

Kennebunkport Planning Board
April 18, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, April 18, 2018. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Russ Grady (Chair), Tom Boak, Mark Messer, Nina Pearlmutter, Edward Francis
Mr. Francis has voting privileges for this meeting.

Approval of Minutes: Approval of the minutes from the April 4th, 2018 Planning Board meeting was deferred until the next meeting. Mr. Boak made a motion to approve the minutes from the April 7th, 2018 Site Walk at Binnacle Hill. Mr. Grady seconded the motion and the vote was unanimous.

Items:

1. **180202 Seaside Hotel Associates, d/b/a The Nonantum Resort** – Site Plan Review – **Public Hearing** – 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, representing the Nonantum Resort addressed the Board stating they have provided the Board members prior to this meeting with an updated copy of the amended Application which includes more accurate information for item numbers 8, 9, and 10 along with updated information on the site plans as well. Ms. Hewitt-Gordon also stated she has spoken with the Town's Highway Department Superintendent and the Tree Warden as suggested by the Planning Board at the last meeting. In regards to the proposed parking changes and the proposed seasonal barriers, Ms. Hewitt-Gordon said Mr. Mike Claus, Officer Kurt Moses and Police Chief Craig Sanford all reviewed the plans and did not express any concerns with this proposal. In speaking with the Town's Tree Warden who visited the property, Ms. Hewitt-Gordon added she was advised to possibly plant more shrubs rather than trees and would defer that decision to their landscaper.

Mr. Grady opened the Public Hearing. There were no comments or questions from the audience in attendance. Mr. Grady closed the Public Hearing.

Mr. Messer was assigned as Case Manager for this Application.

Mr. Messer expressed some concern in writing the Findings of Fact for this Application in regards to the justification of transferring parking spots from one lot to another lot. Ms. Hewitt-Gordon responded by stating yes, this is two separate lots on two different maps with common ownership but historically both lots have been considered as one parcel in terms of the total parking in support of the building. Ms. Hewitt-Gordon recognizes this is a non-conforming use but they are not increasing that use since they are asking for the same amount of parking spaces.

Mr. Gilliam added this is a modification of a previously approved parking plan and referred to the town's parking standards that allows for the Planning Board to consider joint parking on separate lots if they are within 100 feet of each other. Mr. Messer asked Mr. Gilliam to provide him with the specific Article in the Land Use Ordinance he was referring to. Mr. Gilliam agreed to provide Mr. Messer that information.

In reference to Mr. Francis' and Mr. Messer's discussion on private parking lots in the Village Residential Zone and non-conforming uses, Mr. Gilliam suggested the Board members review the Land Use Ordinance definition of an Expansion of Use which is: "the addition of one (1) or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use."

Ms. Hewitt-Gordon responded that they are not asking to expand the coverage and are in fact reducing the coverage but are looking for a modification of the parking plan.

Mr. Grady summarized the Application as a proposal to provide for paved parking spaces with stormwater management and drainage and to eliminate parking on grassy areas as has been done in the past.

Ms. Pearlmutter acknowledged Mr. Messer's concerns regarding two lots in two different zones being treated as one lot in terms of parking.

Again Mr. Gilliam instructed the Board members to review the definition of an expansion of use and perhaps make a determination on any adverse impacts with respect to Article 8.8 in the Land Use Ordinance.

Ms. Pearlmutter read the following definition of a Change of Use as stated in Article 8.8.C: "An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. In Shoreland Zones, the determination of no greater adverse impact shall be made according to criteria listed in Article 8.4."

Mr. Messer stated he would prepare a draft Findings of Fact for the Board members to review at the next meeting.

2. **180301 David McCullough / Walsh Engineering Associates, Inc., Authorized Agent on behalf of David McCullough** - Site Plan Review – **Initial Review** – for approval to create a private road over a tributary to serve the back lot on the property. The property is located at 97 Goose Rocks Road, identified as Assessor's Tax Map 16, Block 003 Lot 07 in the Farm and Forest, Shoreland and Resource Protection Zones.

Mr. Grady is recused from review of this Application. Mr. Boak is the Acting Chairman for this Site Plan Review.

Mr. Boak introduced the Agenda item.

Mr. David McCullough, representing Woody Creek Development LLC addressed the Board stating due to scheduling conflicts they were unable to start any of the work before the 180 day time limit expired on this previously approved Application. Mr. McCullough explained there are no changes to this Application from the previously approved Application and gave a brief summary of the Application describing the road construction which includes a 2 culvert system.

Ms. Pearlmuter commented it would be helpful since this Application is essentially a re-submittal, if a copy of the Findings of Fact from the original Application were included. Mr. Gilliam responded he would email a copy of the recorded Findings of Fact to the Board members.

Due to the fact there were no changes in the Application from the previously approved Application and there were no objections or concerns at the Public Hearing during that initial Site Plan Review, the Board members unanimously agreed to waive holding a Public Hearing for this Application.

Ms. Pearlmuter made a motion to re-approve the Application. Mr. Boak seconded motion. Mr. Francis abstained from voting. The motion passed with a vote of 3-0. As Case Manager, Mr. Boak agreed to prepare the Findings of Fact for the Application to be read at the next Planning Board meeting.

3. **171201 Sandy Pines Campground / Sebago Technics, Authorized Agent** – Site Plan Review – **Findings of Fact** - 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 resumed his role as Chairman and introduced the Agenda item.

Mr. Francis read the Findings of Fact into the record.

Ms. Pearlmuter commented she has a strong objection to a sentence in item #8.k. that references an Affidavit of Mr. Doe and states: "...in March of 2018 Mr. Doe spoke to Michael Spang, family member of the former property owner who confirmed that no new campsites were added after 1985". Ms. Pearlmuter explained by mentioning the Affidavit of Mr. Doe in several sections places improper emphasis on a document which uses hearsay evidence and is only part of the information provided by Mr. Spang.

Ms. Pearlmuter also suggested on Item 17.d. to add at the end of the condition of approval that the "*Applicant will not allow electronically amplified music on the campground after 10:00 p.m.*" Mr. Austin suggested instead of writing this sentence to just add "*refer to condition L*" that also states the restriction of no electronically amplified music on the campground.

The Board members agreed with both of Ms. Pearlmuter's suggestions.

Mr. Boak made a motion to approve the Site Plan Application. Mr. Francis seconded the motion. Mr. Messer abstained from voting. The motion passed with a vote of 4-0.

Mr. Grady made a motion to approve the Findings of Fact as read and amended. Mr. Boak seconded the motion and the vote was unanimous.

4. **80201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent** – Preliminary Subdivision Review – **Public Hearing** – for approval of a thirteen (13) lot cluster subdivision on 24.78 acres. (Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Grady introduced the Agenda item noting the Board has received numerous correspondences from the abutters and the public along with peer reviews from Acorn Engineering and T.Y. Lin Engineering.

Mr. Mike Tadema-Wielandt of Terradyn Consultants, along with Geoff Bowley and Attorney Ralph Austin, addressed the Board and gave a brief summary of the Application noting the project was designed to minimize impacts to the wetland and wildlife habitats that exist mostly in the eastern section of the parcel. Mr. Tadema-Wielandt also noted after much research to determine the ownership of the first 100 linear feet of Henchey Way, Mr. Bowley has secured a purchase and sale agreement with the prior owner so that now the subject parcel extends out to Kings Hwy. Mr. Tadema-Wielandt also explained they are requesting a waiver for the private Right of Way width and sidewalk requirements.

Due to the fact there has been some correspondence regarding the proposed improvements to Henchey Way, Mr. Grady explained the Planning Board has asked Town Counsel for guidance but has not yet received Attorney Tchao's comments.

Mr. Grady asked the Applicant to explain how the road would be improved. Using enlarged site plans, Mr. Tadema-Wielandt replied there would be an 18 foot wide paved travel lane with gravel on either side extending out for a total road width of 20 feet.

Mr. Messer asked if the center line of the proposed road follows the middle of the Right of Way? Mr. Tadema-Wielandt responded yes, the center line and Right of Way swings away from the two abutting houses and the center line does follow the center of the Right of Way.

Noting they have not had a chance to respond to the peer review yet, Mr. Tadema-Wielandt stated the engineering peer review was very technical with a lot of small changes to be made in design notes but nothing that will have any impact on the overall design of the project.

Mr. Grady asked for an explanation on the grinder pumps. Mr. Tadema-Wielandt replied the sewer wastewater is designed in such a way that there is existing gravity sewer which will have all wastewater flows from Phase 2 with the exception of four lots that will connect directly to the existing manhole on Henchey Way. The other 8 lots will pump out to a common force main, Mr. Tadema-Wielandt added.

Mr. Tadema-Wielandt also noted they have submitted a sewer application with the Kennebunkport Sewer Department.

In continued discussions with the Board members about the road design and improvements to Henchey Way, Mr. Tadema-Wielandt stated the Right of Way does widen out to the required 50 feet once on the subject parcel and there is 18 feet of pavement on the entire stretch which does meet the standard. What the first 100 feet of Henchey Way will not have is the sidewalk and shoulders, Mr. Tadema-Wielandt added.

In discussions about road design and traffic analysis, Mr. Tadema-Wielandt stated improving Henchey Way to have a second means of getting in/out of the development is better for safety for emergency vehicle access.

Ms. Pearlmuter commented it is a strange intersection where Henchey Way meets Kings Hwy but she is more concerned with pedestrian traffic rather than vehicular traffic. Ms. Pearlmuter also suggested there should be some lighting for people walking back from the beach at dusk. To avoid increased traffic on Henchey Way, Ms. Pearlmuter suggested having a gate across the road making it an emergency access road only.

Mr. Bowley addressed the Board to explain that it has always been understood on his part that this Application could potentially impact the abutters, particularly the Fetzners and the Millers. Mr. Bowley explained he is very mindful of the safety concerns as he will be living in this subdivision himself. The importance of connectivity for safety and design simplicity is mentioned in the Kennebunkport Comprehensive Plan, Mr. Bowley added, and along with the environmental impact are two important aspects he considers greatly.

Mr. Grady opened the Public Hearing.

Attorney Ben McCall, representing the Fetzners, addressed the Board to express their opposition to the Planning Board granting the requested waiver on the road design of Henchey Way. Mr. McCall questioned whether the Planning Board had the authority to grant such a waiver as a variance can only be granted by the Board of Appeals.

Ms. Pearlmuter offered her opinion that because Kennebunkport has a different type of Board of Appeals, it is not as clearly determined as Attorney McCall states.

Mr. Bill Fetzner addressed the Board to express his concerns with the traffic study as it does not address all of the traffic from beach goers dropping people off in the morning and picking up in the evening. The cumulative effect of people coming onto his property will take a toll; Mr. Fetzner cautioned and urged the Planning Board to compel the developer to discover other options.

Ms. Lisa Miller, of 4 Henchey Way, addressed the Board and using enlarged site plans, read a lengthy letter addressing two of her concerns regarding the identification of large trees and the increased traffic the development will cause. Ms. Miller also noted they own a view easement that prohibits anything larger than a one story house from being built within that easement area. Ms. Miller concluded her presentation by stating she is not opposed to the development of this property; however, she is opposed to the safety issue it will cause with the increased volume of traffic.

Mr. Paul Hogan of 324 Kings Hwy addressed the Board inquiring if the peer review includes the pump out station. Mr. Gilliam suggested Mr. Hogan raise his concerns about the pump out station with Mike Claus, the Highway Superintendent. Mr. Hogan also expressed his concerns about increased beach traffic from this development.

Mr. Ray Lockard of 1 New Biddeford Road addressed the Board to express his concerns about the increased traffic stating he does not believe the normal algorithms and traffic patterns applies to this unique area.

Mr. Francis asked if the opening of a connection through Henchey Way is going to generate more traffic. Mr. Lockard replied it will create more congestion.

Ms. Theresa Henchey-Debenedicts of 10 Ocean View Avenue addressed the Board to urge not to put street lighting and to express her opinion that widening the road would simply invite more people to travel on it. Ms. Henchey-Debenedicts also expressed concern that her sewer line would be damaged or crushed during construction and requested a mechanism so that does not occur.

Due to the increasing late hour, the Board members discussed and agreed to continue the Public Hearing at the next Planning Board meeting. Mr. Austin asked the Board for some guidance on the proposed improvements to Henchey Way in going forward with this Application. The Board members offered their opinions and agreed they would prefer to hear from the Town Attorney before making any decisions or suggestions.

Ms. Pearlmutter made a motion to continue the Public Hearing. Mr. Grady seconded the motion and the vote was unanimous.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary