

# Land Design Solutions

Land Planning, Site Planning and Landscape Architecture

September 30, 2018

Ms. Maureen O'Meara  
Town of Cape Elizabeth  
P.O. Box 6260, 320 Ocean House Road  
Cape Elizabeth, ME 04107

**RE: Rosewood Subdivision Amendment  
Private Road Extension and Lot Division  
Public Hearing & Planning Board Decision Submission**

Dear Maureen,

On behalf of Joe Frustaci the property owner and applicant, Land Design Solutions (agent) respectfully submits the enclosed supporting documentation for a Public Hearing and the Planning Board's Decision for a subdivision amendment involving the 67 ft. extension of the Rosewood Drive Right-of-Way and the division of lot 4B.

The project was before the Planning Board September 15, 2020 at which time the application was deemed complete and the application was tabled to the October 20, 2020 meeting for a public hearing.

**The plans have been revised to show the following:**

1. Per comments by the Peer Review Engineer and the Public Works Director the 3<sup>rd</sup> Amended Subdivision Plan and the Site Plan have been revised to show iron pins at each of the proposed boundary corners in particular, the boundary points along lines L5, L6, L7 and L8 as shown on the plan.
2. A note (#8) has been added to the 3<sup>rd</sup> Amended Subdivision Plan stating "There shall be no sale of lots, nor issuance of building permits, nor site work commenced until the required performance guarantee has been approved in accordance with section 16-2-6(c) of this ordinance".
3. The connection to the existing water main in Rosewood Drive has been revised based on a sketch provided by the Portland Water District in a September 11, 2020 email (attached).
4. A north arrow has been added to the Site Plan.

**Waivers requested for the proposed project include:**

1. Waiver for the reduction of the Rosewood Drive Right-of-Way for the last 105 ft. from 50 ft. to 45 ft. This waiver is needed to enable the proposed lot 4C to have the required of frontage.

2. Waiver for a road that is not centered in the Right-of-Way. The existing Rosewood Drive is not centered. This project proposes to slightly realign (towards the center) the section of road within the Rosewood Drive R.O.W. that is proposed to be extended and reconstructed.
3. Traffic Study – We request the traffic study requirement be waived due to the fact that we are proposing the addition of only one single family residential lot on an existing subdivision road. With the addition of the proposed lot there would only be a total of six lots on Rosewood Drive.
4. Stormwater - We would like to request a waiver for a formal stormwater report and calculations based on the fact that the project is reconstructing an existing section of road and is decreasing the impervious area by 424 s.f.

**Peer Review Engineer Comments & Response:**

We have reviewed the comments prepared by the Town's peer review engineer and have the following responses (comment in *italics*, our response in **bold**).

1. *The applicant desires to create a new lot at the end of the Rosewood Drive by extending the roadway and adjusting the right of way width and alignment of the existing northerly portion of the existing gravel roadway in order to allow for frontage for the additional lot to be created within the overall property. Utilities will also be extended to serve the new lot and an existing turnaround is proposed to be continued for emergency vehicle use.*

**Agreed**

2. *We understand that the Board will be conducting a Completeness Review at their upcoming meeting. Our review comments as presented in this letter should be considered beyond the completeness level. Also, while we have attempted to provide a comprehensive list of our comments, it should be noted that future additional or revised submitted information may result in additional review comments.*

**Agreed**

3. *The applicant is essentially lengthening the roadway and removing an existing portion of the road right of way to create the necessary frontage for existing Lot 4-B and new Lot 4-C. Instead of transferring a portion of existing road right of way to Lot 4-C, it would seem that the right of way could be extend further to the north to attain the minimum frontage and the lot line between Lots 4-B and 4-C adjusted so that both lots can achieve the minimum lot size.*

**We reviewed this thought and found that if the road right of way was extended far enough for us to meet the frontage requirement the existing house on lot 4B would not meet the required front setback.**

4. *The applicant has requested several waivers for this project. One waiver relates to reducing the right of way width from 50-feet to 45-feet for the end section of Rosewood Drive which may be necessary if adjusting the right of way and lot lines as described in the previous comment is not possible. Given that the proposed improvements can be constructed within the right of way and that the width reduction occurs at the end of a dead-end private roadway, we would support the Planning Board granting this waiver.*

**We do believe that all the proposed improvements can be constructed with in the right of way as proposed.**

5. *The applicant has also requested another roadway related waiver to not be required to have the roadway alignment centered within the right-of-way. The submitted plans indicate that the existing roadway is not centered within the road right-of-way and it appears that the proposed roadway will actually be aligned more centrally within the right-of-way. We support this waiver request based on the improved alignment toward the center of the roadway, no impacts to tree line within the right-of-way, and the minor nature of the roadway use.*

**Agreed**

6. *The applicant is also requesting a waiver of the need to perform a traffic study associated with this change. Given that there is only one home being proposed to be added to a dead-end street, we support this waiver request.*

**Agreed**

7. *There is another potential waiver that may need to be considered. The proposed roadway extension is 20-feet which matches the existing gravel roadway width, but does not meet the standard road width of 22-feet. Should this waiver be deemed to be required, we have not supported the road width reduction requests in the past, but understand that the Planning Board as the decision-making body has the prerogative to do so on a case-by-case basis.*

**The waiver will allow the project to match the existing roadway width of 20 feet.**

8. *The applicant did not request a waiver of a formal stormwater report with supporting calculations. As this road will be an upgrade of an existing gravel roadway drive and will result in a minor decrease of 424 square feet of impervious area, we do not believe that a stormwater management plan with supporting calculations will need to be submitted. We agree with the applicant and the designer's assertion that the improvements and extension to the existing roadway will have a negligible impact on the stormwater runoff characteristics of the project area.*

**We would like to request a waiver for the formal stormwater report and calculations based on the fact that the project is reconstructing an existing section of road and is decreasing the impervious area by 424 s.f.**

9. *The project team has been in discussions with the Portland Water District as to how best to extend a water service to the new lot. The outcome of this evaluation should be depicted on the project plans.*

**We have revised the Site Plan to reflect the connection design as shown in a sketch prepared by the Portland Water District and sent to us in an email dated 9-11-20. The existing 8" dia. water main has plenty of capacity so it is just a matter of the best location for the connection and the best route to the proposed lot.**

10. *As a minor point, it appears that the Site Plan is missing a north arrow.*

**A north arrow will be added to the Site Plan.**

11. *The applicant and designer should coordinate with the Public Works Director to develop the placement of monumentation to indicate the location of the proposed right-of-way limits. He stated that the applicant should add monumentation to the plan so that the new right-of-way lines along proposed Lot 4-C can be established and verified in the field. In particular, the boundary points along lines L5, L6, L7 and L8 on the Amended Subdivision Plan.*

**Per direction from the Public Works Director the 3<sup>rd</sup> Amended Subdivision Plan and the Site Plan have been revised to show an iron pin at the points mentioned in the comment above.**

**Town Attorney Review (Road Maintenance Agreement):**

The road maintenance agreement has been revised to reflect the Town Attorney's review comments. The revised road maintenance agreement is attached as part of this submission.

**Fees:**

The Applicant acknowledges an open space fee of \$6,200 will be due should the proposed project be approved.

**The following information is included as part of this submission:**

1. Revised Road Maintenance Agreement
2. Portland Water District Communication
3. Revised Site Plan
4. Revised 3<sup>rd</sup> Amended Subdivision Plan

Eight copies of this cover letter and supporting documentation is enclosed along with Eight full size plans (Site Plan & 3<sup>rd</sup> Amended Subdivision Plan (folded)).

We request that this item be placed on the October 20, 2020 Planning Board agenda for a Public Hearing and discussion with the Board. Please do not hesitate to

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September 30, 2020  
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contact me with any questions or comments concerning the submitted plans or documentation.

Sincerely,

A handwritten signature in black ink that reads "Peter B. Biegel". The signature is written in a cursive, flowing style.

Peter B. Biegel, ASLA  
Maine Licensed Landscape Architect

## Road Maintenance Agreement

### DECLARATION OF COVENANTS WITH RESPECT TO ROAD MAINTENANCE

**KNOW ALL MEN BY THESE PRESENTS, that the Undersigned as owners of certain lots or parcels of land located on Rosewood Drive in the Town of Cape Elizabeth, County of Cumberland and State of Maine ,and more particularly described on the attached SCHEDULE A, ‘The Property.’”**

**WHEREAS, the Undersigned desire to subject the Property to a perpetual obligation to maintain Rosewood Drive, a private road in Cape Elizabeth;**

**NOW, THEREFORE, in consideration of these premises, the Undersigned for themselves and their respective successors and assigns, hereby subject the Property to the following agreement as covenants running with the land which shall be binding upon and enforceable by the parties and their respective successors and assigns, or by the owners of any parcels subject to this Declaration, to wit:**

- 1. Maintenance of Road. The Undersigned property owner hereby agrees to pay 1/6<sup>th</sup> of the cost for maintenance and repairs necessary to keep Rosewood Drive, as modified and approved by the Cape Elizabeth planning board on \_\_\_\_\_, 2020 and recorded in the Cumberland County registry of deeds on \_\_\_\_\_, 2020 passable on foot and by motorized vehicles including without limitation the emergency vehicles of the town of Cape Elizabeth, Repairs include, but are not limited to, grading, snowplowing, sanding, and trimming of vegetation.**
- 2. Enforcement. This Declaration may be enforced by all legally permissible powers of enforcement. All costs and expenses of enforcement and collection, including reasonable attorney’s fees and interest on such costs and expenses, shall constitute a lien on the pertinent lot that is subject to this Declaration. The recording of this Declaration constitutes record notice of the lien, which may be foreclosed in the same manner as a mortgage or real estate by any other method now or hereafter permitted by law. The Town of Cape Elizabeth shall have the right, but not the obligation, to enforce this**

agreement in order to ensure access for emergency vehicles. Any and all costs incurred by the Town of Cape Elizabeth in enforcing this agreement and maintaining the road, including reasonable attorney's fees, shall be the responsibility of the Undersigned and any future lot owners who may join in the execution of this Declaration.

3. **Nonwaiver.** Nothing contained herein shall waive or impair the legal obligations of other owners in common of Rosewood Drive to contribute to such expenses of maintenance and repair, or any rights of subrogation which the Undersigned or the Town of Cape Elizabeth may hold as a result of their advance of such expenses upon failure of such owners to contribute their proportionate share.
  
4. **General.** Other owners of lots on Rosewood Drive may join in this Declaration by a written agreement duly recorded, but the failure to join in this agreement shall not impair their legal and equitable obligations of contribution.

If any provisions of this Declaration, or its application to any persons or circumstances, is invalid or unenforceable, then the remainder of this Declaration, or the application of such provision to other persons or circumstances, shall not be affected thereby.

IN WITNESS WHEREOF, the Undersigned has/have executed this declaration of covenants this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By

Its

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By

Its

STATE OF MAINE

, SS.

**Personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing execution to be \_\_\_\_\_ free act and deed in said capacity and the free act and deed of.**

**Before me,**

\_\_\_\_\_  
**Notary Public/Attorney at Law**

\_\_\_\_\_  
**Printed Name**

## Communication with the Portland Water District

### Peter Biegel

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**From:** Robert Bartels <rbartels@pwd.org>  
**Sent:** Friday, September 11, 2020 8:45 AM  
**To:** 'Peter Biegel'  
**Cc:** 'Joe Frustaci'; Adam Sellick  
**Subject:** 476279-12 Rosewood Drive, Cape Elizabeth  
**Attachments:** Rosewood Sketch.png

Peter,

The design is going to be a little more involved. Please see attached sketch from PWD. You will need to tap a new service behind the existing tap to #10. Create a parent/child connection (1.5" parent/1" child) at the edge of ROW. Route existing #10 to the child branch. Use the new parent branch for the new run to #12. #10 will be impacted for a duration while all the work is going on. The existing service to #10 will need to be retired at the tap. The reason this is necessary is that there is not enough room between the water main and the edge of ROW to install the new service to #12 while keeping proper separation from #10 and the edge of the ROW. PWD did a site visit and came up with this design.

Thanks,

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**From:** Peter Biegel <pbiegel@landdesignsolutions.com>  
**Sent:** Friday, September 11, 2020 8:24 AM  
**To:** Robert Bartels <rbartels@pwd.org>; AMaP MEANS <means@pwd.org>  
**Cc:** 'Joe Frustaci' <joefru@yahoo.com>  
**Subject:** 12 Rosewood Drive Cape Elizabeth

ATTENTION: This email did NOT originate from Portland Water District. This email is from an external source outside of the District. Exercise EXTREME caution when opening external attachments or links from unknown senders.

Hi Robert,

I am working with Joe Frustaci the owner of 8 and 10 Rosewood Drive who has been in contact with the Portland Water District about water service to a lot he is proposing to create 12 Rosewood Drive (shown as lot 4C on the attached site plan). I have attached his previous communication with the District and the site plan showing the proposed connection which we have submitted to the Town. Is the connection and service as shown on the plan acceptable to the Portland Water District?

Thank you,  
Peter

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**RED INDICATES NEW PIPE**

**BLUE INDICATES EXISTING PIPE**

