MINUTES OF THE PLANNING BOARD
TOWN OF CAPE ELIZABETH

October 17, 2023 7:00p.m. Town Hall

Present:	Jonathan Sahrbeck, Chair	James Huebener
	Daniel Bodenski	Derek LaVallee
	Matthew Caton	Alton Palmer
	Andrew Gilbert	

Also present: Maureen O'Meara, Town Planner and Lucy Bauer, Minutes Secretary

CALL TO ORDER

Mr. Sahrbeck called the hybrid meeting (in-person and virtual) to order at 7:00p.m. Mr. Palmer was not in attendance at the start of the meeting.

Mr. Sahrbeck called for approval of the minutes of the September 19, 2023 Planning Board meeting as well as the October 3, 2023 Workshop. Mr. Huebener moved to approve the minutes of September 19, and Mr. Bodenski seconded. With no further comments, the minutes were approved by a vote of 5 in favor, none opposed, and one abstention (Gilbert). With the recommendation to remove a highlight from the October 3 Workshop minutes, Mr. Huebener moved to approve the minutes. Mr. Gilbert seconded. The minutes were approved by a vote of 5 in favor, none opposed, and one abstention (Bodenski).

Mr. Sahrbeck reviewed the rules of the hybrid meeting, citing incidences of "Zoom bombs" at Town meetings in other communities. He reminded the audience that anyone attending virtually must provide a name in order to be admitted to the meeting.

NEW BUSINESS

14 Sunnybank Rd Private Accessway Permit – Vincent Oliviero is requesting a Private Accessway Permit to create access for a vacant lot located at 14 Sunnybank Rd (U41-19), Sec. 19-7-9, Private Accessway Permit Completeness and Public Hearing.

John Mitchell of Mitchell & Associates, representing the applicant, Vincent Oliviero, addressed the Board and provided a summary of the proposal. Mr. Mitchell explained that Dr. Oliviero is requesting an accessway to a parcel of land identified as Lot 19 on Sunnybank Rd. He explained that Sunnybank Road is located within a 25-foot right of way. Lot 19 is a vacant, buildable lot owned by Dr. Oliviero. The lot is contiguous with Lot 13 where Dr. Oliviero resides. The proposal includes extending Sunnybank Rd by 185 feet and incorporating an emergency vehicle turnaround at the end. This will provide Lot 19 with required frontage and access. Lot 19 is a nonconforming lot, having been created in 1956; however, it is a legal and buildable lot.

Mr. Mitchell described the characteristics of Lot 19 and reviewed the grading & drainage plan. He described the plan for installation of utilities via conduits from the transformer located on Sunnybank Rd. He described the plan for an onsite wastewater disposal system, noting that Mark Hampton of Mark Hampton Associates has completed soil testing and has found suitable soils for an onsite system. He described the plan for a dug well which is located, topographically, in line with existing wells on either side of Lot 19.

Mr. Mitchell referenced comments submitted to the applicant by both Mr. Harding and Ms. O'Meara. Mr. Mitchell summarized the changes that have been made to the plans in response to the comments. All comments have been addressed.

Mr. Mitchell addressed concerns expressed by Mr. Romano, an abutter. Mr. Mitchell explained that the applicant engaged Robert Danielson, Esq. to complete a title search for Lot 19 and verify that Lot 19 is a legal, buildable parcel. Mr. Mitchell reviewed the decision-making for placing the hammerhead in a location that is least disruptive to the topography and vegetation.

Mr. Sahrbeck asked a clarifying question regarding Sunnybank Rd. Mr. LaVallee asked a clarifying question about mature evergreens on Lot 19. Mr. Mitchell provided answers to the questions. Mr. Gilbert asked for clarification on the overflow from the rain garden. Mr. Mitchell replied that overflow will not go onto the abutter's property; rather, the overflow will be directed to the drainage swale on the lot. Mr. Mitchell addressed the maintenance of vegetation on Sunnybank Rd in response to comments from the Town Fire Chief. Regarding a concern about setbacks from the septic system, Mr. Mitchell explained that he had spoken with Ben McDougal for clarification on the ordinance. Mr. Gilbert asked if there had been any consideration of a holding tank. Mr. Mitchell replied that this option was not considered. Mr. Mitchell addressed concerns about the impact to the abutter's driveway and access during the construction. Discussion ensued regarding the CMP easement for access to the transformer.

Mr. Sahrbeck clarified that the business of the agenda is specific to the issue of completeness. Mr. Mitchell briefly reviewed the request for two waivers. Mr. Sahrbeck opened the floor to the Board for questions. Hearing none, Mr. Sahrbeck opened the floor for public comment on the issue of completeness. Hearing none, Mr. Sahrbeck closed the floor for public comment. Mr. Gilbert made a motion for completeness.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Dr. Vincent Oliviero for a Private Accessway to create frontage for the lot located at 14 Sunnybank Rd (U41-19) be deemed complete.

Mr. Huebener seconded the motion. With no further discussion, the motion passed, 6-0. Discussion ensued about scheduling a site walk. The walk was scheduled on October 21, 2023 at 8:00 a.m. and will be advertised. Mr. Sahrbeck noted that, until the site walk is completed, it would be premature to consider the merits of the application at this time. Ms. O'Meara suggested that the Chair open the floor for public comment, given that the public hearing had been advertised.

Mr. Sahrbeck opened the floor for public comment. Carmen Romano of 12 Sunnybank Rd. addressed the Board virtually and identified himself as the abutter to the proposed project. He clarified a number of his concerns in response to Mr. Mitchell's presentation.

With no further comment, Mr. Sahrbeck closed the floor for public comment. He invited the applicant to respond to Mr. Romano's comments. Mr. Mitchell addressed the Board, indicating that he would review concerns about runoff. Mr. LaVallee made a motion to table consideration of the application until the Planning Board meeting scheduled for November 21, 2023. Mr. Huebener seconded. With no further discussion, the motion passed, 6-0.

OLD BUSINESS

Carr Woods – Andrew Carr, Debra Carr, Ena Hanson and Shore Road Development Partners LLC are requesting final subdivision review and a Resource Protection Permit for Carr Woods, a 16 unit condominium and 1 single family home lot subdivision located on Deep Brook Drive (U6-91, 91A, 92, 94A, 95), Sec. 16-2-4 Final Subdivision review and Sec. 19-8-3, Resource Protection Permit. The application was deemed complete on June 20, 2023, and a public hearing held on July 18, 2023.

Mr. Gilbert recused himself from this business on the agenda. Mr. Palmer joined the meeting.

Greg Shinberg, owner of Shinberg Consulting, addressed the Board and identified himself as the owner's representative for Shore Road Development Partners, LLC. He identified the team members present, to include Bill Gerrish of Northeast Civil Solutions; Laurie Bachelder, owner of Shore Road Development Partners, LLC; Kristin Collins, Esq. of Preti Flaherty; Gordon Smith, Esq. of Verrill; and Andrew Carr, property owner. Mr. Shinberg stated that the Carr Woods project is consistent with the character of the neighborhood. He acknowledged the concerns that have been raised about the financial capability of the applicant. He clarified that a letter of financial commitment for any project cannot be obtained in advance of approval of the project. He described multiple public benefits of the project to both the Town and the greater Portland area, to include affordable housing units and the expansion of public land. Mr. Shinberg concluded by stating that Carr Woods is an extremely well-designed project.

Bill Gerrish of Northeast Civil Solutions addressed the Board, representing the co-applicants for the project, stating that he would briefly review the submission documents for the meeting. He referenced a letter submitted by Kristin Collins, Esq. addressing concerns expressed about the financial and technical capacity of the applicants. He also referenced a revised construction management plan that has been submitted to the Board.

Mr. Gerrish acknowledged and reviewed the issues at Casino Beach and provided additional detail on the stormwater management plan for the project.

Mr. Shinberg addressed the Board to describe his efforts to hire a qualified team to implement the plans. He described his expertise and role in the project as the owners' representative.

Kristin Collins, attorney for Shore Road Development Partners LLC, addressed the Board and stated that she was available to answer any questions regarding her letter to the Board dated September 29, 2023.

Mr. Sahrbeck opened the floor for public comment.

Kathy Duca, Senior Vice President & Managing Broker, Advisors Living Real Estate, Cape Elizabeth addressed the Board. Ms. Duca resides at 58 Jessica Lane, South Portland and identified that she is originally from Cape Elizabeth. She spoke in support of the Carr Woods project, stating that the project will help alleviate the existing housing shortage in the area. She cited the affordable housing units and open space components of the plan and stated that the project would likely have a positive economic impact on adjacent housing values and the Town.

Alison Day of 75 Hillside Ave., South Portland addressed the Board and identified herself as a residential advisor for Advisors Living Real Estate in Cape Elizabeth. She described personal experience of owning a property adjacent to a new development. She spoke in support of the Carr Woods project, citing the open space, extension of the Green Belt trail, and preservation of both wildlife habitat and character of the neighborhood.

Patrick Cooper of Arundel addressed the Board and identified himself as a realtor with Advisors Living Real Estate in Cape Elizabeth. He referenced his experience as a former builder and contractor in the area. He spoke in support of the Carr Woods project, citing his confidence in the plans and benefit to the Town.

Helen Smith of 17 Cross Hill Rd., Cape Elizabeth addressed the Board and identified herself as a residential advisor for Advisors Living Real Estate in Cape Elizabeth. She stated that she has no financial stake in the project. She spoke in support of the Carr Woods project, citing the advantage of the defined plan for the project as well as the inclusion of increased housing stock, affordable housing units, access to Greenbelt Trails, open space, and increased tax revenue for the Town.

Jon Fetherston of Ashland, MA and the Cottages at Pine Meadows in Saco, ME addressed the Board. He referenced his participation at last month's Planning Board meeting and questioned the new public support for the Carr Woods project.

Leonard White of 13 Rocky Hill Rd addressed the Board and thanked Mr. Gerrish for responding to public concerns regarding stormwater flow to Casino Beach. He described the issue of overflow exiting the system at the junction point in the middle of the beach as opposed to the outflow pipe located in Casco Bay. He stated that the overflow exiting the system at the beach is erosive and suggested that the Carr Woods plan to reduce peak flow is irrelevant because it would compound the issue. He stated that, subsequent to the last Planning Board meeting, water samples taken from the stormwater system at Casino Beach have demonstrated unsafe levels of sewage contamination at the site. He concluded by suggesting that the technical capacity of the developer has not been demonstrated.

Lise Pratt of 32 Wood Rd. addressed the Board and identified herself as an abutter to the project. She expressed concern about the multiple changes to the project team and, with these changes, the need for a revised budget. She stated that evidence presented to the Board does not demonstrate the technical and financial capacity of the developer. She urged the Board to consider whether the project can be completed as proposed and advocated that the Board deny the application.

Mr. Sahrbeck noted that the 15-minute time limit for public comment had been exceeded and made a motion for allowing limited, additional public comment. Mr. Huebener seconded the motion. With no further discussion, the motion passed, 6-0.

Attorney Brandon Mazer of Perkins Thompson, representing Erik and Jennifer Johansson of 2 Rocky Hill Road, Cape Elizabeth, as abutters to the project, addressed the Board. He stated that the standard of demonstrating technical and financial capacity of the applicant has not been met. He noted that the only comments in support of the project have been offered by realtors.

Julia Edwards of 158 Dobson St. South Portland addressed the Board and identified herself as a realtor in Cape Elizabeth. She referenced earlier public comment, stating that, in the property value world, prices older than six months old are not current. She stated that the Carr Woods project has been curated thoughtfully and carefully and will offer benefits to the Town. She cited the lack of housing stock and stated that the project will meet a critical need for housing.

Richard Blake of 2 Ivie Road addressed the Board. He referenced a letter he had submitted to the Board identifying that the Saco project known as the Cottages at Pine Meadows was not completed. He expressed concern about the risks to the Town if the developer cannot complete the project. He questioned whether the financial capacity of the developer has been demonstrated and referenced a recent judgment against Laurie Bachelder.

Mr. Sahrbeck closed the floor to public comment.

Mr. Sahrbeck requested comment from the applicant on an email received by the Board that referenced a judgement against Ms. Bachelder.

Laurie Bachelder of Shore Road Development Partners, LLC addressed the Board. She provided written copies of a lawsuit filed against Coastal Realty Capital by an ex-client of Ms. Bachelder. She stated that the lien that was placed by Court order was lifted, and that the case is being dismissed.

Mr. Sahrbeck asked for clarification on the amount that will be funded in the escrow account for the Carr Woods project. Ms. Bachelder replied that the estimate had been provided in an earlier submission and reiterated that an escrow account provides the highest level of surety that funding is available for a project. The exact amount of funding will need to be determined. Mr. Sahrbeck asked Ms. Bachelder to respond to comments made asserting that she has not completed any projects. Ms. Bachelder replied that she has no completed projects and described a project underway in North Yarmouth for which she is the developer. She spoke of her decision to hire Mr. Shinberg as an owner's representative, stating that she may have misinterpreted the level of information that the Board wished to review. She spoke of her years of experience managing the financial side of development projects.

Mr. Caton requested clarification from Mr. Shinberg on how his role in the development of the Town Green may have differed from his role as the owner's representative for the Carr Woods project. Mr. Shinberg replied that the scope of his role in both projects is similar; the developer for the Town Green had no experience and was advised to engage Mr. Shinberg for his experience.

Mr. Palmer asked Mr. Shinberg to identify the two affordable units in the Carr Woods project. Mr. Gerrish approached the podium and identified units 3 and 4 in the middle of the quadruplex as the affordable units. Mr. Palmer asked for clarification on the maximum sales price qualifying the units as affordable. Mr. Shinberg stated that he believes the maximum price would be approximately $390 thousand dollars, depending on Town rules and HUD requirements.

Mr. Sahrbeck asked Mr. Shinberg about the list of proposed contractors for the project and asked what reassurance could be given that those who have expressed interest will be hired. Mr. Shinberg described his process for obtaining competitive bids and hiring a competent team. Mr. Sahrbeck expressed concern that the Board does not know exactly who will be hired to complete the project. He suggested that a condition for approval be placed that would restrict bids from the team listed in the recent submission documents. Mr. Shinberg acknowledged the concern and discussion ensued.

Mr. LaVallee referenced a letter in the submission documents proposing that, if Mr. Shinberg were unable to fulfill the terms of his agreement as the owner's representative, the Town Planner would assume oversight of Mr. Shinberg's replacement. Mr. LaVallee asked Ms. O'Meara if there was any precedent for this condition. Ms. O'Meara stated that she is not aware of any precedent. Attorney Collins addressed the Board, suggesting that the condition should include "guardrails" around the delegation to the Town Planner. Ms. Collins suggested that a similar condition could be placed around replacement of contractors on the project. This condition would avoid having to obtain Board approval for new team members.

Regarding the issue of financial capacity, Ms. Collins stated that a commitment letter cannot be obtained prior to Board approval of the project. She offered suggestions for conditions that might offer assurance of financial capacity at different stages of the project.

Mr. LaVallee asked Ms. Collins if, in her experience with other municipalities, there was any precedent for the proposed condition delegating responsibility for replacing the development team to the Town Planner. Ms. Collins replied in the affirmative. Discussion ensued on how this condition would be implemented. Mr. Sahrbeck interjected, questioning whether this type of condition is an appropriate expectation of the Town Planner. He stated that replacement of the development team should be the responsibility of the Board as opposed to either the Board Chair or the Town Planner.

Mr. Huebener stated that he is not in favor of a condition that would either limit the applicant's ability to obtain a competitive bid or involve the Town Planner. He stated that he would not be in favor of a condition that would delegate authority to the Board for oversight of replacing Mr. Shinberg.

Ms. Collins expressed concern for conditions delegating authority to the Board for the replacement of contractors, citing issues of risk to established timelines and the ability of the applicant to secure funding if multiple contingencies are in place. Understanding the importance of Mr. Shinberg's role in the project, Ms. Collins suggested that a condition for addressing his replacement, if necessary, would be acceptable.

Mr. Caton asked for clarification on the proposed language of the condition identifying the corporate entity of Shinberg Consulting LLC vs. Mr. Shinberg himself. The Board has no information on who, within Shinberg Consulting, would replace Mr. Shinberg.

Mr. Caton agreed that Board authority should not be delegated to the Town Planner. The Board has recognized both that the applicant has limited experience in completing projects and that Shinberg Consulting has the expertise to complete the project. Mr. Caton stated that he would be in favor of creating a condition that Shinberg Consulting remain on the project. Mr. Bodenski stated that he, too, would be in favor of a condition maintaining the involvement of Shinberg Consulting.

Mr. Shinberg interjected, stating that, if he is unable to continue as the owner's representative, it would be very difficult for the applicant to complete the project without a qualified owner's representative. He suggested that the applicant's interests would be best served by finding a suitable replacement for his expertise.

Citing the language in the subdivision ordinance for demonstrating technical and financial capacity, Mr. Palmer expressed concern for the lack of evidence demonstrating the developer's ability to complete a project. He stated that the applicant's project in North Yarmouth is not comparable to the Carr Woods project. He stated that crafting conditions to allow the project to proceed may not be in the best interests of the community. He acknowledged that the applicant has assembled a team to complete individual roles; however, the technical and financial capacity of the developer is tenuous. He does not believe that a condition of approval should be used to demonstrate the applicant's ability to meet the standard. Regarding financial capacity, Mr. Palmer acknowledged that an escrow account provides the greatest level of surety; however, the details of the project covered by the escrow account are not clear.

Mr. Sahrbeck asked Ms. O'Meara for clarification on the Town's administration of an escrow account. Ms. O'Meara stated that she is the most confident in making sure that a performance guarantee will be available to complete the infrastructure of a project. She further explained that the Town is not involved in making sure that individual buildings are completed, as these represent a contract between a private property purchaser and a seller. Mr. Palmer countered that the Town may not be involved in the completion of individual buildings; however, the standard to be met is completion of the project. Ms. O'Meara validated Mr. Palmer's statement. Ms. O'Meara suggested that the challenge before the Board is consideration of the opaqueness of an escrow account funded by "hard money" as opposed to a more familiar, guarantee letter from an FDIC insured institution.

Attorney Collins addressed the Board to address apprehension specific to the funding of the escrow account. She reminded the Board that Ms. Bachelder is comfortable and familiar with the funding structure and principles of Titan. Ms. Collins suggested that commitment letters from FDIC insured institutions do not offer a better guarantee. Mr. Sahrbeck asked Ms. Collins to elaborate on her experience representing projects funded with private capital. Ms. Collins replied that, while her experience representing projects that are funded with private capital is limited ("less than 10"), the option is considered more frequently. Discussion ensued regarding establishing evidence of financial surety for both the infrastructure and construction phases of the project.

Mr. Sahrbeck asked Mr. Gerrish for clarification on the issue of the sewer cap at Casino Beach referenced during the public comment. Mr. Gerrish stated that the issue at Casino Beach is the result of flow that travels from a 30-inch pipe into a 17-inch pipe. Ms. O'Meara acknowledged that this is the Town's issue. The stormwater management for the project is designed to slow the arrival of flow to the outlet pipe, reducing the risk of popping the cap and causing erosion on the beach.

Mr. LaVallee stated that, while he recognizes the benefits of the Carr Woods project to the community and has greater confidence in the technical team, he remains concerned with the developer. Specifically, he does not feel that Shore Road Development Partners, LLC has the appropriate depth of experience to complete the Carr Woods project. Mr. LaVallee offered thanks to the public, Ms. O'Meara, and the Board for participation in the process. He stated that he would not vote to approve the project.

Mr. Palmer stated that the current applicant has not demonstrated technical and financial capacity; therefore, he would not vote to approve the project.

Mr. Huebener summarized his opinions, both favorable and unfavorable, on specific aspects of the application. He stated that he has not decided to either approve or deny and requested to hear the opinions of the remaining Board members.

Mr. Bodenski summarized his opinions, both favorable and unfavorable, on specific aspects of the application. He expressed concern about the expertise of the developer.

Mr. Caton stated that he would be in favor of changing the ordinance to remove the responsibility for determining technical and financial capacity of an applicant from the Board. He stated that he is not distracted by the changes to the management team. He stated that the addition of Mr. Shinberg provides evidence of technical capacity, regardless of the experience of the developer. He stated that he would be in favor of requesting a condition that provides a contingency if Mr. Shinberg left the project. Concerns about financial capacity could also be subject to a condition. Mr. Caton stated that he would support the application with conditions.

Mr. Sahrbeck stated that his reluctance toward the project stems from the multiple changes to the application. He stated that, while many of the changes represent improvements to the project, he is not confident that all concerns have been fully addressed. He expressed reservations about putting conditions on approval of the application.

Discussion ensued about potential conditions for approval of the application that include preserving the involvement of Mr. Shinberg in the project and suggestions outlined in Attorney Collins' letter dated 9/29/23, p. 4. last paragraph before Section 3.

Noting the hour of 10:00 p.m., Mr. Sahrbeck motioned to continue the meeting. Mr. LaVallee seconded. With no further discussion, the motion passed, 6-0. The proceedings were suspended for a 10-minute break.

Mr. Sahrbeck called the meeting to order at 10:10 p.m.

Attorney Collins addressed the Board to respond to Mr. Palmer's stated concern about the developer. Ms. Collins referenced the Town Attorney's counsel that the Board consider the team of individuals on a project as opposed to an individual. She stated that Ms. Bachelder has expertise in the real estate development industry and has the capacity to work with Mr. Shinberg as the owner's representative. She suggested that the Board engage the Town Attorney to work with the Board to craft conditions for approval of the application. She also offered her own suggestions for conditions that would be acceptable to the applicant.

With no further comment from the Board, Mr. Palmer made a motion for the Board to Consider based on the Findings of Fact:

1. Andrew Carr, Debra Carr, Ena Hanson and Shore Road Development Partners LLC are requesting Final Subdivision Review and a Resource Protection Permit for Carr Woods, a 16 unit condominium and one single family home lot subdivision located on Deep Brook Rd, which requires review under Sec. 16-2-4 Major Subdivision Review, Sec. 19-8-3, Resource Protection Permit, and Sec. 19-7-2, Open Space Zoning.

2. The final subdivision and Resource Protection Permit application was deemed complete on June 20, 2023, a site visit was held on July 5, 2023, and a public hearing was held on July 18, 2023.

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. 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 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 not 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 will comply with the Floodplain Regulations, Chapter 6.

15. The subdivision is in compliance with the Town wetland regulations in the Zoning Ordinance.

16. The subdivision will provide for adequate stormwater management.

17. The subdivision is not located within the watershed of Great Pond.

18. The subdivision is located wholly in the Town of Cape Elizabeth, Maine.

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 with the preservation of 47.56% of the gross land area as open space.

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;

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 project design will maintain an adequate buffer area between the wetland and adjacent land uses;

34. The wetland alterations 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 wetland alterations 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 wetland alterations are not located in the Resource Protection-Floodplain District.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr, Debra Carr, Ena Hanson and Shore Road Development Partners LLC for Final Subdivision Review and a Resource Protection Permit for Carr Woods, a 16 unit condominium and one single family home lot subdivision located on Deep Brook Rd is denied.

Mr. Huebener seconded the motion. With no further discussion, the motion passed with 4 in favor (Huebener, LaVallee, Palmer, Sahrbeck) and 2 opposed (Bodenski, Caton).

OTHER BUSINESS

Project Submission Amendments -At the June 12, 2023 meeting, the Town Council referred to the Planning Board amendments to update submission deadlines and digital submission of materials. The Planning Board has reviewed the amendment package at the June 6, September 5 and October 3, 2023 workshops. A public hearing has been scheduled for this evening.

Ms. O'Meara referenced the general summary of amendments and explained that the Planning Board adopted digital submission guidelines at the start of the pandemic. The amendments incorporate these guidelines into standard practice. In addition, there are updates to Planning Board rules. The amendments update submission provisions in the Zoning Ordinance, Subdivision Ordinance and Planning Board Rules.

Mr. Sahrbeck opened the floor for public comment. With no public comment, either in person or virtually, Mr. Sahrbeck closed the public hearing. With no further comment from the Board, Mr. Huebener made a motion for the Board to consider.

BE IT ORDERED that, based on the materials and the facts presented, the Planning Board recommends the Project Submission Amendments to the Zoning Ordinance, Subdivision Ordinance and Planning Board Rules to the Town Council for consideration.

Mr. Gilbert seconded the motion. With no further discussion, the motion passed, 7-0.

Home Business Amendments – At the September 11, 2023 meeting, the Town Council referred to the Planning Board Home Business Amendments which have been developed by the Ordinance Committee. The Planning Board reviewed the amendments at the October 3, 2023 workshop. A public hearing has been scheduled for this evening.

Ms. O'Meara explained that these amendments represent updates to the home business and home occupation requirements. Updates specific to the home business requirements include expansion of business activity in an accessory structure with two, non-resident, full-time employees. Updates specific to home occupation requirements include allowance of one full-time employee who is not a resident of the dwelling unit on the premises on a regular basis.

Mr. Sahrbeck opened the floor for public comment. With no public comment, either in person or virtually, Mr. Sahrbeck closed the public hearing.

Mr. Palmer referenced the current ADU section of the ordinance that excludes home businesses and occupations. Ms. O'Meara acknowledged that no amendments have been proposed; however, based on recent State legislation, the Town may be revising ADU provisions. Mr. Sahrbeck stated that the decision before the Board regarding approval of the home business amendments is separate from business specific to LD 2003 and ADUs.

With no further discussion, Mr. Huebener made a motion for the Board to consider, seconded by Mr. Caton.

BE IT ORDERED that, based on the materials and the facts presented, the Planning Board recommends the Home Business Amendments to the Town Council for consideration.

With no further discussion, the motion passed, 7-0.

Mr. Sahrbeck opened the floor for public comment. With no comments, either in person or virtually, Mr. Sahrbeck closed the public hearing.

Mr. Huebener made a motion to adjourn. Mr. Caton seconded. With no further discussion, the motion passed, 7-0.

The meeting adjourned at 10:31 p.m.

Respectfully submitted,
Lucy E. Bauer
Minutes Secretary