectivity while discouraging through traffic. Roads are laid out to conform to existing topography as much as is feasible. All lots/units are provided with vehicular access. Roads are designed to meet town standards.
7. The subdivision will provide for adequate sewage disposal.
8. The subdivision will provide for adequate solid waste disposal.
9. The subdivision 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 subdivision is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
11. The applicant has demonstrated adequate technical and financial capability to complete the project.
12. The subdivision will not adversely impact surface water quality.
13. The subdivision will not adversely impact the quality or quantity of ground water.
14. The subdivision is not subject to the Floodplain Regulations, Chapter 6.
15. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance.
16. The proposed subdivision will provide for adequate stormwater management, based on conditions of approval.
17. The subdivision is not located in the watershed of Great Pond.
18. The subdivision is located wholly in the Town of Cape Elizabeth.
19. The subdivision is not located on land where liquidation harvesting was conducted.
20. The subdivision does provide for access to direct sunlight.
21. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed.
22. The subdivision will comply with the open space impact fee.
23. The subdivision lots will be provided with access to utilities.
24. The subdivision plan does not include a phasing plan.
25. The wetland alterations will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
26. The wetland alterations 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;

27. The wetland alterations 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 based on the conditions of approval;
28. The wetland alterations will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
29. The wetland alterations will not pose problems related to the support of structures;
30. The wetland alterations will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
31. The wetland alterations will not disturb coastal dunes or contiguous back dune areas;
32. The wetland alterations will maintain or improve ecological and aesthetic values;
33. The wetland alterations will maintain an adequate buffer area between the wetland and adjacent land uses;
34. The development 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;
35. The development 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
36. The development is not located in the Resource Protection-Floodplain District.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr for Preliminary review of the Major Subdivision Carr Woods, an 18 unit condominium project and 1 single family home lot and a Resource Protection Permit to alter 11,449 sq. ft. of RP2 wetland, located at 10 Deep Brook Rd, be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer's letter dated August 10, 2022;
2. That the plans and materials be revised to address the comments of the town's stormwater consultant, Kristie Rabasca, Integrated Environmental Engineering, Inc.
3. That the plans and where appropriate easements be updated to incorporate existing and new utility infrastructure, such as the existing sewer line located on the south side of the property near Shore Road.
4. That the multiplex building design plans be updated and resubmitted, with supporting narrative;
5. That the landscaping and buffering plan and the open space plan showing trails be reviewed and revised where there are conflicts.
6. That the plans be revised to add a label describing how the triangular piece of land on the north side of Deep Brook Road at Shore Road will be merged with the adjacent property;
7. That the applicant provide a plan for pedestrian access along Shore Road either by participating in the town's Shore Road Rehabilitation Project or ;
8. That the applicant estimate its impact on the existing Casino Beach stormwater project and propose a cost sharing contribution;
9. That the applicant meet with the Conservation Committee and request that a recommendation on the proposed trail network be provided to the Planning Board;
10. That the applicant shall agree to stake out the location of proposed trails in advance of a site walk to be held by the Planning Board;
11. That any change to the developer of the project be required to submit new technical and financial capacity prior to implementation.
12. That the plans be revised to satisfy the above conditions when the project is submitted for final subdivision approval.

Mr. Caton offered 2 friendly amendments and withdrew one of them.

Mr. Bodenski seconded the motion and it was passed, 4-1 (Palmer)

NEW BUSINESS

Town Hall/GoNetSpeed site plan amendment – The Town of Cape Elizabeth, represented by GoNetSpeed, is requesting an amendment to the previously approved site plan for the Town Hall to install a wireless base station on a 20' x 20' easement in the parking lot located at 320 Ocean House Rd ((U11-17), Sec. 19-9 Site Plan Completeness and Public hearing.

Terrence Turner of GoNetSpeed said they want to place their equipment on Town Hall property. They are building a high speed broadband network in the town. The town has agreed that they may use a 20ft. X 20ft. piece of the parking lot. They will place an OLT cabinet and a 14kw generator inside a 6ft. high wooden fence. There will be some bollards to protect it. They will have a propane tank away from the building. They are proposing one cabinet, but they may need to add another as the network grows. The site will use the existing utilities. There is a drainage manhole there. The fence may be outside the 20X20 area. They are here to ask for completeness, a public hearing and approval. They are asking for a waiver for topography. They are taking 2 parking spaces, so they are affecting the parking. They will not violate the noise standard. Any approval will be conditioned on approval of the Town Engineer.

Mr. Huebener opened the public comment on completeness. No one came up to speak, so the comment period was closed.

Mr. Bodenski 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, represented by GoNetSpeed, for an amendment to the previously approved site plan for 320 Ocean House Rd to establish a 20' x 20' easement for a fiber base station including an equipment cabinet, small generator, and propane tank be deemed complete. A determination of completeness shall include a waiver from providing topographic information due to the limited nature of the project.

Mr. Palmer seconded the motion and it passed, 5-0.

Mr. Huebener opened the public hearing. No one spoke, so the public hearing was closed.

Mr. Turner addressed the engineer's comments and said they are taking 2 parking spaces, but it seems as if there is sufficient parking still available to meet the needs. He showed a picture of the proposed fencing and how they will deaden the sound if needed. The sign will be on the plans and it will be on

the fence. He said they are not using any asphalt. They will remove the existing asphalt and put in 1/4in. grey stone.

Mr. Bodenski made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth, represented by GoNetSpeed, is requesting an amendment to the previously approved site plan for 320 Ocean House Rd to establish a 20' x 20' easement for a fiber base station including an equipment cabinet, small generator, and propane tank, which requires review under Sec. 19-9, Site Plan Regulations.
2. The 320 Ocean House Road Town Hall site plan has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Site Plan regulations, and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.
3. The plan for the development reflects the natural capabilities of the site to support development.
4. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.
7. The development will be provided with access to utilities.
8. The applicant has demonstrated adequate technical and financial capability to complete the project.
9. The development will not substantially increase noise levels and cause human discomfort.
10. 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 the Town of Cape Elizabeth, represented by GoNetSpeed, for an amendment to the previously

approved site plan for 320 Ocean House Rd to establish a 20' x 20' easement for a fiber base station including an equipment cabinet, small generator, and propane tank be approved, subject to the following condition:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated August 10, 2022.

Mr. Lavalley seconded the motion and it was approved 5-0.

Freitas/Prout Place Resource Protection Permit – Oscar and Lisa Freitas are requesting a Resource Protection Permit to temporarily alter 316 sq. ft. of RP2 wetland to install underground utilities to serve the lot located at 6 Prout Place (U53-35C), Sec. 19-8-3 Resource Protection Permit Completeness.

Bob Metcalf of Mitchell Associates, spoke for the applicants. He showed the plan of the property. There is a 30ft. wide sewer easement that crosses the property. The lot is fully wooded. There is a 263 sq. ft. vernal pool and they will stay away from it. They will cross the wetland at the narrowest point for the least disturbance. They are requesting 3 waivers, for the topography and a high intensity soil survey and the financial capability since the purchaser will be the one required to finance the project.

Mr. Huebener opened the public comment on completeness.

Frank DeLong of 8 Prout Place wants to clarify that the purchaser is the one who must demonstrate financial capacity to do the work as it is described here.

No one else came to speak, so Mr. Huebener closed the public comment.

Mr. LaValle made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Oscar and Lisa Frietas for a Resource Protection Permit to temporarily alter 316± sq. ft. of RP2 wetland, located at 6 Prout Place, to make below ground utility service connections be deemed complete. A finding of completeness shall include granting a waiver from submitting 1' topographic contours, a high intensity soil survey, and stormwater runoff calculations prepared by a licensed engineer, due to the limited nature of the project.

Mr. Bodenski seconded and the motion was passed, 5-0.

Mr. Huebener opened the public comment period. No one came to speak, so the public comment was closed.

There was no further discussion.

Mr. LaValle made the following motion:

Findings of Fact

1. Oscar and Lisa Frietas are requesting a Resource Protection Permit to temporarily alter 316± sq. ft. of RP2 wetland, located at 6 Prout Place, to make below ground utility service connections, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The wetland alteration will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The wetland alteration 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 wetland alteration 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 wetland alteration will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The wetland alteration will not pose problems related to the support of structures;
7. The wetland alteration will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The wetland alteration will not disturb coastal dunes or contiguous back dune areas;
9. The wetland alteration will maintain or improve ecological and aesthetic values;
10. Except where the alteration is located within the wetland, the wetland alteration will maintain an adequate buffer area between the wetland and adjacent land uses;
11. The wetland alteration 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 wetland alteration 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 wetland alteration is not located in a floodplain.
14. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Oscar and Lisa Frietas for a Resource Protection Permit to temporarily alter 316± sq. ft. of RP2 wetland, located at 6 Prout Place, to make below ground utility service connections be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the town engineer's letter dated August 10, 2022.

Mr. Bodenski seconded the motion and it was approved, 5-0.

OTHER BUSINESS

Public comment

No member of the public was present.

The Board voted 5-0 to adjourn at 9:40 p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary