

**Kennebunkport Planning Board
October 19th, 2022 @ 6:00 PM
Hybrid Meeting Via ZOOM and In-Person
32 North Street, Kennebunkport**

A meeting of the Planning Board was held on Wednesday, October 19th, 2022 in-person and via the ZOOM format. The meeting convened at 6:00 p.m.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, D. Scott Mahoney, Ed Francis, Larry Simmons, George Lichte via Zoom

Approval of Minutes: Mr. Francis made a motion to approve the minutes of the October 5th, 2022 Planning Board meeting. Ms. Pearlmutter seconded the motion, and the motion passed with a vote of 5-0 with Mr. Boak abstaining from voting.

Items:

1. **220902 Woodland Drive - Duncan MacDougall - Coastal Creations/Agent - Postponed at the Request of the Applicant** Site Plan Review Preliminary Application — ~~Continued Initial Review~~ — the Applicant seeks approval to split the lot on Woodland Drive into two (2) lots and eventually build two (2) separate homes (Assessor's Tax Map 8, block 3, Lot 29 in Cape Arundel Zone).
2. **220501 58 Langsford Road, LLC/Erik Peterson - Peterson Design Group/Agent** — Site Plan Review Application — **Initial Review** — the Applicant seeks approval to remove the existing house and construct a new house in a location that is less non-conforming (58 Langsford Road, Assessor's Tax Map 29, Block 1, Lot 22 in the Cape Porpoise West Zone).

Mr. Boak introduced the agenda item.

Mr. Erik Peterson addressed the Board stating this is a revised application in that they have modified the existing application that was put before the Board significantly to shrink the footprint and to minimize any affect this project might have on any of the neighbors' views.

For clarification Mr. Simmons asked if this was the August 24th revision. Mr. Peterson confirmed that is correct.

Using the enlarged site plans he brought to the meeting, Mr. Peterson indicated on the plans where the proposed structure would be located on the parcel which is smaller in footprint than the existing structure and will be approximately 3 feet further from the water. Lot coverage is reduced significantly, Mr. Peterson continued, which is currently 52.1% with 1,348 square feet and the proposed

structure will have a lot coverage of 35.66% with 1,337 square feet for the new building. The Applicant is seeking an 11.5% increase in area and a 28.74% increase in volume as they will be raising the building to meet FEMA flood elevations and will be under the town's height restriction, Mr. Peterson concluded.

Ms. Pearlmutter asked what the height of the new building will be. Mr. Peterson replied the total height of the proposed structure is 29 feet 8 inches.

Ms. Pearlmutter asked if they were still bird-proofing the windows and have cautioned the property owners on the use of fertilizers and pesticides within proximity to the water. Mr. Peterson confirmed the windows will be double-hung windows. Ms. Pearlmutter informed the property owner who was in attendance at the meeting, on guidelines for fertilizer restrictions that can be found on the town's website to help protect the waters.

There were no further questions from the Board members.

Ms. Pearlmutter made a motion the Application is complete. Mr. Mahoney seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting. Mr. Simmons volunteered as Case Manager.

3. 220904 Hidden Pond – Stephen Doe – Sebago Technics/Agent – Site Plan Review – Public Hearing – the Applicant seeks to convert the bungalows (Phase II) from a seasonal use to a year-round use (354-356 Goose Rocks Road, Assessor's Tax Map 38-1-8 and 37-3-3 in the Free Enterprise Zone).

Mr. Boak introduced the agenda item.

Mr. Steve Doe along with Attorney Ralph Austin addressed the Board stating that he sent a letter on October 13th addressing some open items the Board had asked about and offered to briefly run through his responses.

Mr. Doe read through his responses submitted which were:

1. Updated Certificate of Existence
2. Additional plans on erosion control measures
3. Letter to Fire Chief and follow-up phone call confirming there were no concerns as long as fire hydrants were kept clear of snow in the winter. Fire Chief did request a lockbox be installed at the event barn. Mr. Doe will request a letter from the Fire Chief to be included with the Application.
4. Regarding the septic systems, they are designed for year-round use so there is no need for additional inspections other than the 2 inspections per year already occurring in the Spring and Fall.

5. Questions on previous conditions of approval by the Board on the number of events. Currently the Applicant is restricted to 30 events per year and are asking to increase that by 20 more events with 4 of those as outside events.

Mr. Francis asked for some clarification on how many events are currently held on the property. Mr. Doe responded he does not know how many events they hold during the season, but they do not hold 30 events during the time they've been open from May to October.

Ms. Pearlmutter asked how many events they hold now. Mr. Doe replied he did not know. Ms. Pearlmutter reminded the Applicant that she requested that information at the last meeting; adding it is one of the conditions of approval when they limited the events to 30 per calendar year and no more than 4 outside events that there would be a required staff person to monitor those limitations. Again Ms. Pearlmutter requested to know exactly how many events are held and what type of events those are. Mr. Doe agreed to find out and provide that information to the Board.

The Board members, Mr. Doe, and Attorney Austin had a detailed discussion on the number and type of events held on the premises along with abutters' concerns regarding noise and the property's history of zoning and code issues under a previous owner.

Attorney Austin explained the previous owners of Hidden Pond, back in 2016 had a number of zoning and code issues which were resolved with the Town Manager and Mr. Gilliam.

Mr. Gilliam informed the Board members that he is not aware the Code Enforcement Office has received any actual evidence of any violations of conditions.

Ms. Pearlmutter asked about the amount of deciduous vegetation on the property that would be absent in the winter months to help with buttering any noise from events held on the property. Ms. Pearlmutter asked if there is a winter aerial photo the Board members could view. Mr. Doe agreed to try to locate an aerial photo of the property in the winter months.

Ms. Pearlmutter expressed her concerns with this requested additional use and the sound traveling that could bother abutters. Mr. Doe indicated on the site plans where any tented events would be located which would be blocked by the barn and farthest from any abutters' houses.

Mr. Doe continued with his review of his submitted letter noting there were concerns from neighbors about site lighting. Mr. Doe explained they are not changing any fixtures on the property which currently are all under 100 watts.

Lastly Mr. Doe provided information that there will be some blasting and they will follow the town's blasting ordinance.

In response to the request for aerial photos, Mr. Gilliam informed the Board the town's GIS maps are all typically done during a leaf-off season and instructed the Board members and audience where those maps are located on the town website.

Mr. Simmons questioned what the sound level is at the perimeter of the property when there is an outside event being held, particularly if there is a band at such events.

Mr. Gilliam offered the town Code Enforcement Office did not receive any noise complaints but those typically would be handled by the Police Department. Mr. Doe explained back in 2016 there were some issues raised with abutters about noise and then when the Board and Applicant came up with the set of conditions limiting the number of outdoor events and no amplified music at such events.

Mr. Gilliam offered to contact the Police Department to see if there have been substantiated noise complaints over the past couple of years.

Mr. Boak opened the Public Hearing.

There were no comments or questions from the audience in attendance.

Ms. Ann Corby of Goose Rocks Beach addressed the Board via Zoom and asked what the draw will be to Hidden Pond in the wintertime. Attorney Austin responded that honestly the operators of the property do not know what the draw will be but feel there's enough demand based on Earth being open year-round 2 years ago that they feel this will be successful as well.

Ms. Corby then asked if there was anything special planned for this period of time. Attorney Austin replied not that he is aware of.

There were no other hands raised on Zoom.

Mr. Boak suggested continuing the Public Hearing until the next Planning Board meeting. The Board members and Applicant had a brief discussion on this topic.

Attorney Austin requested if the Public Hearing is to be continued to the next meeting that it be limited to simply the submission of those items (police report, aerial photo, and Fire Chief letter) and any public input only on those items.

Mr. Gilliam showed a GIS photo of the property during the leaf-off period and displayed on the screen for the viewing audience and the Board members.

Mr. Boak asked if there were any other audience members who wished to speak.

Ms. Ann Hand addressed the Board via Zoom stating when there are outdoor events, she can hear music in her house with the windows closed. Ms. Hand added the issue in the past is there is no mechanism for the Police Department to refer any noise complaints they receive to the town offices.

Ms. Pearlmutter asked Ms. Hand if she has complained to the Police Department about noise at Hidden Pond. Ms. Hand replied she has in the past but not in the last year or so.

Mr. Gilliam agreed with Ms. Hand's stating that unless there is a request for that information there really isn't a mechanism for the town offices to be notified of any noise complaints, but he suspects there is a record of the call and a record of the visit in the Police Department's logs.

Ms. Hand questioned whether perspective customers to Hidden Pond are informed of the conditions for holding outside events that outdoor music needs to end at 9:00p.m.

Mr. Doe added that the condition placed on events outside is the music has to stop at 9:00pm and the function needs to stop at 11:00pm

Citing the definition of Conditional Use in the Land Use Ordinance which is: "A structure or use which is generally inappropriate without restrictions in a given zone, which if controlled as to location, size and off-site impacts, may have no adverse effects upon the public health, safety or welfare", Ms. Pearlmutter expressed caution in granting 20 more events to be held until the Board has received the report from the Police Department.

Mr. Boak asked the Applicant if they could find out from the new management of the property if consumers are informed of the 9:00p.m. and 11:00p.m. restrictions when booking an event. Mr. Doe explained he would ask the new owners and provide their answer to the Board.

For clarification purposes, Mr. Francis stated the two specific questions the Board is requesting answers to are: 1.) What is the history of complaints, noise complaints, and how were they dealt with, and 2.) What is the operating procedure that Hidden Pond has in place to meet the requirements of having someone on staff who takes care of enforcement?

Mr. Gilliam suggested perhaps Hidden Pond could provide a copy of some operating agreement folks have to sign when they book an event.

Ms. Pearlmutter added she would also like to know exactly how many events actually have been held on the property and depending on that the Planning Board may want to make further restrictions.

Mr. Francis made a motion to continue the Public Hearing pending receipt of the following pieces of information requested by the Board:

1. Information from the town Police Department regarding any substantiated noise complaints that have occurred,
2. Applicant to provide a copy of the contract they use for folks for events or an operating procedure,
3. Applicant will provide the number of actual events that have occurred,
4. Letter from the Fire Chief.

Ms. Pearlmutter seconded Mr. Francis' motion, and the vote was unanimous.

Ms. Pearlmutter volunteered as Case Manager for this Application.

- 4. 220901 52 Wildes District Road Jim Logan Longview Partners, LLC/Agent – Site Plan Review Preliminary Application – Initial Review**
– The Applicant seeks to alter the existing driveway and propose a private road that will include adaptation to allow for access for two additional gifted family lots (gifted lots are exempt from subdivision rules) (Assessor's Tax Map 9, Block 4, Lot 26A in Village residential Zone).

Mr. Boak introduced the agenda item.

Mr. Jim Logan representing the owner of the property Mr. John Noyes for estate planning purposes for future potential divisions of his property to make as gifts to his children. Mr. Logan stated he is here to present to the Board a Site Plan Review that is strictly for the road access, the access drive that Mr. Noyes has that provides access to his personal long-term residence to develop it to be wide enough and substantial enough to allow access for up to 3 dwellings. Mr. Logan explained the road is 650 feet in length and has a hammerhead at the end and varies and width from 16-feet at a minimum and in places is as wide as 18-feet.

Mr. Francis questioned why this is before the Planning Board. Mr. Gilliam explained the ordinance for a private road whenever it will serve 3 dwelling units is something that get reviewed by the Planning Board under a Site Plan Review. Mr. Gilliam added this Application is not a subdivision as this type of division is exempt under state statute because the proposed lots are gifted to family members so it does not fall under a Subdivision Review but it is a Site Plan Review for the road under the town's ordinance.

Mr. Logan stated the reason for being here tonight is to have the town recognize officially a Right of Way to be created on paper with an associated road name because it is private access way, to be named Echo Ledge Lane which will be vetted with town once the Planning Board has reviewed and approved.

Referring to Article 6.14 in the Land Use Ordinance, Mr. Logan explained he believes that section of the ordinance was conceived for Rights of Way to be constructed and not ones that have been in place for 30-40 years. Mr. Logan continued that is why the requirement that says "the center line of the roadway

should not be more than 3-feet off the centerline of the Right of Way” is not possible in number of locations along the road.

Mr. Boak asked if this was something that required a waiver from the Planning Board. Mr. Gilliam explained the ordinance gives the Planning Board some discretion when dealing with a pre-existing condition as in this case where there is a pre-existing driveway that is essentially being encumbered by a legal Right of Way, the legal Right of Way doesn't exist but is based on boundary and property line issues where there is not a lot of wiggle room. Mr. Gilliam added that where this driveway it is not the intention to expand further beyond what exists, he does not have any concerns with it.

Ms. Pearlmutter offered the Planning Board can make a request the standard is modified because of a pre-existing condition. Mr. Gilliam agreed with Ms. Pearlmutter's suggestion adding a waiver is not required but it should be stated in the Findings of Fact.

Ms. Pearlmutter also noted a minor error on the Application where the name of the town is omitted. Mr. Logan agreed to correct that error.

Mr. Logan asked the Board members if they would like to do a site walk. After a brief discussion, the Board members agreed a site walk was not necessary for this Application.

There were no further questions from the Board members.

Mr. Boak made a motion the Application is complete. Mr. Francis seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting. Mr. Mahoney agreed to be the Case Manager for this Application.

5. Other Business: K.J. Trudo Properties/Atlantic Resource Consultants, LLC Agent – the applicant seeks approval from the Board to submit the Preliminary Plan for Subdivision without the need for a third (3rd) Sketch Plan Application (Goose Rocks Road, Assessor's Tax Map 15, Block 1, Lot 1).

Mr. Boak introduced the agenda item.

Mr. Lucien Langlois addressed the Board stating they are ready now to submit for a Preliminary Site Plan Application, but the deadline has passed and am requesting an extension.

Mr. Boak asked when the Applicant was last before the Board. Mr. Langlois replied the had a site walk I December and a 2nd sketch plan was presented to the Planning Board in February. Mr. Langlois confirmed there have been no changes to the plan since the sketch plan was presented in February.

Ms. Pearlmutter made a motion to grant an extension of 9 months to November for a Preliminary Plan to be submitted. Mr. Boak seconded the motion, and the vote was unanimous.

6. Other Business: §240-7.14 Residential Rental Accommodations (administrative process changes).

Mr. Boak summarized the changes to the Residential Rental Accommodations process is that it is required that the Zoning Board of Appeals act on every Application and this proposal is to eliminate that process and have the Code Enforcement Office handle it. Mr. Boak read the proposed change to the ordinance as: “Code Enforcement Office upon successful property inspection and complete permit application shall issue the property owner only and subject to...” noting this is essentially removing the Zoning Board of Appeals from the process.

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

Mr. Gilliam explained there is not vote of approval necessary by the Planning Board at this time as this item will be on the ballot in November for the citizens to vote on.

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

Submitted By: Patricia Saunders, Planning Board Recording Secretary