

TOWN OF MINUTES OF THE PLANNING BOARD
CAPE ELIZABETH

August 17, 2021

7:00 p.m.

Town Hall

Present: James Huebener, Chair Carol Anne Jordan
 Daniel Bodenski Alton Palmer

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 20, 2012. The minutes were approved as presented, 4-0.

CONSENT AGENDA

Ocean Common Subdivision Amendment - Frank W. Murphy LLC is requesting an amendment to the previously approved Ocean House Common Subdivision, located on Town Common Circle (R2-4-6), to replace granite curbing on the Town Common Circle private road with slipform concrete, Sec. 16-2-5 Subdivision Amendments De Minimis change.

Greg Shinberg of Shinberg Consulting said the applicant wants to change the granite curbing to slipform concrete. The curbing is only on one side of the road. He said the base coat has been installed.

There was no discussion on this item.

Mr. Bodenski made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Frank W. Murphy LLC for an amendment to the previously approved Ocean House Common Subdivision, located on Town Common Circle (R2-4-6), to replace granite curbing on the Town Common Circle private road with slipform concrete be approved with the following condition:

1. That the plans be revised to address the comments in the Town Engineer's comments dated August 10, 2021.

Ms. Jordan seconded and the motion passed, 4-0.

NEW BUSINESS

Sprague Corporation Lot 1-5 Subdivision Amendment - The Sprague Corporation is requesting an amendment to the previously approved Sprague Subdivision to reconfigure the building envelopes for lot 1-5, located on Lower River Rd (R08-1-5), into one building envelope and remove the label for the boat repair facility envelope, Sec. 16-2-5, Amendments to a previously approved subdivision Completeness and Public Hearing.

Jessica Kimball, Landscape Architect said this subdivision plan was approved in 1999. There are now 3 building envelopes and they want to have just one building envelope. She described the setbacks for the building envelope from the property line and wetlands. She said the same surveyor who stamped the plan in 1999, will stamp this new plan when it is finalized.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Sprague Corporation for an amendment to the previously approved Sprague Subdivision to reconfigure the building envelopes for lot 1-5, located on Lower River Rd (R08-1-5), into one building envelope and remove the label for the boat repair facility envelope be deemed complete.

Mr. Palmer seconded the motion and it was approved, 4-0.

Mr. Huebener opened the public hearing. No one came to speak, so he closed the public hearing.

Mr. Palmer asked if the intent is to have one residence on this property, or could there be additional residences at a subsequent date.

Ms. Kimball said the intent at this time is to have one residence on the property. The Ordinance would allow more than one house to be built on the property.

Mr. Huebener asked if they would need to come back to the Planning Board if they added more principal buildings.

Ms. O'Meara said if you approve this, they do not need to come back to the Planning Board.

Ms. Jordan made the following motion:

Findings of Fact

1. The Sprague Corporation is requesting an amendment to the previously approved Sprague Subdivision to reconfigure the building envelopes for lot 1-5, located on Lower River Rd (R08-1-5), into one building envelope and remove the label for the boat repair facility envelope, which requires review under Sec. 16-2-5, Amendments to a previously approved subdivision.
2. The Sprague 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 amendments remain in effect.
3. The building envelop reconfiguration 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.
4. The building envelop reconfiguration is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
5. The building envelope is not located in the floodplain.
6. The building envelop reconfiguration is in compliance with the Town wetland regulations in the Zoning Ordinance.
7. The building envelop reconfiguration does provide for access to direct sunlight.
8. 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 the Sprague Corporation for an amendment to the previously approved Sprague Subdivision to reconfigure the building envelopes be approved, subject to the following conditions:

1. That the plans be revised to address the paragraph 2 recommendation in the Town Engineer's letter dated August 11, 2021;

Mr. Bodenski seconded the motion and it passed, 4-0.

Robinson Woods III Resource Protection Permit - The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to alter up to 920 sq. ft. of RP1 and RP1-Buffer wetland to make trail improvements, including installation of a 16' x 6' bridge to replace a longer crossing, installation of 52' of 4' wide

boardwalk and relocation of an existing trail in Robinson Woods III off Shore Rd (U9-2), Sec. 19-8-3 Resource Protection Permit Completeness and Public Hearing.

Philip Mathieu of the Cape Elizabeth Land Trust said they are in the highest class of Resource Protection because of their proximity to the Robinson Woods Pond. He said this is a significant improvement over the existing trail. He showed the plan. They are proposing a bridge that will have zero wetland impact.

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

Mr. Huebener noted that they are asking for 3 waivers, and enumerated them.

Ms. Jordan said the goal is to make things better in this area.

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 Cape Elizabeth Land Trust for a Resource Protection Permit to alter up to 920 sq. ft. of RP1 and RP1-Buffer wetland to make trail improvements, including installation of a 16' x 6' bridge to replace a longer crossing, installation of 52' of 4' wide boardwalk and relocation of an existing trail in Robinson Woods III off Shore Rd be deemed complete. The finding of completeness includes granting of the following waivers:

1. One foot topographic contours;
2. High intensity soil survey;
3. Stormwater management plan prepared by a professional engineer.

Ms. Jordan seconded.

Mr. Palmer asked about the Engineer's letter which mentioned 5 waivers.

Ms. O'Meara said there are 2 waivers that she does not recommend are needed because the applicant had provided information, and the board agreed to leave it at 3 waivers.

The Board voted 4-0 to pass the motion.

Mr. Huebener opened the public hearing. No one spoke, so the public hearing was closed. The Board decided a site walk was not needed.

Mr. Bodenski made the following motion:

Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to alter up to 920 sq. ft. of RP1 and RP1-Buffer wetland to make trail improvements, including installation of a 16' x 6' bridge to replace a longer crossing, installation of 52' of 4' wide boardwalk and relocation of an existing trail in Robinson Woods III off Shore Rd, which requires a Resource Protection Permit.
2. The proposed trail improvements will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed 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 proposed 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 proposed trail improvements will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed trail improvements will not pose problems related to the support of structures;
7. The proposed trail improvements will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed trail improvements will not disturb coastal dunes or contiguous back dune areas;
9. The proposed trail improvements will maintain or improve ecological and aesthetic values;
10. The trail improvements will improve buffering between the wetland and adjacent land uses;
11. The trail improvements will be accomplished in conformance with the erosion control best practices;

12. The trail improvements will be accomplished without discharging wastewater; and
13. The proposed 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 for a Resource Protection Permit to alter up to 920 sq. ft. of RP1 and RP1-Buffer wetland to make trail improvements, including installation of a 16' x 6' bridge to replace a longer crossing, installation of 52' of 4' wide boardwalk and relocation of an existing trail in Robinson Woods III off Shore Rd be approved, subject to the following conditions:

1. That appropriate erosion control measures be used during and after construction; and
2. That the applicant obtain all necessary state permitting and notify the town that permits have been obtained.

Ms. Jordan seconded the motion and it passed, 4-0.

Carr Woods Condominium development - Andrew Carr is requesting Major Subdivision Review for creation of a single family lot and 18 condominiums and a Resource Protection Permit for alteration of 11,789 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 Completeness and Sec. 19-8-3, Resource Protection Permit Completeness.

Mr. Huebener told the members of the audience that this meeting is only on the completeness of the project, not on its merits.

Jim Fisher of Northeast Civil Solutions introduced himself and others who are there with him. He said they have met with the Conservation Committee last week who recommended completeness. He noted that there have been quite a number of letters from concerned people.

He said their soil scientist is present this evening. They have revised their plan of the wetlands to include a small parcel beyond the borders of the project. He said Mr. Harding's comments were not confined to completeness.

Mr. Huebener opened the public comment period on completeness.

Brandon Mazer, Attorney at Perkins Thompson, is representing the Johanssons. He does not agree with the open space calculations. With multiplex development, 45% should remain as open space. He read the open space requirements. He believes there is bedrock and possibly RP-1 wetlands in the proposed open space. He also is concerned by the wetlands calculation. He quoted the ordinance and the letter from Frick Associates. He agrees that the road needs to be relocated.

Mr. Huebener said he thinks this is more substantive than about completeness.

In response to a question, Ms. O'Meara offered that completeness means the data have been submitted, not that it is adequate.

Andy Tabor of 33 Littlejohn Road said the maps do not agree with the deeds for my lot.

Attorney Andre Duchette of Taylor, McCormick and Frame is representing Sheila Wellehan. It is his opinion that you do not have all the required information. The plan is not complete. There are right title and interest issues. He wants the Board to carefully review the information provided to you.

Ben Morrill of 91 Shore Road wants the Town to consider the overall environmental impact from moving the road (Deep Brook Road).

Eric Johansson of 2 Rocky Hill Road said the exposed bedrock is greatly underrepresented. He GPS tracked 110 square feet of exposed bedrock. He has not measured the rest of the property. He thinks the bedrock is much more than is shown on the plans.

Lise Pratt of 32 Wood Road wants a peer review of the geological features. She noted that on the plan some of the units are in the worst and rockiest areas. She thinks there are issues with the drainage plan. They should have a new blasting study.

Cole Peters of Ivie Road said if additional information is needed, how can it be complete? Additional information is needed so that the density can be determined, the drainage can be determined.

Sheila Wellehan of 24 Rocky Hill Road said the results of the HISS study were not meshed with the plans. Some of the plants in the landscape study are not allowed.

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

Ms. Jordan said the hash marked area on the plan is an area of boundary dispute. What is the impact of that settlement?

Mr. Fisher showed the plan and said there are challenges regarding properties. This is the result of extensive surveying. We hold to this line as the more conservative result.

Mr. Bodenski said more utilities information is needed.

Mr. Fisher said until we have approval, they cannot determine where these lines will be placed.

Mr. Bodenski asked about the stormwater management plan.

Travis Letellier, Civil Engineer of Northeast Civil Solutions, said they have an erosion control plan of the details and it is in the packet.

Mr. Palmer said the bedrock is a concern, and he hopes the applicant has addressed it. He also asked about the road and its proximity to the Morrill parcel. What would be the setback with that road alignment. They are creating a nonconformity with the Morrill parcel.

Mr. Letellier said they are considering that issue, and looking for a solution.

Ms. Jordan said they do not get into those details in completeness. She said they need a site walk.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr for Major Subdivision Review of Carr Woods, an 18 unit condominium project and 1 single family home lot and a Resource Protection Permit to alter 11,789 sq. ft. of RP2 wetland, located at 10 Deep Brook Rd, be deemed complete.

Mr. Bodenski seconded the motion and it passed, 4-0.

The Board scheduled a site walk for September 2, 2021 at 5:00 p.m.

In preparation for the site walk, Mr. Palmer would like the centerline of the road to be staked. He'd like the corner of units staked and the corner of Unit 2 closest to the Town property. He also wants the southerly corners of units 17, 16, 15 and 14 and the northerly corner of units 5 thru 12.

Ms. O'Meara would also like to see the line work of road A and road B overlaid onto an aerial photo.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr for Major Subdivision Review of Carr Woods, an 18 unit condominium project and 1 single family home lot and a Resource Protection Permit to alter 11,789 sq. ft. of RP2 wetland, located at 10 Deep Brook Rd, be tabled to the regular September 21, 2021 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Bodenski seconded the motion and it was approved, 4-0.

The board voted unanimously to adjourn at 8:25 p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary