

Kennebunkport Planning Board
May 17th, 2023 @ 6:00 PM
Hybrid Meeting Via ZOOM and In-Person
32 North Street, Kennebunkport

A meeting of the Planning Board was held on Wednesday, May 17th, 2023 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, Mike West

Approval of Minutes: Mr. Francis made a motion to approve the minutes of the May 3rd, 2023 Planning Board meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

- 1. 230401 Mills Road Subdivision – Michael Tadema-Wielandt, P.E. – Terradyn Consultants, LLC /Agent – Final Subdivision Application – Initial Review** – the Applicant is proposing to develop a 13-lot cluster subdivision, including a 1,650 linear foot road, stormwater management infrastructure, underground utilities, and pedestrian accommodations (Assessor’s Tax Map 25, Block 5, Lot 8 in Goose Rocks/Free Enterprise Zones).

Mr. Tom Boak introduced the agenda item.

Mr. Michael Tadema-Wielandt addressed the Board stating not much has changed since the Preliminary Subdivision Plan was approved earlier this year. One small change, Mr. Tadema-Wielandt noted, is on the existing lot there was a small encroachment of a barn on the Priscilla Spang property so to remedy that the landowner and the Applicant agreed to a land swap of about 3,000 square feet so now that barn is completely on the abutter’s property. There is no change in net area and has occurred entirely in the proposed open space area so there isn’t much consequence to the plan and a copy of the recorded deed has been included in this plan, Mr. Tadema-Wielandt commented.

Mr. Tadema-Wielandt also noted they have responded to the comments from Acorn Engineering’s peer review where most Acorn’s notes had to do with technical calculations related to the stormwater management plan. A letter of their comments and the Applicant’s responses was provided to the Board prior to this meeting, Mr. Tadema-Wielandt added.

A copy of the revised Homeowner’s Association documents was also provided, Mr. Tadema-Wielandt noted, and they have submitted to the Maine DEP for a stormwater permit and an NRPA permit through the Army Corps of Engineers.

Mr. West commented that the zip code for Feng Farms LLC was omitted in the Application. Mr. Tadema-Wielandt replied that the zip code is 02118.

Mr. West also asked if the new road had a name. Mr. Tadema-Wielandt replied that the name of the proposed subdivision is Prospect Reserve Subdivision, and the new road will be called Prospect Reserve Way. Mr. Gilliam commented that it is the Public Safety Committee that reviews and approves road names so that is something that should be filed with the Public Safety Committee.

In reviewing the Homeowner's Association documents, Ms. Pearlmutter noted that there is no information on keeping screens on the windows or other measures to prevent bird strikes nor is there language restricting the use of pesticides and fertilizers. Mr. Tadema-Wielandt asked if there are performance standards related to these issues. Ms. Pearlmutter responded there are performance standards in the Land Use Ordinance and in the Subdivision Regulations to insure there is no significant impact on wildlife.

Mr. Tadema-Wielandt commented there is a section in the Homeowners Association documents about best practices. The Applicant and Board members had a more detailed discussion on the environmentally sensitive areas of the property, restricting the use of pesticides, fertilizers, and herbicides, identifying large trees on the property, and indicating those on the site plans along with marking the building envelopes for each proposed lot in comparison to the high intensity soil survey.

Ms. Pearlmutter also commented the Applicant needs to obtain a permit from the Maine Department of Transportation as well. Mr. Tadema-Wielandt agreed with Ms. Pearlmutter noting it is for the road entrance permit because it is on a state road.

Mr. Simmons asked the Applicant to confirm they have the correct turn radius in the roundabout to accommodate the new town Fire Truck. Mr. Tadema-Wielandt acknowledged receipt of the updated diagrams from the Code Enforcement Office and will confirm they have the correct turn radius.

Mr. Simmons also asked about the NRPA permit. Mr. Tadema-Wielandt stated the NRPA permit is reviewed by the DEP who reviews them concurrently and will cover the stormwater permit and wetland impacts as well.

Mr. Gilliam commented there were a few minor items to be addressed such as:

- The electric utilities are still identified on the cover sheet as Kennebunk Light and Power
- The existing septic systems and wells need to be identified within 200 feet of the property line.
- Identify a 50-foot no-cut buffer along Route 9, unless the Board decides to waive that restriction.

Mr. Gilliam also asked the Board if they would like to request having Acorn Engineering review the Applicant's responses to their original peer review. On behalf of the Board members, Mr. Boak agreed it would be beneficial to have Acorn review the Applicant's answers.

Mr. Francis suggested having the town's Conservation Committee review the Applicant's proposed Homeowner's Association documents to ensure they align with the Committee's draft ordinance language involving the use of pesticides, fertilizers, and herbicides in environmentally sensitive areas. Mr. Gilliam strongly cautioned against Mr. Francis's suggestion as it is premature and will set a bad precedent for an application in its final stage of approval from the Planning Board, to be held to restrictions set forth in a potential draft ordinance that has not been vetted by town staff or the town attorney.

After some discussion on Mr. Francis's suggestion, Mr. Gilliam also cautioned the Board members there is very little information in term of performance standards in the Subdivision Regulations or even in the town ordinance that dictates what should and shouldn't be in a Homeowner's Association document.

After some discussion on in-process ordinances proposed and Applications being held liable to those ordinances, the Board members agreed it may be prudent to hold a workshop with the Conservation Commission soon.

Mr. Tadema-Wielandt noted, as an Applicant, it is difficult to put things in place that are not specifically mentioned in the ordinance.

Mr. Simmons summarized the following list of items discussed tonight that need to be included in this Application:

1. The Department of Transportation entrance permit,
2. Change the utility company identified on the cover page,
3. Show the separation of wells and septic systems for abutting properties,
4. Indicate the 50-foot no-cut buffer along Route 9.

Mr. Simmons also added the Board has requested to have Acorn Engineering review the Applicant's responses to their original review.

Ms. Pearlmutter added there should probably also be a letter from the state's historic preservation society.

There was a brief discussion on the estimates of the cost of the infrastructure and blasting. Mr. Tadema-Wielandt agreed to provide a revised estimate of said costs.

Ms. Pearlmutter made a motion that the Application is complete pending receipt of the items listed previously. Mr. Simmons seconded the motion, and the vote was unanimous.

A Public Hearing will be held at the next meeting.

Mr. West is Case Manager for this Application.

2. 230404 803 Kings Highway – John Gallant/Michael Bedell – Kennebunk River Architects/Agent – Site Plan Review – **Initial Review** – the Applicant is seeking a minor expansion of existing single-family home, expansion meets all criteria set forth in the Maine DEP and has been issued a permit to be modified in its current location as designed (Assessor's Tax Map 34, Block 1, Lot 12 in Goose Rocks Zone).

Mr. Boak introduced the agenda item.

Mr. Mike Bedell addressed the Board stating they are seeking approval to do a minor expansion to an existing non-conforming home at 803 Kings Highway by raising the house up onto piers. Mr. Bedell added they will keep the footprint the same but will increase the volume by rearranging the floor plan and the roof lines.

Mr. Bedell further explained they will take out the existing basement which has the sump pump, mechanicals, and oil tank, pick the house up to meet the new DEP requirements, and put it down on a pier foundation with the mechanicals on the first floor. Mr. Bedell added the interior square footage will increase from 1,736 to 1,992.

Ms. Pearlmutter asked if the house had been remodeled before and what the total height will be. Mr. Bedell replied the house has not been remodeled before and the new height will be 32 feet.

Ms. Pearlmutter then asked if they were adding windows. Mr. Bedell replied yes, they will be mostly double hung, screened with some smaller picture windows. The Applicant and Ms. Pearlmutter had a brief discussion on preventative measures for bird strikes.

Ms. Pearlmutter noted there was not a copy of the property deed in the Application. Mr. Bedell agreed to provide that to the Code Enforcement Office.

Mr. Gilliam noted there is a 30-foot height restriction in Kennebunkport for the Goose Rocks Zone.

Ms. Pearlmutter also commented that it is helpful to the Board members to have a design of what the structure is currently in order to compare it to the new building to aid in determining the extra volume proposed.

The Board members and Applicant had a brief discussion on the non-conformities of the structure and the setbacks.

Mr. Simmons asked if the Applicant could provide information on the rebar sizes to be used in the new foundation. Mr. Bedell agreed to provide that information.

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

A Public Hearing will be held at the next Planning Board meeting.

Mr. Simmons is Case Manager for this Application.

3. 230405 21 Norwood Lane - Mark and Katherine Badertsher/John Einsiedler, R.A./Agent - Kennebunk River Architects/Agent - Site Plan Review - **Initial Review** - the Applicant proposes to add a new foundation under the existing structure, elevating the structure to meet FEMA flood requirements. Additionally, they propose to move the barn structure further away from the resource on the southwest side of the property (Assessor's Tax Map 34, Block 2, Lot 2 in the Goose Rocks Zone).

Mr. Boak introduced the agenda item.

Mr. John Einsiedler addressed the Board stating they are proposing to put a new foundation under an existing house and to move an existing barn further away from the resource.

For the Board members Mr. Einsiedler indicated on the site plans where the barn was currently located stating they would like to move it about 20 feet and to add some fill to further help isolate the house from the water that came up from last big storm this past December.

Ms. Pearlmutter questioned if the Applicant is allowed to put fill in that area. Mr. Gilliam explained the Applicant must obtain permission from the DEP for that level of fill.

A discussion on the decrease in non-conformity, the property setbacks and the wetland areas, and the square footage indicated on the tax card.

To address Ms. Pearlmutter's concerns about bird strikes, Mr. Einsiedler stated the windows will be double hung with screens on the outside of the windows, and the patio doors will have screens on the outside as well.

The Board members, Mr. Einsiedler, and Mr. Gilliam had a detailed discussion on the flood zones identified for both the river and the marsh, the flood elevations, high-water marks, sea level rise, and measurements from the 1983 flood maps.

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

A Public Hearing will be held at the next Planning Board meeting.

Mr. Francis is Case Manager for this Application.

4. Other Business:

- a. Chapter 240 – Land Use Article 6. Town-wide Regulations (private road construction)**
- b. Chapter 240 – Land Use Article 2. Terminology (regarding Accessory Apartments)**

Mr. Boak introduced the above-named agenda items noting these items have been discussed at previous Planning Board and Board of Selectmen meetings.

Mr. Boak opened the Public Hearing. There were no audience members in attendance either in person or on Zoom. Mr. Boak closed the Public Hearing.

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

Submitted By: Patricia Saunders, Planning Board Recording Secretary