

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

September 21, 2021

7:00p.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.

CALL TO ORDER

Mr. Huebener called the meeting to order, then called for approval of the minutes of August 17, 2021. The minutes were approved as presented, 7-0.

The minutes of the September 7, 2021 special meeting were approved with a minor correction, 7-0.

OLD BUSINESS

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 Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing.

Ms. Lynch disclosed that her son is employed at the same law firm as David Sherman, who she has learned is the attorney for the developer. She has not spoken with her son about this matter. He is independent and does not live with her. She said she can be impartial, and the consensus of the Board was to allow her to participate in project review.

Mr. Gilbert disclosed that he realized at the site walk that one of his colleagues who has recently joined his group was there. Mr. Gilbert did not know why he was there, and they did not discuss it. His colleague is a wetland scientist and he does not even work in the same building as Mr. Gilbert. The consensus of the Board was that Mr. Gilbert did not have a conflict.

Jim Fisher of Northeast Civil Solutions is there on behalf of the applicant. He said they have had a site walk and a determination of completeness. They have heard many comments about the project from the public. There has been no

peer review as yet. They will not make any substantial changes to the plan until the peer review is complete.

He said the parcel is 14+ acres on Deep Brook Drive. They propose 18 condos and one house. Deep Brook Drive is 1800 ft. long. He showed a plan of the two proposed sites for the road. He spoke about how each layout would affect the wetlands. He said the wetlands at proposed Road A are the lowest grade of wetlands. Proposed Road B follows existing Deep Brook Drive and extends it. He said they are trying to minimize the wetland impact. He said they are not proposing the maximum number of condo units that they could build, and the road is not as long as is possible. They are proposing a curved road to give it a country feel. There will be a trail that connects to Plaisted Woods [actual name is Loveitt Woods] which has trails on it.

Mr. Fisher said the abutting parcels on Rocky Hill Road are small lots. He spoke about the bedrock and said they will be blasting but it will be directed blasting and should not bother the neighbors. Skip Murray will do the excavating and will use many safety precautions.

Mr. Huebener spoke about the public hearing scheduled for this evening. He said the design is likely to change after the peer review. There will likely be another public hearing in a few months.

Mr. Gilbert and Mr. Sahrbeck said they support another public hearing after the changes come in.

Ms. Lynch is concerned that the Subdivision Ordinance requires the public hearing to be in 30 days. She is concerned about the applicant's rights and would like the applicant to provide written confirmation that they agree to this schedule.

Mr. David Sherman, attorney for the applicant, said they agree to extend it for 60-90 days.

Mr. Huebener opened the public hearing.

Keith La Marre of 27 Littlejohn Road wants to get a copy of the plan with the abutters labeled. Littlejohn is the lower side and will be affected much more than the other side. There will obviously an effect on the abutters.

Brandon Mazer of Perkins Thompson represents Eric and Jennifer Johansson. He wants there to be another public hearing so that the comments of the public can be heard. He wants more attention paid to the open space calculations. There must be 45% of usable open space and he says there is only 44.12%. There are RP-1 wetlands in a significant portion of the open space. RP permit

standards say the least amount of wetlands should be disturbed by the road. He said if they build fewer units, less wetlands would be disturbed by the road.

Ben Morrill of 981 Shore Road is concerned by the environmental impact of the road. Deep Brook Road is already there and has already disturbed the environment. He does not believe the wetlands are accurately presented. He believes that the difference in wetland disturbance between the two proposed locations of the road may not be accurate. There is no safety on the exit of the proposed road onto Shore Road.

Vienna Morrill said the road right of way next to our property needs to be addressed. The overlay of road B has significantly less impact on forested land than road A. She is skeptical of the country feel that would be achieved by clear cutting forested land. She does not think there is a significant difference in the amount of invasive species between the two road proposals.

Cole Peters of Ivie Road asks if the Board can revoke the finding of completeness and thereby stop the clock.

Jen Johansson of 2 Rocky Hill Road would like the peer review to review the wetlands. Are they RP-1 or are they areas of very poorly drained soils? She is concerned about all the ledge mapping, and wants the open space calculations to be reviewed.

Sheila Wellehan of 24 Rocky Hill Road quoted a conservation committee member that the open space layout does not meet the intent of the Open Space zoning standards. Steep slopes are dangerous to children.

Caitlin Wold of 29 Littlejohn Road said they live at the bottom of the hill. It looks like they have put the condos in the back yards of 2 properties. She wonders about the dimensions of the units. They look very large.

Kenneth Maisak of 24 Wood Road said there is a small piece of land behind his house that is called the quarry. There is a lot of wildlife there, foxes and deer. He is concerned about how those animals will get to the other open space land if their corridor through Carr Woods is cut off.

Richard Blake of 2 Ivie Road asked if they have done a wildlife assessment. Is that a requirement of the town or the state? He is concerned about the impact on those species.

Andrew Schwartzman of 973 Shore Road is concerned about the increased traffic and the safety of the road. The drainage of the wetlands will impact him. He lives on the low part.

Brandon Mitchell of 6 Rocky Hill Road said there is a lot of gloss over of how big an impact this will be. There will be clear cutting, not a small amount. This will impact us for years, not a minimum impact. He does not want a former Al Frick associate to do the peer review.

Christine Collins of 16 Ivie Road said she has spoken to the Public Works Director. He said a rainstorm had been about a 100 year event. She has also read that the average precipitation has risen 4 inches every year. She would like the changing climate to be taken into consideration when looking at the water from this development.

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

Mr. Huebener said they have a proposal for the peer review from Jim Logan.

Mr. Gilbert said he supports all of what is proposed. In response to a question, he explained that Lidar is a laser that detects elevation.

Ms. O'Meara explained that Sebago Technics has a full schedule of work and had not submitted a proposal, but will fit the peer review in if that is the Planning Board's choice. She described the Longview Partners proposed schedule. It is Mr. Logan's intent to do the field work this month with a written report by the end of October. He has done some training for the Board in the past. She also laid out a possible schedule where the peer review report is available at the end of October, and then provided to the applicant, after which they would have the month of November to revise plans and resubmit for the December 21st Planning Board meeting.

Mr. Palmer asked if he would have a conflict with the person who did the original mapping.

Ms. O'Meara said Mr. Logan is comfortable that he will not have a conflict.

After more discussion, it was the consensus of the Board to hire Mr. Logan.

Ms. Lynch said the applicant has a heavy lift to justify Road A instead of what has already been disturbed.

Mr. Huebener agreed. He asked about tabling the application to December.

Mr. Fisher felt that schedule would allow adequate time for plan revisions if the peer review was available by the end of October.

Mr. Palmer has concerns about road A and road B, the Morrill property, buffering, landscaping plan, the open space and how the open space is working for wildlife, residents and pedestrians.

Mr. Gilbert has concerns about the steep slope behind the units and if that is a hazard, and also leaning toward the existing road location rather than the new one.

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 December 21st meeting of the Planning Board, at which time a public hearing will be held.

Mr. Gilbert seconded the motion and it passed, 7-0.

OTHER BUSINESS

Wireless Amendments - The Cape Elizabeth Town Council has referred to the Planning Board Wireless Amendments to the Zoning Ordinance to make essential services a permitted use in all districts and streamline minor essential services review, Sec. 19-10-3 Amendments, Schedule public hearing for October 19, 2021.

At the May 10, 2021 meeting, the Town Council referred to the Ordinance Committee a request to propose amendments to add wireless infrastructure as a use to the Zoning Ordinance. The Ordinance Committee recommended Wireless Amendments which the Town Council received at the July 12th meeting. The Ordinance Committee recommended additional "5G" wireless amendments to the Town Council which have also been referred to the Planning Board. Both wireless amendment packages have been merged into one Wireless Amendments draft.

Ms. O'Meara showed the proposed amendments on the screen and summarized the changes made in response to Planning Board direction at the workshop.

Ms. Lynch requested that the public hearing notice should include utilities.

A few wordsmithing suggestions were made but the substance was not in dispute.

Ms. Lynch made the following motion:

BE IT ORDERED that, based on the draft text and the facts presented, the Wireless Amendments be tabled to the October 19, 2021 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Gilbert seconded the motion and it was approved 7-0.

Technical Amendments - The Planning Board will consider forwarding a request to the Town Council to authorize the Planning Board to prepare a package of Technical Amendments, Sec. 19-10-3 Amendments.

The Town periodically processes a package of “technical” amendments to the Zoning and Subdivision Ordinances. The last package was in 2015. A technical amendments package is usually a miscellaneous collection of amendments that are not major policy changes. The need for an amendment is often identified when ordinance provisions are applied to real world situations. Imprecise language, unusual circumstances, and emerging chronic problems are common catalysts of technical amendments.

Mr. Bodenski asked if they can add to the proposed list of amendments.

Ms. O'Meara said as long as the Town Council agrees, the Planning Board recommendation includes that items can be added to the proposed list.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the draft list of technical amendments and the facts presented, the Planning Board recommends to the Town Council that the Planning Board be directed to prepare a package of technical amendments for future Town Council consideration.

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

Public Comment

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

The board agreed by consensus that the next meeting would be held remotely.

The board voted unanimously to adjourn at 8:40 p.m.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary