

Kennebunkport Planning Board
March 3rd, 2021 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, March 3rd, 2021. The virtual meeting convened at 6:00 p.m. via Zoom.

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

Approval of Minutes: Mr. Simmons made a motion to approve the minutes from the February 17th, 2021 Planning Board meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

1. **201004 Ivy Subdivision / Sebago Technics, Authorized Agent – Continued Public Hearing** – for approval of major changes to previously approved subdivision – to subdivide a 7.8 acre lot (previously known as Lot #2 of Ivy Subdivision approved in 2012), to create 2 lots; one lot will be accessed by Colony Avenue and the other will be accessed by Endcliffe Road. (Endcliffe Road / Colony Avenue known as Assessor's Tax Map 7, Block 13, Lot 1B in the Cape Arundel Zone.)

Mr. Boak introduced the Agenda item and asked that Mr. Steve Doe of Sebago Technics and Attorney Ralph Austin be promoted to panelist to present the Application.

Based on a site walk of the property and numerous comments, Mr. Doe stated they have made some changes to their Application and shared the new site plans on the screen for the viewing audience. Mr. Doe indicated on the site plans the revisions made, some of which are:

- Renumbered the proposed new lots to be named Lot 2A and Lot 2B
- Shifted the proposed driveway to Lot 2A so it will not impact the Perkins lot
- Made some lot line changes to compensate for the increased wetland impact from the driveway relocation to Lot 2A
- Added vernal pool calculations in the upper corner of the site plans
- Identified the 250-foot radius of the vernal pool on the site plans
- Identified the area within the 250-foot radius of the vernal pool that will be disturbed which is below the allowable 25%
- Shortened the proposed hammerhead turn on Endcliffe Road
- Made a few minor corrections to the notes on the site plans
- Added a 30-foot side yard setback on Lot 2B to create a larger buffer to the Buxton's lot.

Mr. Doe continued stating he has received a letter from the Fire Chief allowing them to keep a small section of Endcliffe Road at 18-feet of travel lane with a narrower shoulder due to the ledge in the area.

In reviewing the peer review letter from Acorn Engineering, Mr. Doe stated he has looked through their comments and does not see anything of major concern and will provide a response soon.

Mr. Boak asked if the building envelopes for each of the lots would be included in the site plans. Mr. Doe replied yes, they would be included as the Code Enforcement Office needs that information.

Mr. Boak also asked for confirmation that the Applicant has no interest in connecting the roads to each proposed lot. Mr. Doe responded they have no interest in connecting the roads.

To address concerns raised in one of the abutter's letters to the Planning Board, Mr. Francis asked if the Applicant were planning on putting up a barrier on the woods road that could potentially infringe on an emergency egress for the Inn. Mr. Doe replied they are not planning on putting up a barrier, although the woods road is not defined as an emergency access. According to the Fire Chief, Mr. Doe added, if there was a fire at the Inn the Fire Department would use Dover Lane to gain access.

Mr. Francis asked what caused the vernal pool on the property to be designated as a significant vernal pool. Mr. Doe replied it is based on the egg count for certain types of salamanders and wood frogs resulting from a vernal pool study done several years back. Mr. Doe also added they have documents supporting that designation and will be filing two Permits-by-Rule this week with the Maine Department of Environmental Protection.

Ms. Pearlmutter questioned the length of the road into Lot 2A and if it is to be extended all the way into Lot 2B. Mr. Doe explained there is an easement they must clear for utilities as well as a pedestrian path to tie into the gravel road which the owners of Lot 2B would have access to.

Mr. Francis mentioned at the last meeting the Board and the Applicant discussed the possibility of a road maintenance agreement for the residents of Endcliffe and the owner of Lot 2B. Mr. Doe explained Attorney Ralph Austin has been talking to the folks on Endcliffe Road and there is a road maintenance agreement ready. Attorney Austin has drafted a very similar maintenance agreement for Mrs. Perkins and the owner of Lot 2A, Mr. Doe continued, which he will speak with Mrs. Perkins to make sure she's amenable to such an agreement. Mr. Boak asked to see those agreements with the submission of the Final Site Plan Application. Mr. Doe agreed to provide that information for the Final Site Plan Review.

Referring to a lengthy letter received from Mr. Dakin regarding the 2012 Subdivision Plan, Mr. Simmons expressed his concern if the current proposal aligns materially with the 2012 plan. Attorney Austin replied that the 2012 plan set aside Lot 2 which is now being divided for future development but could not be developed without coming back to the Planning Board so from the Applicant's perspective they are keeping materially the same from what was approved in 2012.

Mr. Simmons suggested perhaps it would be worthwhile to overlay the 2012 plan on to this new proposal to see what the difference is. Indicating the lot lines on the site plans on the screen, Mr. Doe explained what changed from 2012 is this Lot 2 is being broken into 2 lots to be sold with a section of land that was granted to the Old Fort Inn previously.

Mr. Gilliam further explained there were several other out-sales to abutting property owners as well so ultimately this lot was a piece of land for development by the Applicant and the rest of the lot on that 2012 plan was conveyances to abutters.

Mr. Boak opened the Public Hearing.

Mr. Jim Martin addressed the Board and asked if there is a plan now to widen Endcliffe Road all the way down to Poet's Lane. Mr. Doe replied when the Chickadee Trust Application was approved they were required to widen Endcliffe Road to the 22-foot width from Poet's Lane to the end of Terralyn Swift's lot with the exception that down Poet's Lane there is a big ledge and they were allowed to keep that road narrow without having to remove the ledge but once past that ledge they are required to widen the road to the 22-foot width again.

Mr. Boak closed the Public Hearing.

Mr. Francis made a motion to approve the Application. Ms. Pearlmutter suggested the Board's approval should be subject to compliance with the Acorn Engineering report. Mr. Gilliam added that approval of the Preliminary Subdivision Application does not gain any vested rights for the project but is merely a permission that allows the Applicant to move forward with submitting a final application and design.

Ms. Pearlmutter offered her opinion that she is uncomfortable with this approval having not been able to review the report from Acorn Engineering regarding the stormwater maintenance plan. Mr. Doe explained Acorn Engineering has reviewed their stormwater plan and had a couple of items that need to be addressed in their final application submittal. Mr. Gilliam agreed with Mr. Doe's statement adding it is his understanding the Applicant and Acorn Engineering were to work through those items before providing a final submittal application to the Board. Mr. Gilliam added he is not a stormwater expert, but he did come away with the understanding there were no significant disagreements between the two parties. Attorney Austin added the peer review report was just received at the end of last week.

Mr. Francis restated his motion to approve this preliminary application. Mr. Boak seconded the motion, and the vote was unanimous. Mr. Boak stated he would compose a letter of approval from the Planning Board.

2. 210201 Kennebunkport Captains Collection, LLC (d/b/a Maine Stay Inn & Cottages) / Sebago Technics, Authorize Agent -- Site Plan Review -- Initial Review -- for approval to modify the existing site and parking, to include new site landscaping. (34 Maine Street, Assessor's Tax Map 10, Block 6, Lot 1 in the Village Residential Zone.)

Mr. Boak introduced the Agenda item and asked Mr. Gilliam why this Application requires Planning Board approval.

Mr. Gilliam explained this property, functioning as a hotel is a conditional use in the Village Residential Zone and is a grandfathered legally non-conforming use and are asking to make a modification to their site plan with regards to the parking area. Mr. Gilliam added this property is non-conforming in its use within the Village Residential Zone.

Mr. Steve Doe shared the site plans on the screen for the viewing public and explained the boundaries of the property, the location of the existing and proposed parking areas and the new landscaping to be done for each of the cottages which will include an outdoor dining area and fire pit along with a footpath that ends at the new parking lot location. To ensure access for emergency vehicles, Mr. Doe explained they will maintain the fire access drive currently on the property, but it will be converted to gravel instead of a paved surface.

Ms. Pearlmutter asked if the new parking lot will be gravel. Mr. Doe replied no, the new parking lot will be pavement.

Ms. Pearlmutter commented there are several easements on the deeds, one of note is an easement with the town regarding shade trees. Mr. Doe indicated on the site plans where the large elm trees were on the property along with 2 large Norway spruce trees. Mr. Doe explained he was concerned about the trees as well so the way they are constructing the new parking lot is to scarify the surface but leave all the organics and topsoil in place on top so that they will be near the root system of those trees. Ms. Pearlmutter stated she is still concerned since they are changing the elevation in that area of the lot and suggested the Applicant consult with the town's Shade Tree Committee to see what impact that might have.

Ms. Pearlmutter also cautioned the Applicant to consider the water requirements of the new vegetation they are planning on planting and if it will affect the bigger trees. Mr. Doe agreed with Ms. Pearlmutter's suggestion as that is one of the items he was discussing with the owner.

Mr. Mahoney asked if the fire truck path will be converted to all gravel where it is currently all tar. Mr. Doe replied the initial part of the old parking lot will remain pavement, but the rest will be gravel.

Mr. Francis commented he did not see any handicapped spaces in the new parking lot. Mr. Doe indicated on the site plans he believed there is one ADA space on the road. Mr. Robert Blood, the owner, addressed the Board stating that space on the road could be an ADA space; however, the inn does not hit the threshold that requires them to upgrade the property to be ADA accessible as they are under 20 rooms. Mr. Blood added any of those street-level spots could be an ADA spot.

The Board members and Applicant had some discussion where the actual Right of Way was in connection to the curb cut into the Maine State property line for the road. Mr. Gilliam offered to review the grandfathered documentation for this property.

Mr. Francis asked Mr. Gilliam what the impervious surface requirements are in the Village Residential Zone. Mr. Gilliam responded in the Village Residential, Non-Shoreland Zones you are looking principally at the buildings which will not include the parking area. Mr. Doe added they are decreasing the amount of impervious surface area by making these proposed changes.

Mr. Francis requested the Applicant to include a statement on the plans indicating exactly how much the impervious area has been decreased by.

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

Mr. Boak stated a Public Hearing will be held at the next Planning Board meeting on March 17th, 2021. Mr. Mahoney volunteered to be Case Manager for this Application.

3. 210202 Shmalo Family LLC / Trades Center Inc., Authorized Agent -- Site Plan Review -- Initial Review -- for approval to convert the second floor of both buildings (previously retail space into two apartments. (24 Ocean Avenue, Assessor's Tax Map 11, Block 9, Lot 10 in the Dock Square Zone.)

Mr. Boak introduced the Agenda item and asked Mr. Gilliam why this Application was before the Planning Board when residential rental accommodation approvals are granted by the Zoning Board of Appeals. Mr. Gilliam replied this Application is not for a residential rental accommodation but for a residential mixed use which is a conditional use approved by the Planning Board for the Dock Square Zone.

After some discussion amongst the Board members that the Land Use Ordinance does not list a residential mixed use as a conditional use permitted in the Dock Square Zone, Mr. Gilliam offered to review the original warrant article to determine if it was omitted accidentally.

The Board members agreed to continue with the Applicant's presentation but would delay any vote until the next meeting when the issue with the Land Use Ordinance was clarified.

Mr. Dave Wade of Trades Center Inc., representing the Shmalo family addressed the Board stating they are proposing to convert the second floor of each of the buildings at 24 Ocean Avenue into two apartments. Mr. Wade explained the building was built in 1985 and the work in converting the second floor to living space will not impact any exterior shape or size. Some windows will

be upgraded as well as the display windows will be converted to double-hung windows to match the rest of the building, Mr. Wade added, and a couple of windows will be installed over the parking area also to add lighting to the approximately 750 square foot single bedroom apartments. Mr. Wade also stated four spaces for parking on the back side of the building will be designated for the apartments. Mechanical and electrical upgrades will also be done to ensure the new spaces meet the energy codes; Mr. Wade concluded.

Ms. Pearlmutter noted a few items that should be included with the Application, such as:

- A copy of the property deed as referenced,
- A current Letter of Authorization for Mr. Wade to represent the Shmalo family
- Indication on the site plans where the required 2 entrances and exits will be located for each apartment.

Mr. Wade explained they plan to use the existing entrances onto the deck and will be replacing the bedroom windows with egress windows that will be 12-feet to the ground and will be installing a 2R fire suppression system between the 1st and 2nd floors.

Ms. Pearlmutter also asked if these rentals will be long term and not day-to-day rentals. Mr. Wade replied they will be long term rentals.

Mr. Francis questioned if these apartments could be turned over to Airbnb and rented out daily at an elevated rate during peak season. Mr. Wade explained that is not the owner's intent as they are hoping to rent to professionals or anyone wishing to remain long term in the area.

Mr. Gilliam explained the town is currently working through the Board of Selectmen on a process of putting forward a short-term rental licensing ordinance that would prevent residential dwelling units from being rented on a short-term basis. Mr. Gilliam suggested if the Planning Board were concerned about these units becoming short term rentals that could be made a condition of approval that these apartments are to be rented as primary residences.

Mr. Simmons clarified there are two buildings, and the Applicant is requesting to put 2 apartments in each building for a total of 4 apartments to be designated as permanent residences and not some sort of temporary housing? Mr. Wade replied yes, the idea is to have someone who is working in the area and wants a rental that is not seasonal but year-round.

Referring to water damage that occurred in previous years from frozen pipes, Mr. Simmons asked how the liability will be shared if one of the tenants leaves for a few months in the winter. Mr. Shmalo joined the discussion stating they have property managers on call to make sure the heating element is kept on and there would be something in the tenant agreement regarding that as well.

Mr. Boak announced this Initial Review will be continued to the next meeting on March 17th, 2021.

- 4. 201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent** – North Campus – Site Plan Review – **Public Hearing** – for approval to demolish all existing buildings and parking areas and construct two new building with multiple parking areas. (128 Ocean Avenue / 12 & 14 Colony Avenue, identified as Assessor's Tax Map 8, Block 8, Lots 14, 15 & 16 in the Riverfront and Shoreland Zones.) *Nina Pearlmutter, Case Manager* **Continued to a future date at request of Applicant.**
- 5. 201002 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent** – South Campus – Site Plan Review – **Public Hearing** – for approval to demolish 4 existing buildings and construct one new building, to include building expansion, and the reconstruction of circular parking area. (140 Ocean Avenue, identified as Assessor's Tax Map 8, Block 6, Lot 4 in the Riverfront and Shoreland Zones.) *Nina Pearlmutter, Case Manager* **Continued to future date at request of Applicant.**

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary