

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: August 16, 2022  
SUBJECT: Carr Woods 18 unit condominium and 1 single family lot

### Introduction

Andrew Carr is requesting Major Subdivision Review for Carr Woods, an 18-unit condominium development and 1 single family lot and a Resource Protection Permit to alter 11,449+ sq. ft. of RP2 wetland, located at 10 Deep Brook Rd. The application will be reviewed for compliance with Sec. 16-2-4, Major Subdivision Public Hearing and Sec. 19-8-3, Resource Protection Permit Public Hearing. The comments of Town Engineer Steve Harding are attached.

### Procedure

- The Board should begin by having the applicant summarize the project.
- The Board should open the meeting for public comment that is allowed at every meeting and can be limited to 15 minutes total.
- The Board may begin discussion at any time.
- At the close of discussion, the Board has the option to table, approve, approve with conditions, or deny the application.

### Subdivision Review (Sec. 16-3-1)

Below is a summary of how the subdivision review standards may be met.

#### (a) Pollution

The project is not expected to result in undue water pollution. No development in the floodplain is proposed. The nature of the soils and slopes has been factored into the project design, as described in later standards. Direct discharge into streams is not proposed and the project design is intended to comply with state and local health and water resource rules and regulations.

#### (b) Sufficient Potable Water

The applicant has provided a letter from the Portland Water District regarding ability to serve the project with public water.

#### (e) Erosion

The design includes a robust erosion control plan, which includes methods to accommodate the range of steep slopes, ledge and wetlands located on the site.

(d) Traffic

1. Road congestion and safety. The applicant has provided a traffic study that indicates that there is sufficient capacity in Shore Road to accommodate the traffic anticipated by the project. Site distance standards can be met with trimming of vegetation north of the proposed Deep Brook Rd.
2. Comprehensive Plan. The comprehensive plan encourages new development to locate in growth areas and this project is located in the RC District, a designated in-fill growth area.
3. Connectivity. The project is located on a long, narrow lot on the west side of Shore Rd, in between 2 developed neighborhoods. There is no existing connection available to those neighborhoods. In addition, there is no vacant land abutting this project which has development potential, so provision for future vehicular connectivity is not needed.
4. Safety. The proposed private road, Deep Brook Drive, is designed to meet private road standards and will include a sidewalk along the entire length of the road, on the north side. The applicant has also committed to coordinate with the town on the Shore Road Rehabilitation Project, which is proposed to include a sidewalk on the west side of Shore Road and crosswalks at safe locations.

The applicant has requested a waiver to reduce the sidewalk esplanade width to 6'. This is a common reduction request that has been granted in other condominium projects. The esplanade width reduction also reduces how much of the property will need to be altered at the property line as part of construction, potentially resulting preservation of more existing vegetation.

5. Through traffic. Deep Brook Road is proposed as a dead end with a T-turnaround, so no through vehicular traffic is expected.
6. Topography. The revised road layout has reduced impacts on wetlands. In addition, the design now reduces the road slope where units are proposed and slightly increases the slope to compensate on other sections of the road.
7. Block Length. Not applicable.
8. Lot Access. Each unit is provided vehicular access. An existing home located at the corner of Deep Brook Road and Shore Road has vehicular access to the current location of Deep Brook Road. The location of Deep Brook Road is adjusted at the Shore

Road intersection and access will continue to be provided to the existing lot. The applicant has provided written confirmation from the lot owner that they support the the proposed design.

9. Sidewalks/pedestrian connections. A sidewalk is proposed on the north side of Deep Brook Road along its entire length. In addition, a public pedestrian trail is proposed to extend from the end of the road to connect to Loveitt Woods, a Town owned open space. For this month's submission, the applicant has added a trail network to the proposed open space, creating access along the north and south property boundaries. The town's greenbelt system management plan encourages "rustic" trails that typically weave around existing trees. The greenbelt trail proposal will need to be merged with the landscape buffering plan to accommodate both buffering and trail connections.

Deeds for public access along the sidewalk and for the trail will need to be provided as part of the final subdivision approval submission, to which the applicant has committed.

10. Road Name. Deep Brook Road is the current name of the private road which will be rebuilt to serve the new development.

11. Road Construction Standards. The applicant has provided a design for construction of Deep Brook Road which has been reviewed by the Town Engineer. Subject to comments from Town Engineer Steve Harding, the road has been designed to comply with road standards.

(e) Sewage Disposal.

All units and the single family house lot will be served by public sewer.

(f) Solid Waste Disposal.

From 7-30-2021 submission, "The development will consist of condominium units which will have a private trash hauler collect bins or bags on a weekly basis. The private condominium association will be responsible for all trash on the property."

(g) Aesthetic, cultural and natural values

1. Scenic. The site is not located in a vista or view corridor as identified in the Visual Impact Study conducted by the town.

2. Wildlife. From 7-30-2021 submission, "A snapshot from the Maine IF &W website shows the property as having no significant wildlife habitats located on it.

3. Natural features. The property includes typical wetland, exposed ledge, and steep slope features common in Cape Elizabeth. Much of these features will be significantly altered to accommodate the project, similar to the changes that occurred when the adjacent neighborhoods were developed. The applicant is required to preserve natural features, "whenever practical." Most of the wetland areas will be preserved. Open Space Block 4, located at the rear of the property, will be preserved predominantly in its natural state.
4. Farmland. The property is not used as farmland.

(h) Conformity with local ordinances

1. Comprehensive Plan. The comprehensive plan encourages new development to locate in growth areas and this project is located in the RC District, a designated in-fill growth area. The project will add to existing town open space and provide pedestrian connections, which is also a goal of the comprehensive plan. The project will also include 2 moderate income affordable units in compliance with the Mandatory Affordable Housing requirements, supporting the comprehensive plan's affordable housing goals.
2. Zoning Ordinance. The project has been designed to comply with the Zoning Ordinance provisions, subject to Planning Board approval. See also Sections 19-7-2 (D) below. The applicant has provided a Net Residential Density map and calculation that indicates that 25 residential units are allowed. The dead end road requirements will continue to cap the allowed units to no more than 20.
3. Multiplex Housing. From the 7-30-2021 submission, "The project is designed to cluster the development in the most suitable and buildable area of the property." See also Sec. 19-7-2 (E) below.
4. Addressing Ordinance. Unit numbers will need to be assigned by the Town Assessor post approval to comply with E911 requirements, including keeping even numbers on one side of the road and odd numbers on the opposite.

(i) Financial and Technical Capability

The applicant has provided a memorandum from the Town Manager asserting adequate financial capacity and a list of professionals with experience in designing subdivisions.

(j) Surface Waters

The project is not located in the Shoreland Performance Overlay District.

(k) Ground Water

The project will be served by public water and public sewer. The stormwater design includes filtration and detention so that potential recharge can be maintained.

(l) Flood Areas

The subdivision is not located in the floodplain.

(m) Wetlands

The applicant is proposing to alter 11,449 sq. ft. of RP2 wetland (Site and Layout Plan, Sheet 1 and 2). The wetland boundaries and designation have been reviewed by a third party retained by the Town, Longview Partners.

The applicant has relocated the access road back to essentially the location of the existing Deep Brook Road. This has resulted in 6,575 sq. ft. of alteration to wetland B, however much of this wetland area is already maintained as lawn, and avoids a similar amount of wetland alteration in a thickly vegetated area on the south side of wetland B. An earlier submission also included a significant alteration to wetland D, which has been reduced.

The proposed trails network will include approximately 150' of trail in wetland D. It is likely the Conservation Committee will recommend that a boardwalk be constructed for the portion of the trail located in the RP2 wetland. The typical boardwalk is 30" wide, so the applicant will need to revise the total wetland alteration to include the trail/boardwalk.

(n) Stormwater

The Town Engineer has reviewed the stormwater plan and his comments are attached.

(o) Lake Phosphorus concentration

The project is not located within the watershed of a great pond or lake.

(p) Impact on adjoining municipality

The project is located wholly in the Town of Cape Elizabeth.

(q) Land subject to Liquidation Harvesting

The project area has not been subject to liquidation harvesting.

(r) Access to Direct Sunlight

Significant tree clearance will occur as part of project construction, will result in access to sunlight for the proposed units.

(s) Buffering

At the April 19<sup>th</sup> meeting, the Planning Board requested that a third party review of the landscaping plan be done. Henry Hess of Sebago Technics performed the review and the applicant has made substantial changes to the landscaping plan to address his comments.

Due to the combination of steep slopes, exposed ledge and project construction, most of the existing vegetation on the site will not be preserved. Consequently, a robust landscaping plan will be needed to provide buffering for the abutting neighborhoods and the new residents.

The revised landscaping plan has been provided and trees prohibited by Appendix C of the Subdivision Ordinance have been removed (oaks and maples). The plan replaces white pines with a combination of white, black, and red spruce trees, arborvitae and deciduous trees for buffering. The area between unit #1 and Shore Road has a planting plan typical of a front yard facing the street.

It appears that a combination of preservation of existing trees and substantial tree planting will create a vegetated buffer between building sites and the project property lines. The plan also notes that some field relocation of planting may be needed and that will be done while preserving the overall buffering goals and in consultation with town staff.

The buffering plan may require some adjustments to coexist with the proposed trail network.

(t) Open Space Impact Fee

An Open Space zoning subdivision can meet the open space impact fee requirements by complying with the open space provisions within Sec. 19-7-2. The Open space zoning provisions are discussed below.

(u) Utility Access.

The applicant has provided letters that there will be adequate public water, public sewer, electric and telephone capacity to serve the subdivision.

The development site includes existing cross country type, small diameter sewer and storm drain lines. Most of these pipes will be upgraded, replaced or integrated into the

overall plans for the development. In one instance, an existing sewer line located on the south side of the property, near Shore Road, is not located within the easement for the sewer line. The sewer easement documentation should be replaced with a new easement for the area where the sewer line is located. The applicant has committed to providing this information on the final review submission.

(v) Phasing.

No phasing is proposed.

Resource Protection Permit Standards (Sec.19-8-3(B))

Below is a summary of the Resource Protection Permit standards of review and how they may be met.

1. Flow of surface/subsurface waters

The stormwater management plan demonstrates how the flow of surface waters will be maintained.

2. Impound surface waters

The proposed wetland alterations are integrated into the stormwater management plan to manage and release stormwater at a rate not to exceed pre-development levels.

It is expected that the final Resource Protection Permit will be expanded to include the trail/boardwalk to be installed in wetland D. The typical boardwalk construction on greenbelt trails elevates boardwalk on 4" x 4" posts to preserve surface water movement.

3. Increase surface waters

The wetlands are integrated into the stormwater management plan to control the release of water into the wetlands in a manner that will not substantially increase the water level of the wetlands.

4. Damage to spawning grounds

The wetland alteration areas have not been identified as significant wildlife habitats.

5. Support of structures

The wetland alterations are included in the project design that must meet technical standards for stability.

6. Aquifer recharge/groundwater

The stormwater design includes filtration and detention so that potential recharge can be maintained.

7. Coastal dunes

No work in coastal dunes or back dune areas is proposed.

8. Ecological/aesthetic values

The project is designed to avoid wetland alterations to the extent practicable and the majority of the wetlands on the site will not be altered.

9. Wetland Buffer

The RP2 wetlands that are proposed to be altered do not have a mandatory buffer, however the Planning Board has explicit authority to impose a buffer (Sec. 18-8-3 C.1). Most of the areas adjacent to the wetlands are designated as open space. It should be noted that other elements of the development, such as stormwater features, will require removal of existing vegetation and installation of new buffer plantings adjacent to the wetland areas. One result of the revised open space plan is creation of larger buffers located in preserved open space, such as the east side of wetland D.

10. Erosion Control

The design includes a robust erosion control plan, which includes methods to accommodate the range of steep slopes, ledge and wetlands located on the site.

11. Wastewater discharge

No discharge of wastewater is proposed as part of the project scope.

12. Floodplain Management

No floodplains are located in the project area.

Open Space Design Standards (Sec. 19-7-2 D)

Below is a summary of how the Open Space Design standards (specific to open space) may be met. The town engineer has reviewed the open space calculations submitted.

1. Land to be preserved as open space



a. Contiguous Land. The applicant has substantially revised the open space component of the development to increase the amount of land to be permanently preserved as open space and to establish a project wide trail network. Portions of trail are located on challenging slopes. (Similar slope conditions are present on the existing greenbelt trail network.) The Management of Greenbelt and Open Space Plan (2012) acknowledges that “The rustic nature of greenbelt trails makes it problematic to make all trails accessible at the same level as the built environment because preservation of the natural environment is also a goal of the trail system.” (p 18). It is advisable to (1) ask the Conservation Committee to comment on the proposed trail plan, and (2) ask the applicant to provide more detail on how the most steeply sloped portions of the trails will be made reasonably accessible.

To the extent possible, open space has been preserved in large, contiguous blocks. Many of the narrow strips (50’ in width or less) are now proposed to include pedestrian trails and can be included in the total 45% open space calculation.

b. Connectivity. Proposed open space is located adjacent to the town owned Plaisted Park and Loveitt Woods. In addition to a public access easement proposed on the sidewalk, a trail system has been added to the preserved open space. It is expected that the Conservation Committee will review and provide comments on the trail layouts for a future meeting.

c. Preservation priorities. The proposed open space includes all the site wetlands, except for portions that will be altered as part of the Resource Protection Permit. The proposed open space also includes some steep slopes. No agriculture is operating on the property, so preservation of farmland is not applicable. An existing casual trail connection is proposed to be formally incorporated into the town greenbelt trail network with a pedestrian easement and donation of Open Space Block B.

At the direction of the Planning Board, stormwater facilities have not been included in the calculation of the minimum 45% open space. A question remains regarding the open space and trail connection to Wood Rd. Trail connections that dead end on private property are not advisable.

## 2. Permanent open space preservation

- a. Permanent legal protection. The applicant has committed to providing documentation as part of final subdivision review.
- b. Restricted activities. The applicant has committed to documenting limitations on activities on the open space to be preserved as part of final subdivision review.

- c. Maintenance. To be provided as part of final subdivision review submission, documentation should include responsible parties.

#### Multiplex Housing Standards (Sec. 19-7-2 E)

##### 1. Open Space

Multiplex housing developments must set aside 45% of the gross land acreage as open space. The applicant has provided updated calculations that 48.5% of the gross land area is set aside as open space. This area does not include stormwater facilities.

A plan note has been added to the plan that the encroaching structures located on Open Space Block B shall be the responsibility of the developer to remove.

##### 2. Building size

The four unit building footprint has been reduced to 7,360 sq. ft. Elevations of the building will be provided as part of final review.

##### 3. Public Water and Sewer

All units will be served by public water and public sewer.

##### 4. Site Design Standards

a. Open space. See subsection D above.

b. Building location. The proposed units are oriented toward Deep Brook Road. Unit 1, which is located within 100' from Shore Road, needs to orient the front of the building toward Shore Road. (The driveway must remain connected to Deep Brook Road).

c. Landscaping. A landscaping plan for the area between unit 1 and Shore Road has been provided. The purpose of the landscaping plan is not to shield the unit from the road, but rather to create a transition from the public road to the private dwelling, typically found in suburban settings. It appears that the mix of lilacs and shrubs accomplishes this goal.

d. Parking areas. At least 2 parking spaces are provided for each unit.

##### 5. Architectural Standards

a. Massing. From 4-30-2021, "This development is the modern interpretations of Carpenter and Board & Batten Gothic architectural styles that were popular in the mid 1880's. The proposed housing development consists of 19 condominiums with the massing designed as simple rectangular volumes to keep in context with the Cape Elizabeth/Cape Cottage style. The main rectangular volume is the dominant shape on the site (for design, footprint, height and roof line - see attached plans). The front porches, built-out awnings, additional rooms and overhangs are designed as additive elements."

The applicant has confirmed that the original designs are still the intent.

b. Roof. From 4-30-2021, "The roof design exceeds the 7:12 pitch which is consistent with the local homes. The roofline construction follows the tradition of roof overhangs. The asphalt roof shingles will match those required by local code.

The applicant has confirmed that the original designs are still the intent.

c. Entrance and windows. From 4-30-2021, "Key contextual elements include balanced and proportionately spaced windows. The generous use of windows are framed with simple trim at the top and sides that creates a rhythm and pattern throughout all units. The front entry doors are well integrated with the fenestration of the façade and are protected by a front facing shed roof design. All units have a distinctive front entrance."

The applicant has confirmed that the original designs are still the intent.

d. Exterior siding materials. From 4-30-2021, "The façade materials consist of vertical ship lap, vinyl, LP smart siding and corner boards consistent with the local design and appearance of the neighborhood.

The applicant has confirmed that the original designs are still the intent. Exterior material labels should be added to the building elevations.

6. Density Bonus - Not applicable

Motions for the Board to Consider

**A. Motion for Approval**

Findings of Fact

1. Andrew Carr is requesting Preliminary Major Subdivision Review for Carr Woods, an 18-unit condominium development and 1 single family lot and a Resource Protection

Permit to alter 11,449 sq. ft. of RP2 wetland, located at 10 Deep Brook Road, which requires review for compliance with Sec. 16-2-4, Major Subdivision, Sec. 19-8-3, and Resource Protection Permit Public Hearing.

2. The applicant was deemed complete on August 17, 2021, a site visit was held on September 2, 2021 and public hearings held on September 21, 2021 and April 19, 2022.
3. The subdivision (will/will not) result in undue water pollution. The subdivision (is/is not) located in the 100-year floodplain. Soils (will/will not) support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations (will/will not) be compromised by the project.
4. The subdivision (will/will not) have a sufficient quantity and quality of potable water.
5. The subdivision (will/will not) cause soil erosion, based on the erosion control plan provided.
6. The subdivision (will/will not) cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The subdivision (provides/does not provide) for road network connectivity while discouraging through traffic. Roads (are/are not) laid out to conform to existing topography as much as is feasible. All lots (are/are not) provided with vehicular access. Roads (are/are not) designed to meet town standards.
7. The subdivision (will/ will not) provide for adequate sewage disposal.
8. The subdivision (will/will not) provide for adequate solid waste disposal.
9. The subdivision (will/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/is not) compatible with applicable provisions of the Comprehensive Plan and town ordinances.
11. The applicant (has/has not) demonstrated adequate technical and financial capability to complete the project.
12. The subdivision (will/will not) adversely impact surface water quality.
13. The subdivision (will/will not) adversely impact the quality or quantity of ground water.
14. The subdivision is not subject to the Floodplain Regulations, Chapter 6.

15. The subdivision (is/is not) in compliance with the Town wetland regulations in the Zoning Ordinance.
16. The proposed subdivision (will/will not) provide for adequate stormwater management.
17. The subdivision is not located in the watershed of Great Pond.
18. The subdivision is located wholly in the Town of Cape Elizabeth.
19. The subdivision is not located on land where liquidation harvesting was conducted.
20. The subdivision (does/does not) provide for access to direct sunlight.
21. The subdivision (does/does not) provide a vegetative buffer throughout and around the subdivision and screening as needed.
22. The subdivision (will/will not) comply with the open space impact fee.
23. The subdivision lots (will/will not) be provided with access to utilities.
24. The subdivision plan does not include a phasing plan.
25. The wetland alterations (will/will not) materially obstruct the flow of surface or subsurface waters across or from the alteration area;
26. The wetland alterations (will/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/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/ will not) result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
29. The wetland alterations (will/will not) pose problems related to the support of structures;
30. The wetland alterations (will/will not) be detrimental to aquifer recharge or the quantity or quality of groundwater;

31. The wetland alterations (will/ will not) disturb coastal dunes or contiguous back dune areas;
32. The wetland alterations (will/will not) maintain or improve ecological and aesthetic values;
33. The wetland alterations (will/will not) maintain an adequate buffer area between the wetland and adjacent land uses;
34. The development (will/ will not) 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 development (will/will not) 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 development is not located in the Resource Protection-Floodplain District.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Andrew Carr for Preliminary review of the Major Subdivision Carr Woods, an 18 unit condominium project and 1 single family home lot and a Resource Protection Permit to alter 11,449 sq. ft. of RP2 wetland, located at 10 Deep Brook Rd, be approved, subject to the following conditions:

1. That the plans be revised to address the comments of the Town Engineer's letter dated August 10, 2022;
2. That the plans and materials be revised to address the comments of the town's stormwater consultant, Kristie Rabasca, Integrated Environmental Engineering, Inc.
3. That the plans and where appropriate easements be updated to incorporate existing and new utility infrastructure, such as the existing sewer line located on the south side of the property near Shore Road.
4. That the multiplex building design plans be updated and resubmitted, with supporting narrative;
5. That the landscaping and buffering plan and the open space plan showing trails be reviewed and revised where there are conflicts.

6. That the plans be revised to satisfy the above conditions when the project is submitted for final subdivision approval.