

Kennebunkport Planning Board
November 2nd, 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, November 2nd, 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, Charles “Larry” Simmons, George Lichte

Approval of Minutes: Mr. Simmons made a motion to approve the minutes of the October 19th, 2022 Planning Board meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

1. **220902 Woodland Drive – Duncan MacDougall – Coastal Creations/Agent** – 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).

Mr. Boak introduced the agenda item.

Mr. MacDougall addressed the Board stating they are asking to take a 9.7-acre lot in a previously approved subdivision and divide it to eventually build two houses.

Mr. Boak questioned why this was listed as a new subdivision. Mr. Gilliam explained for the purposes of this Application it is a revision to a previously approved subdivision, so this is a request to add an additional lot in the subdivision. Mr. Boak then asked if the name of the subdivision needed to be changed. Mr. Gilliam replied the splitting of the lot would not trigger a subdivision name change.

Mr. Gilliam further explained this is a revision to a previously approved subdivision done by the Seashore Company and in the past, it wasn’t uncommon for a subdivision not to have a name since having subdivision names is a more recent item in the Subdivision Regulations and for this Application, he does not think it is necessary to be named specifically.

In reviewing the Application, the Board members listed several waivers that are being requested such as:

- High intensity soil survey
- Tree survey
- Traffic study.

Ms. Pearlmutter noted there are two trees at the end of Woodland Drive the Applicant mentioned may need to be trimmed and suggested the Applicant contact the John Ripton of the Shade Tree Committee to determine if they need permission to trim those trees. Mr. MacDougall agreed to contact the Shade Tree Committee.

Mr. MacDougall commented item #27 on the Application regarding erosion control is not applicable because this property is not in the watershed of the Great Pond and the impervious surface added from roofs and driveways for one house is not more than 5% of the overall area of the subdivision.

Ms. Pearlmutter made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous.

Mr. Boak stated a Public Hearing will be held at the next Planning Board meeting.

Mr. Francis asked if it was possible to shorten this process and not have a Final Subdivision Review. Mr. Gilliam offered to review the Kennebunkport Subdivision Regulations to see if the Planning Board holds that discretionary authority and report his findings to the Board later.

In their discussions, the Board members also agreed they would like to see a copy of the road association agreement as part of this subdivision. Mr. Gilliam explained that document already exists and is referenced in the deed but may be a separate recorded document, but he will provide a copy of it to the Board members.

Mr. Boak volunteered as Case Manager for this Application.

2. 220903 58 Langsford Road, LLC/Erik Peterson – Peterson Design Group/Agent — Site Plan Review Application – Public Hearing – 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). *Case Manager: Charles "Larry" Simmons.*

Mr. Boak introduced the agenda item.

Mr. Erik Peterson addressed the Board stating they are proposing to do a less than 30% expansion and to consolidate the footprint to move the house further away from the water and minimize the lot coverage. Mr. Peterson provided the following information with regards to this Application:

- Existing interior area of the existing building is 1,738 square feet
- Proposed interior area will be 1,939.5 square feet which is an 11.67% increase

- Volume of existing building will increase by 28.74%
- Lot coverage has been reduced from 51.2% to 35.66%.

Mr. Peterson also added the proposed building will be raised to meet the FEMA flood regulations and the underside of the house will not be used for a living space or mechanical uses or services other than storage.

Mr. Boak questioned that there is a portion of the proposed structure that will be closer to the ocean than the existing house. Mr. Peterson explained that portion Mr. Boak is referring to is closer to the cove, but the main body of the house will be moved back from the ocean frontage.

Ms. Pearlmutter asked if there was any comparison of the square footage that is moved back away from the ocean compared to the square footage of the southeasterly section of the property. Mr. Peterson offered to do a quick calculation of the two areas based on the site plans.

Attorney Ralph Austin representing the Applicant, addressed the Board stating it is their position that when you look at something as less or more non-conforming, you need to look at the totality of the circumstances.

Mr. Peterson reported that the deck area of the existing house is 260 square feet, and the deck area of the proposed house is 130 square feet, representing a decrease in lot coverage

Referring to the McCall's Attorney's letter, Ms. Pearlmutter stated that she read through their arguments which object to the proposed house plans and that she disagreed with the objections, adding the Land Use Ordinance allows for a footprint of a house to be reconfigured on the existing lot. Applicant proposes to reduce the area of lot coverage, but the increase in building volume is an allowed expansion of a residential use.

Attorney Austin added a similar argument was made before this Board in 2007 on a property at Skipper Joe's Point where an abutter challenged whether a structure could be moved but not the use of the structure, separating the structure from the use of the structure. The challenge went to Superior Court and the court agreed with the Planning Board that a structure and its use move together. The decision was upheld by the Maine State Supreme Court, Attorney Austin added, offering the case was *Nardy v. Town of Kennebunkport*. Mr. Gilliam offered to provide a copy of that case decision to the Board members.

Again, referring to the McCall's letter, Ms. Pearlmutter also disagreed with the McCall's other argument that the architectural style of the proposed house is not the same, as there are several houses in the neighborhood which are very much aligned to that architectural style.

Mr. Francis also commented on the McCall's letter stating it is important to note for the record that the Board takes abutter's comments and concerns seriously. Mr. Francis outlined the four main points in the McCall's letter and offered his opinion that through the Application submittal and the discussions with the Board members at the last meeting and this meeting, there is no compelling reason to deny this Application.

Mr. Simmons asked the Applicant to confirm they have agreed to include provisions to minimize bird strikes and limit the use of pesticides, herbicides, and fertilizers. Mr. Peterson replied yes there are screens on the windows and the owner stated at the last meeting he has no interest in using fertilizers and the like.

Mr. Simmons asked if they need a Permit By Rule from the Maine DEP. Mr. Peterson responded yes; they have already filed for that.

Mr. Simmons added the comments made in the Application regarding erosion control were sufficient in his opinion. Mr. Gilliam added those are typical items the Code Enforcement Office looks at to be identified as well when we do this kind of construction so any contractor that's doing earth disturbance work within the Shoreland Zone has to be certified in erosion control practices with the state to begin with and it's a standard that construction firms are used to providing.

Mr. Boak opened the Public Hearing.

Mr. Steven McCall addressed the Board stating most of their points were raised in their letter from their Attorney and wanted to thank the Board members for reviewing that letter. Mr. McCall questioned the setbacks where the proposed structure is being moved as there is a large hedgerow there and mentioned the proposed house removes the dedicated parking area in front of the house and has the parking on the existing driveway that is 1 car-width wide and will leave the owners of the proposed house parking in area that was intended to be an access way of two of the abutters.

Ms. Rita McCall addressed the Board to state the proposed house will block most of her views of the ocean from her yard and deck. Ms. McCall added the Applicant is not staying within the usage of the land and questioned why they should be allowed to build a bigger house.

The Board members, specifically Mr. Francis and Ms. Pearlmutter, explained to Ms. McCall that the ordinance allows for a one time increase in volume and area up to 30% provided they are not increasing the non-conformity of the property, which this Application is not.

To address Ms. McCall's complaint regarding her views of the ocean, Ms. Pearlmutter explained the only way the Board could address that issue is if there was a view easement in the deed which there is not. Mr. Peterson added to his knowledge there is no view easement on the property.

There were no further comments from the public in attendance or on Zoom.

Mr. Boak closed the Public Hearing.

Mr. Simmons made a motion to approve the Application. Mr. Mahoney seconded the motion, and the vote was unanimous.

Mr. Boak announced the Findings of Fact will be read at the next Planning Board meeting.

3. 220904 Hidden Pond – Stephen Doe – Sebago Technics/Agent – Site Plan Review – Continued 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). *Case Manager: Nina Pearlmutter.*

Mr. Boak introduced the agenda item.

Mr. Steve Doe along with Attorney Ralph Austin and Justin Grimes addressed the Board stating there were a few items the Board requested at the last meeting and Attorney Austin has sent two memos prior to this meeting along with a letter from the Fire Chief.

Ms. Pearlmutter asked to address some of the issues raised by letters from abutters. Ms. Pearlmutter explained in her opinion sound in the winter will carry more than in the summer and would recommend the number of events allowed in the winter be limited to 10 at the most with no outdoor events. Ms. Pearlmutter also suggested the 2 fire pits on the property be converted to propane to eliminate smoke pollution and to reduce fire danger from the wood fire pits.

Mr. Doe indicated on the site plans the location of the two fire pits on the property: one at Earth restaurant and the other at the Lodge. Mr. Doe added part of the experience in the winter is getting people outside.

Mr. Francis commented the Applicant listed several prior approvals from the Planning Board has been given and asked the Applicant why they included those approvals and to what degree is that germane to the current situation. Mr. Doe replied those approvals were required to be provided as part of the Application process. Attorney Auston added it is a requirement of the ordinance as the industry changes, the tourist season changes, and the

business evolves this, and other hospitality properties have come before the Board multiple times.

A lengthy and detailed discussion among the Board members, the Applicant and Mr. Gilliam occurred regarding the limitation of outside events, the noise constraints of those events, the limitation of amplified music, potential sound barriers.

Mr. Doe offered to conduct sound readings at the property line on a couple of events to get a baseline reading and provide that data to town offices. The Board members expressed their approval of that suggestion.

Mr. Boak opened the Public Hearing. There were no comments from the audience members in attendance.

Mr. Joe Novak, via Zoom addressed the Board stating he and his wife have enjoyed living adjacent to Hidden Pond and asked about the frequency of use of the visitor and especially of staff moving up/down the streets and adding congestion with the golf carts to/from the maintenance shop. Mr. Novak also asked if the management of Hidden Pond instruct their staff to be a little more respectful to the neighborhood and not having headlights shining directly into their house for long periods of time. Mr. Novak clarified he is looking more for a goodwill gesture than requesting action from the Board.

Mr. Grimes addressed the Board stating he would be happy to meet with Mr. Novak to look into ways to correct that behavior though at this time they are still considering what the right vehicle will be necessary since golf carts are not practical in the wintertime.

There were no further comments or questions via Zoom or in person.

Mr. Boak closed the Public Hearing.

After some discussion and negotiations, the Board members agreed to allowing an additional 15 events to include the 4 outdoor events.

Ms. Pearlmutter made a motion to approve the Application with a recommendation that the fire pits be converted to propane and that events be limited to 15 only with 4 of those to be outside during those 6 months. Mr. Simmons suggested adding a recommendation on monitoring the sound.

Ms. Pearlmutter amended her motion to include a condition that those 4 outside events are monitored for sound at the perimeter of the property and the Code Enforcement Office receives that report. Mr. Boak seconded the motion, and the vote was unanimous.

The Findings of Fact will read at the next Planning Board meeting.

4. **220901 52 Wildes District Road – Jim Logan – Longview Partners, LLC/Agent** – Site Plan Review Preliminary Application – **Public Hearing** – 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 addressed the Board on behalf of John Noyes and stated he has submitted prior to this meeting a letter from the Fire Chief along with an updated authorization letter.

There were no questions from the Board members.

Mr. Boak opened the Public Hearing. There were no questions from the audience in attendance or from the 7 attendees via Zoom. Mr. Boak closed the Public Hearing.

Mr. Francis made a motion to approve the Application. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Mr. Boak announced the Findings of Fact will be read at the next Planning Board meeting.

5. **221001 Kitty's Run – Christopher Coppi – Coppi Environmental, LLC/Agent** – Site Plan Review Application – **Initial Review** – This site plan review application is seeking to alter the number of service lots accessible by the existing driveway. A findings of fact from August 15th, 2012 stipulated the approval of the access driveway to service two lots. Applicant is seeking the altered driveway to ultimately service three lots. The existing driveway initially required approval by the Planning board due to wetland crossing (Assessor's Tax Map 13, Block 3, Lot 16B in the Free Enterprise Zone).

Mr. Boak introduced the agenda item.

Mr. Chris Coppi on behalf of the Applicant addressed the Board stating they are seeking approval for one additional lot for an access drive at Kitty's Run which is an existing road that was built within the approved Right of Way.

Mr. Boak stated all the Board is approving with this Application is use of a road from 2 lots to 3 lots. Mr. Gilliam added there is a previous set of Findings that identified the road had been approved for 2 lots and so because the Findings were specific to that and because the town ordinance requires the Planning Board approve a road that services 3 lots or more, hence that is why this Application is before the Board. Mr. Gilliam added the actual separation of the

lots falls under the jurisdiction of the Code Office since this is not a subdivision per the state statute.

Mr. Francis asked if they were proposing to make any changes to the existing driveway. Mr. Coppi replied no they are waiting for guidance from the town on the hammerhead in their discussions with the Fire Chief. Mr. Gilliam added the hammerhead end wasn't fully completed and just in discussion with the Fire Department they have some new apparatus coming into town and so we are working on getting specifications from the manufacturer on what is going to be needed.

Ms. Susan Hill, realtor addressed the Board requesting that a line from a 2012 Findings of Fact be removed prohibiting accessory apartments since the property is in the Free Enterprise Zone and with the new state legislature coming in 2023 that will allow accessory dwelling units for properties within the state of Maine. Mr. Gilliam further explained this is one of those situations where there is an old decision, in this instance from 2012, and modifications have been made to the Land Use Ordinance making accessory apartments permissible and the new legislation referred to will make accessory dwelling units a permitted use essentially on all single-family home lots in the state of Maine.

Mr. Boak asked for a copy of the 2012 Finding be provided to the Board and suggested a statement be added to this Application's Findings noting that provision no longer applies.

Mr. Boak made a motion the Application is complete. Ms. Pearlmutter seconded the motion, and the vote was unanimous. Mr. Boak announced a Public Hearing will be held at the next meeting.

Mr. Francis volunteered as Case Manager for this Application.

- 6. 221002 37 Pier Road – Devin Prock – Permitting with Prock, LLC/Agent**
– Site Plan Review Application – **Initial Review** – The site plan review application has been submitted with the intent to reconstruct a preexisting pier. The existing pier serves as a support structure for a residential cottage. Cottage to be temporarily relocated on the property for the duration of the requested rebuild. (Assessor's Tax Map 30, Block 1, Lot 10 in the Cape Porpoise East Zone).

Mr. Boak introduced the agenda item.

Mr. Devin Prock, representing Diane Cullen of 37 Per Road, addressed the Board stating they are proposing to replace her existing wharf to bring it up to the FEMA flood elevations. The finished dock will be roughly 14 feet above Mean Low Water and the cottage will be 1 ½ feet higher than it is now, Mr. Prock continued. Mr. Prock noted the agenda description is inaccurate as the cottage

will not be moved on site but instead will be jacked up in its same location and the foundation, piling and timber caps rebuilt in place to limit the stresses and possible damage to the inside of the cottage. Mr. Prock concluded his presentation by stating the wharf and footprint will remain the same and all materials will be pressure-treated timbers and galvanized fasteners typical for marine applications.

Ms. Pearlmutter commented there was no deed included in the Application. Mr. Prock agreed to provide a copy of that.

Mr. Prock also noted the Maine DEP approved the Permit By Rule which was forwarded to the town and offered to provide the entire approval package to the Code Enforcement Office.

Mr. Boak asked if this is in the Resource Protection Zone. Mr. Gilliam confirmed it is in the Resource Protection Zone. Mr. Prock noted he will correct that on the Application.

Mr. Prock also noted this is a working wharf as they use it for removing and putting their traps in the spring and fall.

Mr. Francis asked why this is considered maintenance of an existing structure and if they are changing the location of the pilings. Mr. Prock responded it is required where there is over 50% replacement it must come before the Planning Board, and they are not changing the location but are reducing the number of pilings considerably.

Ms. Pearlmutter commented the use is both residential and commercial. Mr. Gilliam agreed with Ms. Pearlmutter's statement it is a mixed use as it is privately owned but there is commercial use as well.

Mr. Simmons asked if they are going to use any existing post holes. Mr. Prock replied a lot of the surface under that pier is ledge so a lot of them will be pinned to the ledge or anchored to it and others will be driven; the majority will go in a new hole because of the layout and the structural aspect of the pier.

Mr. Prock added this project has also been approved by the Department of Marine Resources for the construction as a requirement for the Permit By Rule application.

Mr. Francis made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous.

Mr. Boak stated a Public Hearing will be held at the next meeting on November 16th, 2022. Mr. Lichte is Case Manager.

Ms. Diane Cullen addressed the Board to inform them she has had a legal name change to Diane Brassard.

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

Submitted By: Patricia Saunders, Planning Board Recording Secretary