

Kennebunkport Planning Board
April 4, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, April 4, 2018. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Russ Grady (Chair), Tom Boak, D. Scott Mahoney, Mark Messer, Nina Pearlmutter, Neil Higgins, Edward Francis

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the March 21, 2018 Planning Board meeting. Mr. Grady seconded the motion and the vote was unanimous.

Mr. Grady announced there will be a public site walk for the Binnacle Hill Phase 2 Subdivision off of New Biddeford Road this Saturday, April 6th, 2018 at 9:00 a.m. The public is welcome to attend but keep in mind the land is undeveloped, Mr. Grady added.

Items:

1. 180102 Deborah Pearse and Bruce Donath / Alan Shepard, Authorized Agent – Site Plan Review – **Findings of Fact** – for approval to expand the use of the non-conforming single-family dwelling from seasonal into year-round by installing insulation and a heating system. (25 Pier Road, identified as Assessors Tax Map 30, Block 1 Lot 17 in the Cape Porpoise East, Shoreland and Resource Protection Zones.

Mr. Boak read the Findings of Fact into the record. Mr. Grady made a motion to approve said Findings. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Mr. Gilliam commented he would be happy to provide a memo from the Code Enforcement Office explaining that the seasonal conversion permit fees and requirements do not apply in this situation since it is a connection to an existing sewer hook-up.

2. 180202 Seaside Hotel Associates, d/b/a/The Nonantum Resort – Site Plan Review – **Continued Review** – for approval to tear down an existing garage and storage building, replace with a new storage building and clean up the parking plan. (95 Ocean Avenue, identified as Assessor's Tax Map 8, Block 001 Lot 13 in the Riverfront Zone.)

Mr. Grady introduced the Agenda item.

Ms. Tina Hewitt-Gordon, General Manager of the Nonantum Resort, addressed the Board and gave a brief summary of the Application noting she has submitted the additional documentation the Board requested which included an updated drawing showing the existing building to be replaced and the lot coverage. Ms. Hewitt-Gordon also stated she had submitted some photos of the existing building and its deteriorated condition along with information on what the proposed new building would look like. Also among the other items submitted, Ms. Hewitt-Gordon, stated they have provided an updated list of abutters, a letter from 1995 from Livingston & Hughes that includes what the existing parking plan is and what the proposed modification to the parking plan would look like.

Mr. Messer asked the Applicant to explain the lot coverage on the site plan. Mr. Geoff Aleva, Civil Engineer addressed the Board and explained the calculations differ depending on the requirements for each zone.

Mr. Boak asked the Applicant if they could make some modifications to their Site Plan submittal page to correctly indicate what information has been submitted. Ms. Hewitt-Gordon agreed to submit a letter of clarification to be included in the Application.

Mr. Grady commented the new proposal includes a retaining wall with landscaping and asked if that was to prevent people from pulling off of Ocean Avenue and parking on the grass area. Mr. Aleva replied they never intended to have guests park on the grass and the new design is to have everyone enter in the same area along with adding wheel stops to parking spaces that are perpendicular to Ocean Avenue to prevent cars from pulling directly out onto Ocean Avenue.

Ms. Pearlmutter asked the Applicant if there were 3 catch basins as shown on the plans. Mr. Aleva replied there are several catch basins and indicated on enlarged site plans where those were located.

Ms. Pearlmutter asked if they plow and salt that parking area when it snows. Ms. Hewitt-Gordon responded they do a sweep through of the parking area in the winter but they do not salt. Mr. Aleva added the catch basins also have a sump and hoods to trap any oils which are out of the flood zone. Ms. Pearlmutter asked if that could be noted on the plans. The Applicant agreed to add that notation to the site plans.

Mr. Gilliam commented the property is located in the X Zone according to the FEMA maps which is the zone with the least amount of risk for flooding.

Ms. Pearlmutter raised a concern that often times people plow into the trees and asked where the snow will be placed when plowing. Mr. Aleva replied since the hotel closes during the wintertime, the plow only clears the main areas to keep it open for fire access so the snow is stored in the parking spaces that are not utilized during the winter.

Mr. Grady asked the Board members if they had any further questions for the Applicant.

Mr. Francis commented that the note on the plan indicates only hotel employees will be utilizing the newly configured parking area when in actuality it will be a combination of both employees and guests. Mr. Aleva agreed to update that note to accurately reflect there will be a mix of guests and employees parking there. Ms. Hewitt-Gordon added the parking spaces for employees will be at the top of the hill and will have parking tags to identify them as employee vehicles.

Mr. Francis expressed his concern for preserving some of the large trees on the property. Ms. Hewitt-Gordon responded it is their goal to retain as much green space as possible and will need to replace some of the tall pines that fell in storms with appropriate trees indigenous to the area.

The Board members and the Applicant had a brief discussion on the history of the parking at the resort. In reference to a letter submitted by Livingston & Hughes, Ms. Hewitt-Gordon explained there are paved & painted parking spaces, paved & unpainted parking spaces and unpaved & unpainted parking spaces, of which the latter ones are used as overflow parking which is not ideal to have cars parking on a lawn.

Ms. Pearlmuter suggested the Applicant might want to talk to the Tree Warden for guidance on what species of trees would be best for the area and to discuss a possible easement with the private property owners and the town on the terms of the maintenance of those trees.

Mr. Boak made a motion the Application is complete. Mr. Mahoney seconded the motion and the vote was 5-0 in favor of the motion. Mr. Messer was assigned as Case Manager for this Application.

A Public Hearing will be held at the next Planning Board meeting on April 18th, 2018.

Mr. Gilliam suggested the Applicant should have a meeting with Mike Clause, the Town's Superintendent of Public Works to obtain a more formal approval on the seasonal wheel stops for the front of the parking lot. Mr. Aleva agreed with Mr. Gilliam's suggestion.

3. 171201 Sandy Pines Campground / Sebago Technics, Authorized Agent – Site Plan Review – Continued Deliberations – for approval for facility upgrades and to improve pedestrian and vehicular safety to the operational component of the campground, as well as relocation of campsites and other site work. (277 Mills Road, Assessor's Tax Map 32, Block 1, Lot 3 in the Goose Rocks, Shoreland and Resource Protection Zones.).

Mr. Grady introduced the Agenda item noting the Public Hearing has been closed and this is the Board's continued deliberation and to discuss the first draft of Findings that Mr. Francis has prepared.

Town Attorney Amy Tchao asked which Board members would be voting on this Application and if any alternate Board members would have voting privileges. Mr. Grady responded that Mr. Messer and Mr. Higgins would not be voting on this Application and that Mr. Francis, an alternate Planning Board member would have voting privileges in place of Mr. Messer. All members would participate in the discussion and deliberations for this Application, Mr. Grady also noted.

As the assigned Case Manager, Mr. Francis stated his goal for these deliberations would be to have a clear understanding and draft of what the Findings of Fact should be for this Application.

In reference to Item #8 of the Draft Findings of Fact, Mr. Messer questioned whether the Board had concluded there are 324 campsites currently on the property. Ms. Tchao encouraged the Board members to fully discuss this subject due to the fact that the basis of the property becoming less non-conforming is that the number of campsites is being reduced from 324 to 300.

Mr. Francis stated the reason 300 sites were an important aspect is because it eliminated the non-conformity by increasing the land area per campsite.

Due to the lack of accurate historical information and conflicting evidence on the number of campsites on the property from websites, Ms. Pearlmuter stated she is not convinced 324 is an accurate number of campsites based on her research.

Mr. Boak agreed with Ms. Pearlmuter's hesitation to agree the current number of campsites is 324, adding that reducing the number to 300 would not make the property conforming with regard to square footage per site as the number should accurately be reduced to 299.

After a lengthy discussion with each Board member contributing their opinion, the Board members agreed to have Mr. Francis and Ms. Pearlmuter collaborate to determine the specific language for Item #8 of the Findings of Fact.

Mr. Hutchins noted the date of the authorization letter mentioned in Item #5 of the Draft Findings needs to be corrected.

Mr. Boak suggested the language of Item #9 be changed to "Since purchasing the property in 2016, Sandy Pines has completed a number of site upgrades and improvements to the existing campground, which have been permitted as required through the Planning, Code Enforcement...".

After a brief discussion amongst the Board members, Mr. Gilliam, Attorney Tchao, and Mr. Doe, the words "from data which included aerial photography reviewed with and confirmed by the Code Enforcement Office..." will be added to Item #10.d.

The Board members agreed no changes needed to be made to Item numbers 11 and 12 of the Draft Findings.

Mr. Doe suggested in Item #13.g. the specific revision date should be referenced for the Site Plan Drawing.

In Item #14.a. Mr. Boak suggested the “*” should be replaced with a lowercase “x” and in Item #14.d. the language should be changed to say “approximately 5,000 sq. ft.”.

On Item #16, Ms. Pearlmutter noted the Land Use Article referenced should be 10.10.A.1. not 10.10.A.

After a brief discussion the Board members concluded to amend the wording in Item #16.a. Comments: “The Board finds that, with the accompanying conditions...”.

Ms. Pearlmutter expressed concern regarding evening events held at the campground that would violate the conditions in Item 17.e such as outdoor movies or bands. Mr. Gilliam requested if the Board were to place restrictions on evening activities, that those restrictions be as specific as possible with regards to hosted activities that are under the control of the campground.

On Item 16.g.v. Mr. Boak suggested adding the words “at least” in front of \$2,500.

In reference to the conditions listed on page 9 of the Draft Findings of Fact, Mr. Grady questioned whether the Board was requesting the Applicant to erect barriers to restrict kayak launching. Mr. Doe explained there is a channel on the property that people can launch kayaks from at high tide. When the tide is low, guests can’t launch from there so they try crossing the marsh which is on the Rachel Carson Reserve property. In an attempt to stop folks from walking across the marsh, Mr. Doe added, the campground will install some signage and a chain. Mr. Gilliam added it would be helpful to use more specific language in the condition such as adding the phrase “where the channel meets the property line”.

In reference to condition #k of the Draft Findings of Fact, Mr. Francis stated the Board’s responsibility in imposing conditions is to ensure the Applicant isn’t expanding a non-conforming use. Citing Case law, in particular Frost v. Lucy, Ms. Pearlmutter explained that adding events was considered by the court to be an expansion of a non-conforming use. Ms. Pearlmutter continued by stating bands are very loud and will affect nesting birds, wildlife, and abutters, and noted that sound travels fast over water.

Mr. Gilliam, the Board members, and the Applicant all had a lengthy discussion on the establishment of quiet hours at the campground, nighttime activities such as bands, DJs, amplified music and outdoor movies. Mr. Francis suggested the restriction on nighttime hosted events include a ban on fireworks as well.

Attorney Tchao suggested adding specific wording defining the dates of a “seasonal use” such as April 15th to October 15th of each year. Ms. Tchao also suggested the Board may want to add a condition that the campground must remain seasonal. The Board members agreed with Ms. Tchao’s suggestions.

Ms. Tchao also advised the Board members that if the number of seasonal RV sites is set at 76 then it should be clearly stated that those sites will be allowed to remain year-round but not occupied year-round and that 76 is the maximum number of seasonal RV sites.

Mr. Francis stated he will incorporate all of the changes suggested tonight and with additional input from Ms. Pearlmutter, will update the Draft Findings of Fact and distribute to the Board members as well as to Lisa Harmon in the Code Enforcement Office for comments.

In an attempt to capture the Board’s discussions this evening, Ms. Tchao read the following statements to potentially be included in the Findings of Fact: *“Although conflicting evidence was reviewed regarding the number of campsites historically on the property which included evidence that the number of sites may have ranged from 225 to in excess of 400, the Board concludes that there is substantial evidence in the record that the current number of campsites is 324, and that the number of campsites historically on the property since the mid 1980’s on the whole has exceeded 300.”* The Board members agreed with Ms. Tchao’s statement.

Mr. Grady made a motion to continue this Site Plan Review until the next Planning Board meeting on April 18th, 2018. Mr. Boak seconded the motion and the vote was unanimous.

OTHER BUSINESS:

Mr. Boak asked if Attorney Tchao could review and share her legal opinion on a letter received from a concerned citizen regarding the pending Binnacle Hill Subdivision Site Plan Review. Attorney Tchao agreed to review the letter and provide some comments for the Board members. Mr. Ralph Austin, Attorney for the Applicant of Binnacle Hill also agreed to provide his comments regarding said letter.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous.

Submitted by: Patricia Saunders, Planning Board Recording Secretary