

**Kennebunkport Planning Board
February 21, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station**

A regular meeting of the Planning Board was held on Wednesday, February 21st, 2018. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Russ Grady (Chair), Tom Boak, Nina Pearlmutter, Neil Higgins, Edward Francis
All members present will have voting privileges for this meeting.

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the January 17th, 2017 Planning Board meeting. Mr. Grady seconded the motion and the vote was unanimous.

Items:

1. 171203 Margaret Jandl / Walsh Engineering, Authorized Agent – Site Plan Review – **Findings of Fact** – 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. Grady read the Findings the Fact into the record. Mr. Boak made a motion to approve said Findings. Ms. Pearlmutter seconded the motion and the vote was unanimous.

2. 171205 Gregory and Heather Burke / Walsh Engineering, Authorized Agent – Site Plan Review – **Public Hearing** – 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 representing Greg and Heather Burke addressed the Board stating this Application is to address a few items on the site namely: to replace the deteriorating retaining wall, construct a new dock, regrade a slope on the backside, and rebuild and connect a new garage. Using enlarged site plans, Mr. Walsh gave a brief presentation on the Application noting the dock did receive approval from the Board of Selectmen.

Mr. Greg Burke addressed the Board stating all the components of this Application are intended to make the property more conforming and to have a year-round attached garage for New England winters.

Mr. Walsh also noted they have met with Jenn Harris of the Maine Department of Environmental Protection who expressed no issues with their proposal. Mr. Walsh also stated they have submitted their Natural Resources Protection Act permit to the DEP.

Mr. Grady asked the Applicant to explain the lot coverage for this property. Mr. Walsh responded the lot coverage changes slightly by reducing it from 49.6% lot coverage to 49.5%.

Ms. Pearlmutter asked the Applicant if they live in the house. Mr. Burke replied they live in the house year-round. They did rent this property while residing in Kennebunk but have sold their Kennebunk property and permanently reside in Kennebunkport.

There were no further questions from the Board members.

Mr. Grady opened the Public Hearing.

Mr. Charlie Sullivan, of Goose Rocks Beach, addressed the Board asking about the size and the roof line of the proposed garage. Mr. Burke responded by stating there is space above the garage for an office or exercise room and storage. Mr. Grady added the lot coverage is why the property is deemed non-conforming.

Mr. Ray Lockard addressed the Board asking why Ms. Pearlmutter questioned if the property was rented or occupied by the owner. Ms. Pearlmutter responded that the town has different zoning permitted uses and it may become important to clarify those uses in our Land Use Ordinance in the future.

There were no further questions from the audience in attendance. Mr. Grady closed the Public Hearing.

Ms. Pearlmutter offered her opinion that as a marine biologist, she has serious concerns approving this dock since it is in a known breeding ground for ducks and spawning ground and it encourages people to use paddleboards or kayaks in very shallow areas that would be detrimental marine wildlife. Ms. Pearlmutter also commented the property is also a very scenic view of Kennebunkport and adding a dock

would detract from that view. Under Articles 10.10.A.1.n. and 10.10.B.1.d., Ms. Pearlmutter stated she cannot vote approval of this Application.

Mr. Burke responded to Ms. Pearlmutter's comments stating there are four other docks in that area as well and believes it is not the kayaks or paddleboards that do the most damage but the motorized dinghies that come through creating waves on the shoreline.

Mr. Francis made a motion to approve the Application. Mr. Higgins seconded the motion and the Board voted 4 to 1 in favor of the motion. Ms. Pearlmutter opposed the motion. The Application was approved.

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

3. 180101 Wilson & Elizabeth Goodwin / Atlantic Environmental, LLC, Authorized Agent – Site Plan Review – **Initial Review** – for approval to install a new 4'x10' ramp, a 4'x40' pier and a 10'x20' float. (26 Langsford Road, identified as Assessor's Tax Map 30, Block 1 Lot 37 in the Cape Porpoise West, Shoreland and Resource Protection Zones.)

Mr. Grady introduced the Agenda item.

Ms. Lisa Vickers of Atlantic Environmental addressed the Board and gave a detailed presentation of the Application noting they have received permits from the Army Corps of Engineers and the Maine Department of Environmental Protection.

Mr. Grady asked the Applicant exactly how much shoreline frontage there was. Ms. Vickers replied there is 86 feet as listed on the property deed but she would update the site map to include that information. Mr. Grady agreed it would be helpful to have it noted on the map that the requirement of a minimum of 60 feet of shoreline frontage has been met.

In reference to a comment in the Application that there was no other access to the water, Ms. Pearlmutter questioned if there was a public pier in the area. Ms. Vickers replied there is a private dock further down the road that the public uses. Right now the Applicant is dragging their kayaks through the marsh grass in order to reach the water and thought it best to have their own private dock, Ms. Vickers added.

Mr. Higgins asked the Applicant to indicate where the setbacks are. Using an enlarged site map, Ms. Vickers identified there is more than 25 feet from both the north and south boundaries and will show that more clearly in the Application materials.

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

Mr. Grady announced there will be a Public Hearing held at the next Planning Board meeting on March 7th, 2018. Mr. Higgins was assigned as Case Manager for this Application.

4. 180102 Deborah Pearse and Bruce Donath / Alan Shepard, Authorized Agent – Site Plan Review – **Initial Review** – for approval to expand the use of the non-conforming single family dwelling from seasonal into year-round by installing insulation and a heating system. (25 Pier Road, identified as Assessor's Tax Map 30, Block 1 Lot 17 in the Cape Porpoise East, Shoreland and Resource Protection Zones.)

Mr. Grady introduced the Agenda item.

Mr. Bruce Donath addressed the Board stating he and his wife have owned the property since 1981. Since the house is a seasonal home they have been living year-round in another home directly across the street, Mr. Donath added. Mr. Donath stressed to the Board they have no intention of increasing the footprint and are simply asking to winterize the home for year-round occupancy.

Mr. Boak commented there is no definition of a seasonal home in the Land Use Ordinance. Mr. Gilliam explained this is a unique situation since the home is located within the Resource Protection Zone where a single family home is not listed as a permitted use in that zone. The winterizing of this particular house constitutes as an expansion of use because it will add to the timeframe which the house could be used, Mr. Gilliam added.

Ms. Pearlmutter asked if the Board was being charged with granting a waiver. Mr. Gilliam responded that the Planning Board is being asked to give permission not a waiver.

Mr. Alan Shepard, representing the Applicant addressed the Board stating this request falls under the Land Use Ordinance definition of an expansion of use because it is going to be occupied more than it has been historically. Mr. Shepard also added they are requesting a waiver to provide a full land survey given there will be no changes to the property.

Mr. Grady asked if this Application is really to just add insulation and water to the house. Mr. Shepard replied the water line is below frost grade already so they will just need to box in some of the line into the house and yes, put in insulation and heating.

Mr. Francis asked what type of heating system would be installed and if they were to install an oil tank. Mr. Donath replied they would put in a forced hot air system using the propane tank that is already there.

Mr. Grady asked Mr. Gilliam to provide the specific citation in the Land Use Ordinance why this Application is before the Board. Mr. Gilliam replied it is because of Article 8.8.A. that places this expansion of the timeframe due to it is a non-conforming use in the Resource Protection Zone. Mr. Donath added the time change is actually part of the definition of expansion of use on Page 2-8 in the Land Use Ordinance.

Mr. Grady asked the Board members if there was any further information they require from the Applicant.

Mr. Boak and Ms. Pearlmutter expressed their opinion that it would be helpful to have a survey map done of the property, specifically to document what is on the property now. Mr. Grady suggested that perhaps a satellite photo of the property would be sufficient. Mr. Gilliam offered to provide a copy of the Shoreland Zoning map from the GIS maps. The Board members agreed a copy of the map from the town would be sufficient for this Application.

Mr. Grady made a motion the Application is complete. Mr. Boak seconded the motion and the vote was unanimous. A Public Hearing will be held on March 7th, 2018. Mr. Boak was assigned as Case Manager for this Application.

5. 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 and gave a brief review of the Application. Using enlarged site maps, Mr. Doe gave a detailed explanation of the three components to this Application, which are:

- 1) Change the main entrance to expand the driveway for the ability to stack campers as they enter the property to avoid a backup on Mills Road,
- 2) Add 4 new glam tents to the glamping area and move a couple of the RV sites to another area away from the glam tents,
- 3) Add a new bathhouse in the area of the primitive tent sites for convenience of their guests.

In response to questions raised by the Board members at the last meeting and in accordance with Article 7.3.A.1, Mr. Doe explained that the property contains a total area of 4,635.64 square feet per campsite, which is below the required 5,000 square feet. After making the proposed changes, and by removing one camp site, Mr. Doe continued, the area per site would be 4,636.51 square feet.

Mr. Grady asked the Board members if they had any questions for the Applicant.

Ms. Pearlmutter commented that the property does not comply with the ordinance requirement of 5,000 square feet per campsite and asked Attorney Ralph Austin how the number of campsites increased from advertised at 225 sites in 1985 to the current number of 324 sites. Mr. Austin replied after the Applicant purchased the property they met with Mr. Gilliam and using aerial photography and conducting a site walk, it was determined there were 324 sites on the property. Mr. Austin also added that it is not a Planning Board decision to determine how many campsites are on the property.

Ms. Pearlmutter agreed with Mr. Austin's statement it is not in the purview of the Planning Board to determine the number of campsites; however, as part of the Beach Use Agreement the town is charged with not increasing the density of the use of the beach and if the number of sites is increased that will increase the use of the beach.

Mr. Austin responded the Beach Use Ordinance is very specific and believes the Town Manager, Laurie Smith has sent a letter to the Board that states this Application does not violate that ordinance.

Ms. Pearlmutter agreed with Mr. Austin's statement regarding the Beach Use Ordinance but questioned how the Planning Board can determine whether something is becoming less or more non-conforming unless they have a basis of what the acreage is. Mr. Austin replied the Board has been given the acreage.

Mr. Austin commented the Board has already had a Public Hearing on this Application and all that was requested from the Board was for the Applicant to provide the number of sites there are now and the total area of the property per campsite. Mr. Doe provided the Board with those calculations, Mr. Austin continued, and noted they had to eliminate one campsite in order to maintain the same amount of square footage.

Mr. Boak commented that in visiting the Applicant's website for the campground, it states there are 80 RV rentals not 76 as stated at a prior meeting and that there are fewer than 300 campsites available. Mr. Boak suggested the Applicant reduce the number of campsites to 300 instead of 323 which would make the sites compliant with the 5,000 square foot requirement. Mr. Austin responded that he cannot make that decision but it is something he will consider and speak to the Applicant and the Code Enforcement Office about it.

Mr. Francis noted the Application refers to Phase 1 and Phase 2 and asked the Applicant to explain what those were. Mr. Doe responded Phase 1 was the upgrade of all the utilities, the extension of the water main to the site and the upgrade of the septic systems all of which were permitted through the Code Enforcement Office. Phase 2, Mr. Doe noted is what is being proposed today.

Mr. Francis stated there is a demolition plan and site plan in the Application and noted the curb cut is different between those 2 plans. Mr. Doe replied that was an error as there is no change to the curb cut.

In reference to the section of the Application that references the relocation of RV sites for the addition of more glam tent sites, Mr. Francis asked if there were platforms or utilities that need to be moved as well. Mr. Doe replied there are no utilities required for the glam tents but there is some grading to be done on the sites as the glam tents sit on a wood platform.

Mr. Francis asked if the Applicant could update the drawings to determine if those parking areas meet the Land Use Ordinance requirement. Mr. Doe replied the spaces are dimensioned on the site plan as 10ft. by 20ft. spaces and 16ft. by 20 ft. for handicapped spaces.

Mr. Francis questioned the setback requirements for each type of site on the property and asked if there was perhaps an opportunity to do better on the placement of one of the park model sites which is only 14 feet away from the lot line. Mr. Doe agreed to move that site so that it is 20 feet away. Mr. Francis also asked if it were possible to add a visual buffer to those sites.

Mr. Francis stated that the application cover letter describes removing the existing peak-use campsites in the main entry area, but that these campsites are still shown on Attachments A, B and C in the application package, and are included in the total campsite count of 324. The Applicant agreed to update the Attachments to show which campsites would be removed, and update the campsite count accordingly.

In reference to the last meeting, Mr. Doe stated the Applicant has agreed to adhere to the following suggestions made by Ms. Carol Sherman:

- Any site work will be performed to the Best Management Practices
- Any fertilizers will be organic
- No use of fertilizers or pesticides in the Shoreland area
- Will only use organic pesticides
- Will agree to use native plants
- All maintenance reports of the septic systems will be submitted to the Code Enforcement Office
- Will contribute to the Maine Healthy Beaches testing process.

Mr. Doe also added the Applicant will not use any shuttle system to transport guests to the beach. All of these items can be conditions of approval, Mr. Doe concluded.

Mr. Higgins questioned whether the proposed new utility shed is in compliance with the 100 foot setback. Mr. Doe responded he will clarify that on the site plans and ensure it is in a position that renders it compliant with the setback requirement.

Mr. Grady asked if the Applicant could submit a new set of site plans that include all of the information discussed this evening and that clearly shows each of the campsites in their locations. Mr. Doe agreed to Mr. Grady's request.

Ms. Pearlmuter asked if dogs are allowed to run free on the campsite. Mr. Doe replied he knows one person in the park models that has a dog but he doesn't believe dogs are a big concern. Ms. Pearlmuter commented it is important to control dogs around marshes.

Mr. Grady opened the Public Hearing for comments or questions from the audience in attendance.

Mr. Charlie Sullivan addressed the Board and asked how many spaces are on the site. Mr. Grady replied there are 323.

Mr. Sullivan asked if the septic tanks are contained and if they have leach fields. Mr. Doe indicated on the enlarged site maps where the septic fields were located in relation to the marsh.

Mr. Sullivan expressed his concern for the quality of the water at Goose Rocks Beach and questioned whether the current septic systems at the campsite would eliminate any affluent from leaking into the marsh area. Mr. Doe acknowledged Mr. Sullivan's concern and explained when the Applicant purchased the property they replaced every one of the septic systems to bring them up to the new standards.

Mr. Paul Hogan addressed the Board and questioned whether the soil type was considered when installing the concrete septic tanks and if those are in compliance with the town's mobile home requirements.

Mr. Hogan also suggested the Applicant submit in writing their financial commitment to the Maine Healthy Beaches program as well as their commitment to the suggestions made by Carol Sherman.

Mr. Richard Driver of Goose Rocks Beach addressed the Board to express his concern at the lack of historical records on file regarding the operation of this property. Mr. Driver referred to this property as the single largest development in terms of density in the Town of Kennebunkport and questioned why a survey of the property was not conducted. Mr. Driver also stated it is the Applicant's responsibility to convince the Board they are not making the parcel more non-conforming.

Mr. Driver asked Mr. Doe if they performed a wetland survey. Mr. Doe responded they did not as it wasn't necessary for the work they were proposing which was only in the upland areas. Mr. Driver questioned how the Applicant could accurately state the work was only in the upland areas if the Board doesn't have a survey to determine that.

In reference to the Applicant's website advertising for the campground, Mr. Driver suggested the Applicant is introducing additional commercial activities that are not permitted such as selling alcohol, having a restaurant on site, renting paddleboards and kayaks. Mr. Driver argued the Applicant is changing the character of the non-conforming use of the property by taking it from a rustic campsite to a glamorous rental operation.

Mr. Bob Sherman of Goose Rocks Beach addressed the Board and questioned how guests of the campground were going to get to the beach. As a property owner, Mr. Sherman added, the Applicant is responsible for the safety of their guests and to have them walking along Route 9 or Dyke Road at night is not a safe practice due to the lack of street lighting. Mr. Austin responded the Applicant made it a condition of not shuttling guests to the beach because they felt it was a condition that the residents of Goose Rocks Beach would want.

Mr. Ray Lockard addressed the Board and asked how the number of sites was determined. Mr. Gilliam explained after the current owner purchased the property we did a site walk to see what condition the property was in at which point the owner produced a map that showed the current number of campsites. Mr. Lockard questioned why the town accepted the owner's map as correct. Mr. Gilliam responded he did not see any material difference between what he saw on the site walk and what was presented by the owner. Mr. Lockard expressed his concern that the increased density is definitely going to have some detrimental effect on the beach.

Mr. Paul Hogan asked the Board if double wide RVs would be allowed in the park as the Department of Housing and Urban Development was offering regulatory relief on the size of the RV. Mr. Gilliam explained there are different classifications of recreational vehicles so the RVs on the campground are built to recreational vehicle standards not HUD standards and cannot be used as permanent residences.

Referring to the Applicant's website, Mr. Hogan stated the owner is advertising 2 new rental opportunities on the property for A-frames and camp caravans. Mr. Hogan suggested asking the Applicant for some written reassurance there will not be bigger, double-wide RVs allowed in the campground. Mr. Gilliam replied that if the Planning Board felt that was necessary they could include that as an appropriate condition of approval.

Mr. Bob Sherman asked if the glamping fad fades, can the owner replace those glam tent sites with anything they wish. Mr. Gilliam replied the sites can be utilized in a different fashion but the question is is that a condition the Board wants to place on the Application such as if they change a site from a tent to a pop-up. For many campgrounds these are operational issues, Mr. Gilliam added. Mr. Sherman cautioned it may be something to consider as the Board and town try to establish parameters.

Mr. Hogan asked if the owner's concessions on fertilizers and pesticides included insecticides. Mr. Doe replied he believes the only pesticides that have been used are for mosquitos which are an organic type, most likely garlic based. Mr. Hogan asked if the Applicant would make a commitment to only use that type of insecticide. Mr. Doe agreed to conform to that condition on behalf of the Applicant.

Mr. Grady thanked everyone for their comments and discussion and suggested the Board members should seek some guidance from the town attorney to define exactly what is in the Board's purview, especially since this is the first time this Applicant has appeared before the Planning Board. Mr. Grady also suggested continuing the Public Hearing to receive that input from town counsel.

Mr. Driver addressed the Board and asked Mr. Gilliam for specific details on how many sites could be possibly used for park models, how many permits for decks or sunrooms were issued since 1985 and how many of those units were removed that had sunrooms and decks. Mr. Gilliam again explained how the number of sites were determined since the Spangs owned the property and could not provide a count on how many of those RVs had decks or sunrooms but there are permits for such transactions recorded in the town records.

Referring to the Applicant's website advertising for the campground, Mr. Driver expressed concern that the owner's ongoing activities such as live bands and dance parties most definitely changes the character in terms of what the previous owners did on the site. Mr. Driver also questioned if the alcohol license the Applicant holds for the store violates their non-conforming status. Mr. Gilliam responded the retail liquor license has been maintained by the current owner in order to sell beer and wine at the camp store for onsite consumption.

Mr. Driver continued his dialogue that it is not specifically the size of the tent but it is the compilation of all the changes the owner has done to the property that collectively causes a change in the character of the property. The fact that a business man comes into town and wants to bring in tourists to make money does not give him a license to violate our ordinance, Mr. Driver added.

Mr. Francis asked Mr. Driver if having a band is a detriment to the abutters. Mr. Driver replied it is a change of a non-conforming use. Ms. Pearlmutter commented it doesn't matter if the change is an adverse use or an enhancement. Mr. Austin agreed with Ms. Pearlmutter's statement in that they are simply asking to improve the entranceway, add a bathhouse and move some sites.

Mr. Hogan urged the town and Board members to keep the spirit of the Beach Use Agreement in mind when deciding about this Application.

Mr. Driver requested if the Public Hearing was to be continued if the public would be allowed to comment? Mr. Austin cautioned having the public input was not necessary as the Board is seeking legal advice from the town attorney not from the public. Ms. Pearlmutter noted it would be important to provide the public an opportunity to react after hearing what the town attorney presents.

Mr. Grady agreed with Ms. Pearlmutter's suggestion but asked the public to be respectful in their comments.

Ms. Pearlmutter made a motion to continue the Public Hearing until the next Planning Board meeting on March 7th, 2018. Mr. Boak 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