

TOWN OF MINUTES OF THE PLANNING BOARD
CAPE ELIZABETH

July 20, 2021

7:00 p.m. Town Hall

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 June 15, 2012. The minutes were approved as presented, 7-0.

OLD BUSINESS

287 Ocean House Rd Site Plan Amendment - Michael Friedland is requesting amendments to the previously approved site plan for 287 Ocean House Rd (U22-76) to delete the finish paving coat, revise the outdoor storage and expand the outdoor display hours, Sec. 19-9 Site Plan Review.

Michael Friedland spoke about his changes and showed the plan. He said there will be no signs posted or display items at the property borders. They have not put up the fence until they had a decision about the paving. All items will be behind the fence. The triangular area that was to be for plants, would be for outdoor display items. He stopped getting plants, so he would like it for outdoor display of seasonal items. He proposed changing Note 11 to reflect that change. He said they have made sure to keep the handicap access open. Re. Note 12, he said he has addressed that. He will not have display items along the perimeter of the property.

John Turner said he was hired to address the code and the ability of the paving to support the vehicles, and drainage. He said the calculations are used in the design of the pavement, and he was not asked to design the pavement. The current condition serves the purpose. He said it meets the ordinance in its current condition. He spoke about the Town Engineer's letter.

Ms. Lynch said it seems like we have dueling experts.

Mr. Turner said we do this for the DOT and a lot of towns. We've done this for 30 years. He is an engineer who graduated from RPI.

Mr. Palmer said they have a lot of opinions. He was looking for an engineering analysis to back up their opinion. It feels like we just have another opinion. The wearing course was submitted, now they want it removed from the plan.

Mr. Turner said there was no pavement design requirement in the Ordinance.

Mr. Sahrbeck asked if it was industry standards to have both courses. The original submission was to have both.

Mr. Turner said it is standard to have both on a road, in a place the public has access to. Sometimes they just have a thicker binder course. He said he was just asked to say if it met the ordinance.

Mr. Sahrbeck said he is not asking about the ordinance, but about industry standards.

Mr. Turner said there are a lot of sites where there is no inspection at all.

Mr. Palmer asked what the DOT standard would be for a residential driveway.

Mr. Turner said he does not deal with residential driveways.

Mr. Palmer said the DOT standard for a residential driveway is 2 in. He then asked if the DOT is doing a commercial driveway, is it standard to only put 2 in. of pavement?

Mr. Turner said they do not construct driveways. If they tie into one from paving the road, they meet the existing condition. He was asked if he is a registered PE in the State of Maine, and he replied that he is not.

Mr. Friedland said the top coat in the original plan was in there because of industry standards, not the code. According to the code my driveway meets the standard.

Ms. Lynch said our town ordinance only refers specifically to parking lots. She read the standard. The applicant could have a gravel parking lot. It meets the ordinance.

Mr. Sahrbeck said the ordinance says paved condition. He thinks of that as paved to industry standards. He said they rely on the Town Engineer's opinion. The Planning Board looks down the road, not just at today.

Ms. Lynch read from the Town Engineer's report as it said the pavement appears to be in good shape.

Mr. Gilbert noted that the Town Engineer comment was noting we had a mild winter and the pavement has not been there very long, so it should be in good shape. He feels the ordinance needs to be beefed up and to be more specific. He thinks it should be done to a standard.

Mr. Huebener said he would like to have both coats, but the ordinance is not specific enough.

Mr. Bodenski said the applicant could have easily hired an engineer to show the calculations.

Mr. Palmer said the calculations can be done, but they don't duplicate them on every project.

Mr. Turner said they have a PE on the staff.

Ms. Lynch said this is a small business. He has improved the site. She cannot imagine putting a small business through this kind of calculation. \$5,000 is a lot of money for a small business.

Mr. Sahrbeck said financial issues do not come into consideration when we do site plan review. He proposed a condition of approval that requires the examination of the pavement by an expert every year.

Ms. Lynch said others request waivers and that is an economic consideration.

Mr. Turner said if you have a binder that is just as thick as the binder and the wearing course it will have better structural capacity than the two layers would. If you had 3 in. of binder, you would be better off than 2 in. of binder and 1 in. of wearing course.

Mr. Huebener asked about the need for the applicant to move his displays out of the right of way.

In response to a question, Ms. O'Meara said the applicant has not met the conditions in the temporary Certificate of Occupancy.

Mr. Huebener asked Mr. Friedland if he can get everything behind that fence.

Mr. Friedland said he can absolutely do that. We are waiting until we have something definite to move forward.

Mr. Palmer suggested modifying Note 8 to say concrete walkway and pad in front of the building. Ms. Jordan made the following motion:

Findings of Fact

1. Yam Yams LLC is requesting amendments to the site plan approved for 287 Ocean House to alter outdoor storage and outdoor display, and eliminate a finish pavement coat, which requires review under Sec. 19-9, Site Plan Regulations.
2. The 287 Ocean House Rd site plan application has been previously approved by the Cape Elizabeth Planning Board on July 21, 2020 to be in compliance with the Site Plan Regulations, and the findings and decisions of that approval which are not altered by the proposed amendments remain in effect.
3. The site plan amendment application was deemed complete at the May 18, 2021 Planning Board meeting, and a public hearing was held on June 15, 2021.
4. 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.
5. The development will provide a vegetative buffer throughout and around the site and screening as needed.
6. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
7. 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 Yam Yams LLC for amendments to the site plan approved for 287 Ocean House Rd to alter outdoor storage and eliminate a finish pavement coat be approved with the following conditions:

1. That note 8 be revised to add concrete storage pad after concrete walkway in sentence 2.
2. That note 11 and references to note 11 be deleted.
3. That no permanent certificate of occupancy be issued until the plans are revised to reflect the Planning Board approval.

Ms. Lynch seconded the motion and it passed, 4-3 (Bodenski, Palmer, Sahrbeck).

NEW BUSINESS

Town Trails Resource Protection Permit - The Town of Cape Elizabeth is requesting a Resource Protection Permit to alter 3,186 sq. ft. of RP1 and RP2 wetland for installation of boardwalk on existing town trails located on Gull Crest, Cross Hill, Winnick Woods and Stonegate open spaces, Sec. 19-8-3 Resource Protection Permit Completeness and Public Hearing.

Steve Harding, Town Engineer from Sebago Technics spoke on behalf of the applicant. The Conservation Committee takes care of 19 miles of trail. They had an outside assessment of the boardwalks. They looked at the existing boardwalks that needed repair as well as areas that needed a new boardwalk. He showed a plan. The environmental report said the trails get a lot of use, and when wet, people go around the trail. A boardwalk leads them to stay on the path and out of the wet areas. The boardwalk is relatively narrow, 3 10in. wide 2X10s.

The Resource Protection Permit they are requesting is 3,180 sq. ft. They are requesting an additional 20% for the boardwalk to cover them if they need a longer boardwalk etc.

They are requesting a waiver on the plan size and the 1 ft. contour intervals. This project won't have any earthwork. No mechanical equipment will be used. They are not changing the topography at all. They are also asking for a waiver of a high intensity soil survey. A waiver of the storm water report is requested.

They are seeking a DEP Permit which is in process. They have confirmed that the Army Corps of Engineers does not regulate these types of projects.

Mr. Huebener opened the public comment. No one came forth, so the public comment was closed.

Mr. Gilbert asked why they are asking for the waiver of the 1 ft. contours.

Mr. Harding said it is a project where the topography is not an issue.

Mr. Bodenski asked if they will be using pressure treated lumber.

Mr. Harding said it is pressure treated.

In response to a question about contract specifications, Ms. O'Meara said this is all done by volunteers, often Eagle Scout candidates. They do not have a

budget to cover professionals. She staffs the Conservation Committee and often orders the lumber for the project and can confirm it will be pressure treated.

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 Town of Cape Elizabeth for a Resource Protection Permit to alter 3,180 sq. ft. of RP1 an RP2 wetland for installation of boardwalks on existing Town trails located at Gull Crest, Cross Hill, Winnick Woods, and Stonegate be deemed complete. The finding of completeness includes granting waivers from submitting the following information due to the limited scope of the project and limited site alterations.

1. A site plan at a scale of 1:100' or less;
2. One foot topographic contours;
3. A high intensity soil survey;
4. Water flow directional arrows;
5. Stormwater runoff plan prepared by a professional engineer.

Ms. Lynch seconded and it passed, 7-0.

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

Mr. Palmer asked if it was RP-1 or RP-2.

Mr. Harding said it is mostly RP-2.

Mr. Palmer suggested that a boardwalk in RP-2 should not even need Planning Board approval.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. The Town of Cape Elizabeth is requesting a Resource Protection Permit to alter 3,180 sq. ft. of RP1 and RP2 wetland for installation of boardwalks on existing Town trails located at Gull Crest, Cross Hill, Winnick Woods, and Stonegate, which requires review under Sec. 19-8-3, Resource Protection Regulations.
2. The boardwalks will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;

3. The boardwalks 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 boardwalks 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 boardwalks will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The boardwalks will not pose problems related to the support of structures;
7. The boardwalks will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The boardwalks are not located in coastal dunes or contiguous back dune areas;
9. The boardwalks will maintain or improve ecological and aesthetic values;
10. The boardwalks will promote recovery of vegetation to maintain an adequate buffer area between the wetland and adjacent land uses;
11. The boardwalks will allow reestablishment of vegetated areas which is a best management practice to prevent erosion;
12. The boardwalks will not include discharge of wastewater regulated in the Sewer Ordinance;
13. The boardwalks are not located in the 100-year 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 Town of Cape Elizabeth for a Resource Protection Permit to alter 3,180 sq. ft. of RP1 and RP2 wetland for installation of boardwalks on existing Town trails located at Gull Crest, Cross Hill, Winnick Woods, and Stonegate be approved.

Ms. Jordan seconded the motion and the motion was approved, 7-0.

The board voted 7-0 to adjourn 8:10p.m.

Respectfully submitted,

Hiroshi Dolliver
Minutes Secretary