

Kennebunkport Planning Board
January 17, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A regular meeting of the Planning Board was held on Wednesday, January 3rd, 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 Pearlmutt, Edward Francis

Approval of Minutes: Mr. Grady announced at the last meeting the Board agreed to table approval of the December 20, 2017 meeting minutes until the Board members had a chance to review the video of the meeting. Mr. Grady noted at the January 3, 2018 Planning Board meeting Mr. Messer requested to add some language to the minutes of the December 20th, 2017 meeting minutes. Upon review of the video, Mr. Grady offered his opinion that the minutes accurately reflect Mr. Messer's opinion and he does not see a need to make any amendments. Mr. Messer acknowledged Mr. Grady's comments and requested his views be made known that he does not agree with the Board's practice of writing the Findings of Fact in printed form with signature lines before the Board has their discussion or votes on an Application.

Mr. Boak made a motion to approve the minutes from the December 20th, 2017 Planning Board meeting. Mr. Messer seconded the motion and the vote was unanimous.

Ms. Pearlmutt noted an error on page of 3 of the January 3rd, 2018 Planning Board meeting minutes. Ms. Pearlmutt made a motion to approve the January 3rd, 2018 meeting minutes as amended to reflect a reference to "pH" be changed to "PAH" under Agenda item #3. Mr. Boak seconded the motion and the vote was unanimous.

Items:

1. 171201 Sandy Pines Campground / Sebago Technics, Authorized Agent – Site Plan Review – Initial Review – 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. (227 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.

Mr. Steve Doe of Sebago Technics addressed the Board along with Attorney Ralph Austin, and stated the following requests were made at the last meeting:

1. Clarification on how sites are being reconfigured or moved
2. Provide information on the proposed new bathhouse and the capacity of the septic system
3. Provide an explanation on the additional pavement roadway to the site in exchange for elimination of site #21 to be taken out of the rental area
4. Provide documentation of property title transfer from JTJ, LLC to Sandy Pines, LLC and correct typos in said documents.

Mr. Doe continued with his presentation using enlarged site maps of the property to explain how they are proposing to perform some facility upgrades to improve pedestrian and vehicular access to the site due to safety concerns. Mr. Doe gave a detailed explanation of the three areas to be improved: 1) main entrance, 2) glam tent area, & 3) existing bathhouse.

Using a detailed sketch of property's entrance, Mr. Doe explained all of the proposed improvements to the gate system, pedestrian path and additional thru lane for returning registered guests.

Mr. Messer asked if the proposed sidewalks shown on the plan were included in their calculations. Mr. Doe replied they were not but he could add those to the site plan.

Moving onto the next set of enlarged site plans, Mr. Doe explained the proposed new glam tent area is in place of existing RV sites including a new common cooking area along with an overflow parking area.

Mr. Doe concluded his presentation by pointing out where they are requesting to add a new bathhouse at the end of the property for the convenience of their guests. Mr. Doe also explained what sites would be relocated or converted from RV sites to glam tent sites.

Mr. Messer asked how many sites were on the property when the Applicant first purchased the land. Mr. Doe replied there are 324 sites but they only advertise for 283 sites. Mr. Messer responded he counted 300 on one of the plans submitted in the Application. Mr. Doe answered there are sites on the property that the owner keeps in reserve but does not rent out and the town's files show all of the 326 sites. Mr. Doe also added they are reducing the number of sites by one so the total number of sites on the property will be 323.

Ms. Pearlmutt asked if the number of sites was increased before it was purchased. Mr. Doe replied he does not believe so.

Mr. Austin addressed the Board stating the Applicant counted the number of camping sites on the property several times before the purchase was finalized and determined the number of sites to be 324. The State has licensed the property for 400 but there has never been 400 sites used on the property, Mr. Austin added, and were advised by the Kennebunkport Code Enforcement Office the 324 sites were grandfathered.

Ms. Pearlmutter asked if the sites haven't been used in over a year do you still consider them grandfathered. Mr. Austin replied yes, the 283 sites are what they advertise because sometimes there are people who register for 1 site when they actually need more than one.

The Board members and Mr. Doe and Mr. Austin had a brief discussion on non-conforming uses.

Mr. Messer questioned whether the proposed new buildings make the property more non-conforming. Mr. Austin argued it does not because it does not encroach on any of the setbacks nor does it change the property's use as a campground.

Referring to the requirements in Article 7.3.A.1. which states: "*The site of the campground shall contain a total area of at least five thousand (5,000) square feet per recreational vehicle, tent, or shelter, not including roads and driveways. Land supporting wetland vegetation, and land below the normal high water mark of a body of water shall not be included in calculating land area per site*" Mr. Francis asked the Applicant how could they assure the Board this requirement is being met? Mr. Austin responded they are assuming they have adequate square footage per site but would supply that data for the Board before the next meeting. All Board members agreed it was necessary for them to have included in the Application the exact square footage per campsite for the entire property.

Mr. Grady acknowledged the Planning Board has received several emails and written correspondence about this project which raised a number of questions. This is why the Board has asked town counsel, Attorney Amy Tchao to clarify what is the Planning Board's responsibility and what is within their purview, Mr. Grady explained.

Ms. Tchao stated this campground property is a pre-existing non-conforming use that is grandfathered but it cannot be expanded and instructed the Board to look at the overall campground use as a whole. In a detailed account on case law regarding historical use, Ms. Tchao further explained the Board needs to look at the scope and character of the use as it was prior to today's standards being enacted. There are cases that do allow for some natural growth and expansion in time, but at some point the Board needs to determine if the Application is overreaching the grandfathered use, Ms. Tchao added.

Citing Articles 10.2.A.2. and 10.2.A.3., Ms. Tchao informed the Board members this Application clearly falls within the Board's authority and suggested the Board should review any expansion of a campground use as a whole.

Mr. Austin stated they have submitted a full site plan on what Sandy Pines' intent and development is, noting the property is and shall remain a campground and that they are only asking to make the entrance safer, add a bathhouse for more convenience that doesn't require an expansion of the septic system and to relocate some of the campsites. There are no development plans beyond what we've requested in this Application, Mr. Austin stated.

Mr. Grady noted this is the first time Sandy Pines has been before the Planning Board. In reference to some of the correspondence received from the public, Mr. Grady raised the concern that at some time in the future the Applicant will be back before the Board to trade those campsites for park model sites. Mr. Austin responded only 76 park model sites are approved and grandfathered so any other RVs need to be removed offsite during the off season and they are.

Ms. Tchao shared with the Board and the audience a detailed explanation of Frost v. Lucy, 231 A.2d 441 (Me. 1967) as an example of permissible and impermissible expansions of use.

Mr. Messer asked the Applicant to explain what is currently at the campsite that was not there previously. Mr. Austin replied the glam tents are new but they are merely fancy tents that are seasonal and are removed from the campground at the end of the season.

Mr. Francis asked if the glamping tents require a bigger site. Mr. Doe responded No, the glam tents only sleep 2 people.

Mr. Grady asked the Applicant to provide the Board with a clarification on the square footage per the number of camping sites for the entire property.

Mr. Pearlmutter agreed with Mr. Grady's request stating it is important for the Board and the town to have a basis of the square footage per campsite in the event of future changes to the property.

Mr. Grady opened the Public Hearing.

Mr. Richard Driver of Goose Rocks Beach addressed the Board asking if Mr. Austin could explain what other improvements the Applicant is contemplating in the future. Mr. Austin replied he does not recall mentioning there were other improvements they were planning in the future; however, in meeting with the Code Enforcement Office prior to submitting this Application there were a number of things they would like to do but were advised by the town that those items would not be allowed.

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Mr. Driver asked about the 76 park units that have been historically on the property and asked if those units had decks and sunrooms. Mr. Doe replied some of those units have decks and sunrooms, all of which have been permitted by the Code Enforcement Office.

Mr. Driver questioned whether those park models are changing the character of the site and the use as they are the equivalent to permanent construction. Mr. Austin disagreed with Mr. Driver's comment by stating what is currently on the property is in keeping with what was there before and was determined by the Code Enforcement Office to be permissible.

Mr. Bob Sherman addressed the Board and asked if the number of sites is a fixed number that can't be increased. Mr. Doe responded stating there are 76 year round RV sites that are grandfathered and that number cannot be increased.

As a member of the Town's Goose Rocks Beach Advisory Committee, Mr. Sherman requested the Applicant use the property respectfully and to keep their relationship with their neighbors and the Goose Rocks Beach community a harmonious one.

To provide some history of the town offices' interaction with the site, Mr. Gilliam explained he has had many conversations with the previous users of the campsite that were not aware of the property being up for sale until they were given their vacancy notice. Mr. Gilliam further explained his office has gathered information from the owners, performed several site walks of the property and done the necessary due diligence on the history of the property which included obtaining a copy of the license for resale of alcohol for the camp store for guests of the site. Among other things the town was able to determine through their research, Mr. Gilliam added, is there are records of permits for decks, sunrooms, and sheds but there is not a definitive site plan of the property prior to the Applicant's purchase.

Ms. Carol Sherman, of Kings Hwy addressed the Board and asked the Applicant take responsibility to develop a current comprehensive concrete plan to protect the environment of Sandy Pines. Specifically, Ms. Sherman asked Mr. Harrington to address the following items:

1. Provide annual septic system testing
2. Protect the native plants and remove invasive species
3. Protect the neighboring wildlife
4. Protect the wetlands
5. Protect the ground using organic fertilizers, etc.
6. Protect the marsh
7. Protect the water quality.

Ms. Sherman also suggested Mr. Harrington should elicit the assistance of the many town committees to help with this protection of Sandy Pines such as the Natural Resource Committee, the Kennebunkport Conservation Committee, Lawns for Lobsters, the Kennebunkport Conservation Trust and the Shade Tree Committee to name a few.

Mr. Grady noted the Board should continue the Public Hearing for the next meeting in order to gather additional information as requested from the Applicant such as the total lot coverage calculations and the number of sites on the property to establish a baseline going forward.

Mr. Messer requested the following three points be discussed at the next meeting:

1. Applicant to provide further explanation on the buffering in accordance with Article 10.10.A.1.d.
2. Planning Board to take a vote on whether this Application is an expansion of the character of the property
3. A condition of approval to be placed on the Application to maintain the current ratio on tents to glam tents to RVs.

Ms. Pearlmutter commented she did not believe the Planning Board could place a condition of approval on the ratio as noted above. Mr. Messer corrected his statement by saying he was referring to the grandfathered 76 RV sites.

In reference to concerns raised about other park model sites beyond the grandfathered 76 sites being allowed to add a deck or porch to their site, Mr. Austin offered a condition that the Applicant would not authorize any deck or permanent addition to any site other than the previously approved 76 sites.

Mr. Boak made a motion to continue the Public Hearing until the next Planning Board meeting on February 7th, 2018. Ms. Pearlmutter seconded the motion and the vote was unanimous.

3. 171202 Melissa Winstanley / Bruce Read, Esq., Authorized Agent – Site Plan Review – Public Hearing – for re-approval to do a maintenance dredge to remove approximately 310 cubic yards of silt and sand to restore adequate mooring and access depths at an existing recreational pier. This action was previously requested by the Applicant and approved by the Board on November 16, 2016, however a permit to do the work was not pulled, and the approval expired. (85 Ocean Avenue, identified as Assessor's Tax Map 08, Block 001, Lot 18 in the Village Residential, Shoreland and Resource Protection Zones.)

Mr. Grady introduced the Agenda item.

Mr. Bruce Read addressed the Board on behalf of Melissa Winstanley stating this is re-approval to perform a maintenance dredge in an attempt to economize the cost by coordinating the work along with 3 other neighbors using the same contractor. Mr. Read mentioned the Board questioned at the last meeting why the dump site was changed from inland disposal to off shore disposal and explained the results of the samples most recently tested were within the limits to be allowed for disposal off shore. Mr. Read also added that no additional yardage has changed since the original approval.

There were no questions from the Board members.

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

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

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

3. 171203 Margaret Jandl / Walsh Engineering, Authorized Agent – Site Plan Review – Public Hearing – for approval to raise existing single-family dwelling onto new foundation and add access stairs. (77 Marshall Point Road, Assessor's Tax Map 31, Block 3, Lot 12 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Bill Walsh addressed the Board on behalf of Margaret Jandl stating the property is a 0.54 acre parcel with an existing single family residence with 16.7% lot coverage. Mr. Walsh explained they are requesting to raise the house and place it on a new foundation to meet the velocity zone standards. The Applicant has filed a Permit By Rule with the Maine Department of Environmental Protection, Mr. Walsh added.

Mr. Messer questioned whether the addition of the deck makes the structure more non-conforming and thus would not be allowed under the Land Use Ordinance. Mr. Walsh responded that the deck is within the setbacks and the structure is still within the 20% lot coverage.

Mr. Grady pointed out a discrepancy in the lot size between the town's tax card and the land survey submitted in the Application. Mr. Walsh responded he believes the town record incorrectly states the parcel is 0.41 acres as the professional land surveyor measured the property to be 0.54 acres. Mr. Gilliam commented the town uses professional surveys to update the property record cards.

Mr. Grady asked Mr. Gilliam if the town had any concerns with this Application. Mr. Gilliam replied No, adding he agreed with the method the Applicant used in calculating the lot area.

Mr. Grady opened the Public Hearing. There were no questions or comments. Mr. Grady closed the Public Hearing.

Mr. Messer made a motion to approve the Application for 77 Marshall Point Road for permission to construct a new foundation and deck. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Grady was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

4. 171205 Gregory and Heather Burke / Walsh Engineering, Authorized Agent – Site Plan Review – Initial Review – for approval to perform site improvements to this property including removing and replacing a garage in a more conforming location, reconstruction of a deteriorating wall on the shoreline as well as installation of a dock system. (82 Ocean Avenue, Map 8, Block 1 Lot 2 in the Village Residential, Shoreland and Resource Protection Zones.)

Mr. Grady introduced the Agenda item.

Mr. Bill Walsh addressed the Board stating they are requesting to rebuild an existing deteriorating wooden retaining wall, regrade a section of the backyard for a dock to be stored in the off-season and raise the garage and rebuild it attaching it to the existing house. Mr. Walsh explained the property is a 0.27 acre parcel with 2 separate structures. Using an enlarged site map, Mr. Walsh indicated where the garage currently sits on the property line and attaching it to the house where it would be 27 feet from the high water line. The failing wood retaining wall will be replaced with a granite wall that would also have a fixed pier, a ramp and a 20'x10' floating dock, Mr. Walsh added. The combined volume of the house will increase to 19%, Mr. Walsh concluded.

Mr. Greg Burke addressed the Board stating they purchased the property in 2009 and are excited to be back living in Kennebunkport with the hope of having an attached 2 car garage for year-round occupancy.

Mr. Messer asked what the size is of the proposed fixed pier. Mr. Burke replied it is 12-feet by 6-feet. Mr. Messer questioned whether the pier should be included in the calculations for lot coverage. Mr. Walsh responded the granite wall is included in the calculations but anything beyond the High Water Line is not included in the lot coverage. Mr. Walsh added there is a slight decrease in lot coverage as it goes from 49.6% to 49.5%.

Ms. Pearlmuter questioned the Applicant on why they want a dock and cautioned that particular region is a duck breeding area. Mr. Burke responded he has not seen any duck breeding in the area and would like the dock in order to launch their kayaks and paddleboards. Mr. Walsh added they have been granted a Natural Resources Protection Act permit from the Maine DEP.

Mr. Boak commented there was nothing included in the Application to indicate the dock was less than 1/5th the length across the river. Mr. Walsh responded he could add that documentation to the Application. Mr. Burke also noted the Harbormaster and the River Committee has been on the site.

Mr. Messer also requested the Applicant include documentation that the fixed pier will be over riprap. Mr. Walsh agreed to include that information as well.

Mr. Messer made a motion this Application is complete. Mr. Grady seconded the motion and the vote was unanimous. Mr. Mahoney was recused from voting on this Application as he is a neighbor of the Applicant. Mr. Francis exercised his voting privileges for this Application.

Mr. Grady was assigned as Case Manager and announced a Public Hearing will be held at the next Planning Board meeting on February 7th, 2018.

4. 171204 Binnacle Hill – Phase 2 / Terradyn Consultants, LLC, Authorized Agent – Sketch Plan – for review of Phase 2, a proposed 12 Lot cluster subdivision connecting to the approved 15 Lot Binnacle Hill Subdivision on New Biddeford Road, identified as Assessor's Tax Map 41, Block 2, Lot 8 in the Goose Rocks and partial Shoreland Zone.

Mr. Grady introduced the Agenda item.

Mr. Mike Tadema-Wielandt of Terradyn Consultants in Portland addressed the Board stating Binnacle Hill Phase 2 is a 12 lot subdivision immediately adjacent to Phase 1 which was approved last August. The site is similar to Phase 1, Mr. Tadema-Wielandt stated, with approximately 4 acres of freshwater wetlands, a manmade pond and a vernal pool in the northeast portion of the site. The Applicant has hired a turtle specialist to review the site and to provide a report with some recommendations to ensure the spotted turtle's habitat is protected, Mr. Tadema-Wielandt noted. This proposed plan incorporates input from the Maine Inland Fisheries and Wildlife Department as well as the Department of Environmental Protection, Mr. Tadema-Wielandt commented, and the result is all development is clustered in the western portion of the site with more than half of the site preserved as open space.

Mr. Tadema-Wielandt continued his presentation by stating there is a 1,300 foot road connecting to Henchey Lane with 12 lots all between 30,000 and 50,000 square feet each being serviced by public sewer and water.

Mr. Tadema-Wielandt acknowledged receipt of correspondence from residents of Henchey Lane regarding land ownership and a view easement and will submit a revised sketch plan reflecting those comments. Mr. Tadema-Wielandt discussed at length the design and ownership of Henchey Lane and the 20 foot private Right of Way, the details of which are still being determined.

Mr. Mahoney asked if Henchey Lane was a gravel road. Mr. Tadema-Wielandt responded yes it is currently gravel but it is their proposal to improve that with pavement the entire length down to Kings Hwy. The developer feels connectivity is important, is good planning and is an important part of the design, Mr. Tadema-Wielandt added, noting it is also referenced within the Kennebunkport Comprehensive Plan.

In reference to one of the letters received by the town regarding this Application, Ms. Pearlmuter asked if the Applicant has done a tree survey. Mr. Tadema-Wielandt replied yes they have done a tree survey as required by the Ordinance which will be included in their Preliminary Application submission and will make every effort to preserve as many trees as possible.

Mr. Grady requested to have more detail on the road and sewer connection to Henchey Way included in the plan. Mr. Tadema-Wielandt replied they are in discussions with the KKW Water District for a potential loop and will include more details in their Preliminary Application submission.

Mr. Messer asked if it was required to have 2 entrances or is just desirable on the developer's part. Mr. Tadema-Wielandt responded it's desirable on their part but there is a limit on the length of a dead end road of 1,000 feet so clearly this layout would not work with only one connection at Binnacle Lane.

Mr. Francis asked if there was any concern with emergency services having only one connection. Mr. Tadema-Wielandt responded typically emergency services like to see more than one connection but they haven't discussed this sketch plan with them as of yet.

For clarification purposes, Mr. Gilliam informed the Board that when a Preliminary Subdivision Application is received at the town offices, they require enough copies of the Application be provided so that all affected agencies such as police, fire, highway, etc. will have a chance to review it in addition to requiring a separate Sewer Application with the Kennebunkport Sewer Department.

Mr. Boak commented the major item to be determined by the Applicant is the connection to Henchey Lane.

There were no further questions or comments from the Board members.

Mr. Tadema-Wielandt mentioned to the Board the Applicant was hoping to submit their Preliminary Subdivision Application in early February in order to make the Planning Board's agenda in March.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary