

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

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

Members Present: Mr. Tom Boak (Acting Chair), D. Scott Mahoney, Mark Messer, Nina Pearlmuter, Neil Higgins, Edward Francis  
Mr. Higgins will have voting privileges for this meeting.

Approval of Minutes: Mr. Francis stated he forwarded to Lisa Harmon in the Code Enforcement Office, some comments he wished to be included in the minutes from the February 21<sup>st</sup>, 2018 meeting. Mr. Francis was unsure if those comments were incorporated into said minutes and asked if the Board could defer approval until the next meeting. Ms. Pearlmuter made a motion to defer approval of the minutes from the February 21<sup>st</sup>, 2017 Planning Board meeting. Mr. Mahoney seconded the motion and the vote was unanimous.

Items:

**1. 180101 Wilson & Elizabeth Goodwin / Atlantic Environmental, LLC, Authorized Agent** – Site Plan Review – Public Hearing – for approval to install a new 4'x10' ramp, a 4' x 40' pier and a 10'x20' float. (26 Langsford Road, Assessor's Tax Map 30, Block 1, Lot 37 in the Cape Porpoise West, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Ms. Lisa Vickers of Atlantic Environmental addressed the Board and gave a brief description of the Application, noting she had submitted revised plans to include the 86 feet of shore frontage. Ms. Vickers also noted the new plans indicate the distances of the pier from each of the property's abutters which are 33 feet from the southerly side and 49 feet from the northerly abutter. The float will be constructed with float skids to provide approximately 18 inches of elevation to prevent it from bottoming out and hitting the substrates, Ms. Vickers added. Lastly, Ms. Vickers noted they have received permits from the Maine Department of Environmental Protection and the Army Corps of Engineers.

There were no questions from the Board members.

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

As Case Manager, Mr. Higgins prepared a draft Findings of Fact but had a couple of items he wanted to bring to the Board members for discussion before reading. For Applications regarding piers and docks, Mr. Higgins suggested adding Article 5.11 in order to address those issues that are applicable. Mr. Higgins also suggested eliminating reference to Article 10.12.e. when performance guarantees are not required for certain Applications. The Board members agreed with Mr. Higgins suggestions. Mr. Higgins agreed to amend his draft of the Findings of Fact by the next Planning Board meeting.

Mr. Higgins made a motion to approve the Application. Ms. Pearlmuter seconded the motion and the vote was unanimous. The Findings of Fact will be read at the next Planning Board meeting on March 21<sup>st</sup>, 2018.

~~**2. 171201 Sandy Pines Campground / Sebago Technics, Authorized Agent** – Site Plan Review – **Continued Public Hearing** – 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. (277 Mills Road, Assessor's Tax Map 32, Block 1, Lot 3 in the Goose Rocks, Shoreland and Resource Protection Zones.)~~ **CONTINUED TO MARCH 21<sup>ST</sup> AT THE REQUEST OF THE APPLICANT.**

~~**3. 180102 Deborah Pearce and Bruce Donath / Alan Shepard, Authorized Agent** – Site Plan Review – **Public Hearing** – 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.)~~ **CONTINUED TO MARCH 21<sup>ST</sup> AT THE REQUEST OF THE APPLICANT.**

**4. 180201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent** – Site Plan Review – **Initial Review** – for approval of a thirteen (13) lot cluster subdivision on 23.78 acres. (Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Mike Tadema-Weidlant, along with Mr. Geoff Bowley and Attorney Ralph Austin addressed the Board. Mr. Tadema-Weidlant stated the design has basically stayed the same since the Sketch Plan phase. The project site is approximately 25 ½ acres in size, Mr. Tadema-Weidlant stated and is directly adjacent to Binnacle Hill Phase 1. There are 2 areas within the Shoreland Overlay Zone in the southwest and southeastern portion of the property, Mr. Tadema-Weidlant explained, and neither of which will be disturbed. The Department of Inland Fisheries and Wildlife have reviewed the entire site and identified a portion of this site as a spotted turtle habitat, Mr. Tadema-Weidlant

explained. In order to protect the habitat, the lots are clustered together, the western part of the site and wetlands are preserved as open space and protected by a deed restriction to not allow future development, Mr. Tadema-Weidlant added.

Mr. Tadema-Weidlant continued his presentation using enlarged site plans by noting the following items:

- The 13 lots vary in size from ½ acre to a little over 1 acre
- Average lot size is approximately 30,000 sq. ft.
- The new road, Timber Way, will be constructed connecting Binnacle Lane to Henchey Way
- The portion of Henchey Way that is not on the project site will be improved to an 18-foot paved road
- All lots will be served by public water and sewer
- Timber Way will be constructed the same as Binnacle Lane with a sidewalk on the west side
- A Sewer Application has been filed with the Kennebunkport Sewer Department
- There are 6 proposed street lights, the design and spacing will match that of Phase 1
- Permits to the Maine DEP and the Natural Resources Protection Act have been filed
- Have received confirmation from the water district there is adequate water supply to service the area.

Using enlarged drawings and aerial photos, Mr. Tadema-Weidlant gave a more detailed presentation on the proposed development of Henchey Way from Kings Hwy to the proposed subdivision.

Ms. Pearlmuter asked if all of the lots are going to connect to the sewer line on Kings Hwy. Mr. Tadema-Weidlant replied yes.

In reviewing the proposed development of Henchey Way presented, Mr. Boak questioned whether the Applicant would need to request a waiver on the road construction since it would not meet the 20 foot setback requirement. Mr. Tadema-Weidlant responded there is a provision in the Land Use Ordinance to allow a lesser standard without a waiver for a Right of Way that is adjacent to the subject parcel. Mr. Austin further explained the standard in the Subdivision Regulations that applies in this instance to streets within the subdivision. There is 100 feet of Henchey Way that runs down to Kings Hwy that is privately owned and is outside of the subdivision property, Mr. Austin added, which is outside the scope of the Subdivision Regulations and would fall under the Land Use Ordinance private way standards.

Mr. Gilliam added, procedurally this would fall under Article 6.14.E. of the Subdivision Regulations which states:” The Planning Board may reduce or modify the driveway/private road standards where strict adherence to the limitations cannot be met when considering a pre-existing right-of-way, or cannot be met due to environmental concerns. If such a modification is approved, the Planning Board shall include the modification in the Site Plan Review’s written Findings of Fact, and the applicant shall record the Findings of Fact with the York County Registry of Deeds”. Mr. Gilliam instructed the Board members they needed to determine if the waiver request should be through the Subdivision Regulations or the Land Use Ordinance.

Mr. Tadema-Weidlant admitted they have certainly looked at other designs that eliminate access to Henchey Way; however, when developing a property, connectivity and multiple points of access are some things we look to do. “Those are beneficial for multiple reasons such as emergency vehicle access and it’s better for pedestrians and better for traffic patterns,” Mr. Tadema-Weidlant stated. From a planning perspective to have two dead ends is less than ideal, Mr. Tadema-Weidlant concluded.

Mr. Boak commented that the Miller’s current driveway is on the Gayhour property or the piece of Henchey Way that feeds into the subdivision’s property. Mr. Tadema-Weidlant responded, yes, Henchey Way would be pulled away from the Miller property to create a little more separation to their property and fill in with grass. As far as vehicle access the permanent width stays the same, so it will look continuous as you’re driving in, Mr. Tadema-Weidlant added.

In reference to correspondence received by the Board members prior to this meeting, Ms. Pearlmuter asked about the increased traffic along the beach and the issue of snow plowing in the winter. Mr. Tadema-Weidlant explained they would indeed instruct the snow removal company to plow up from Kings Hwy to deposit the snow on the Applicant’s property where it would be distributed along the side of the road.

As for the question of increased traffic, Mr. Tadema-Weidlant stated they did provide a traffic analysis where their traffic engineer concluded the majority of trips would be going out to New Biddeford Road from Binnacle Land, not to Kings Hwy.

Ms. Pearlmuter acknowledged Mr. Tadema-Weidlant’s response but cautioned there is still concern for the pedestrian traffic along the road, especially with the narrow end towards the beach. Mr. Tadema-Weidlant agreed with Ms. Pearlmuter’s concern and noted that is why they have kept the 18 foot road width since narrowing roadways naturally slows down traffic.

Ms. Pearlmuter asked if the Applicant intends to install street lighting on the narrow section of road. Mr. Tadema-Weidlant replied there is no lighting proposed now but he is sure the Applicant will entertain that notion if the Board felt it would be beneficial.

Mr. Boak asked the Applicant to comment on a letter in the application regarding a historic archeological survey. Mr. Tadema-Weidlant explained during the sketch plan phase, when they notified all necessary state agencies, the Maine Historic Preservation Commission was one of those agencies that provided comments on the development of the site. At which time, Mr. Tadema-Weidlant continued, the subject property incorrectly included land down to Kings Hwy which is owned by the Kennebunkport Conservation Trust. Mr. Tadema-Weidlant offered to provide a copy of the letter he received from the Historic Preservation Commission stating no further action is required.

Regarding the tree survey map, Ms. Pearlmutter expressed her concern about the large oak and pine trees situated where some of the lots are. Mr. Tadema-Weidlant responded that the tree clearing will be selective on those lots not only for preservation purposes but to create a sense of privacy.

There were no further questions from the Board members.

Procedurally, Mr. Gilliam explained the Board has the option of requesting a site walk on the property. Additionally, as part of the Subdivision Application, Mr. Gilliam asked the Board members to consider authorizing the town to engage a 3<sup>rd</sup> party engineering firm to conduct a Peer Review. The Applicant has also filed a Sewer Application for the sewer extension, Mr. Gilliam added, which follows its own calendar for a Public Hearing and is subject to the town's Sewer Use Ordinance. This Sewer Application also goes through a third party review which looks at the capacity of the town's infrastructure from input point all the way back to the treatment plant, Mr. Gilliam concluded.

Mr. Boak asked if the Sewer Application required a town meeting. Mr. Gilliam replied he does not believe so since the Application is all on private property.

Mr. Messer asked if the town manager or other town officials will provide their comments. Mr. Gilliam replied they have passed along all the information and believes that is a part of the Final Application process.

Mr. Boak asked Mr. Gilliam what is the Board's next step in this process. Mr. Gilliam replied by asking the Board for authorization to proceed to schedule a peer review for the stormwater management and the road design.

Mr. Boak made a motion to request a peer review. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Mr. Boak expressed his agreement that the Board conduct a site walk of the property. Mr. Gilliam offered to coordinate with the Applicant and will propose some possible dates for the site walk.

The Board members and Mr. Austin had a brief discussion whether to determine the Application complete and whether to hold the Public Hearing before or after the site walk.

Mr. Gilliam offered the peer review report should be submitted to the Planning Board by April 1<sup>st</sup>.

Ms. Pearlmutter made a motion the Application is complete. Mr. Higgins seconded the motion and the vote was unanimous. A Public Hearing will be scheduled for the first meeting in April.

Mr. Boak was assigned as Case Manager for this Application.

**5. 180202 Seaside Hotel Associates, d/b/a The Nonantum Resort – Site Plan Review – Initial Review** – for approval to tear down an existing garage and storage building, replace with a new storage building and clean up the parking plan. (95 Ocean Avenue, identified as Assessor's Tax Map 8, Block 001 Lot 13 in the Riverfront Zone.)

Mr. Boak introduced the Agenda item.

Ms. Tina Hewitt-Gordon of the Nonantum addressed the Board asking to consider approving the removal of a garage, construction of a new storage facility and a redesign of the parking area. Ms. Hewitt-Gordon added the current parking plan shows 42 parking spots and with the redesigned parking area they would gain an additional 19 spaces by removing those parking areas currently on the grass on the river.

Mr. Messer asked Mr. Gilliam if there is a lot or building that is in two different zones what zone is it designated to be in. Mr. Gilliam replied that as a general rule our zoning districts follow property line boundaries so it is a fairly rare occurrence. The Shoreland Zone is an overlay zone not a zoning district, Mr. Gilliam added.

Ms. Hewitt-Gordon explained that the spaces on the current parking plan that are on the back lawn are not utilized and were deemed as overflow parking.

Ms. Pearlmutter raised her concern that the increased paved area in the proposed parking lot would increase runoff to the abutters. Mr. John Einseidler, architect for the Applicant, replied there will be a stormwater management plan to retain any runoff.

The Board members and the Applicant had a brief discussion about the proposed parking lot design and the percentage of lot coverage.

Mr. Messer asked the Applicant to provide further information on the following items:

1. In accordance with Article 10 of the Land Use Ordinance, it is required to provide a building sketch of the proposed new storage building and the first floor plan along with the building materials for the proposed new storage building,
2. Provide more detailed information on how deteriorated the current garage is.

Mr. Francis asked how many parking spaces are there currently. Ms. Hewitt-Gordon replied there are 28 spaces down along the bottom area and 14 spaces deemed for employees. Mr. Francis also commented it would be beneficial if the safety of people crossing the street could be improved as well.

Ms. Pearlmuter asked the Applicant to clearly mark the setbacks from abutters on the Application. Ms. Hewitt-Gordon agreed to provide that information to the Board members.

Mr. Higgins asked if abutters were notified about this Application. Mr. Gilliam responded that abutters were notified there has been an Application and they will each receive a certified letter notifying them when the Public Hearing has been set.

Ms. Hewitt-Gordon agreed to provide the following information to the Planning Board:

- Actual volume change on the face of the Application
- Sketch of new building plan for first floor and building materials
- Proof of condition of existing building to be removed
- Actual list of abutters
- Indicate on map where setbacks are located
- Stormwater plan
- Some sort of seasonal demarcation for the parking lot.

Mr. Francis expressed his hesitation approving this request to increase the lot coverage area or the number of parking spaces. The Board members and the Applicant had a brief discussion regarding the parking and the requirements of the Land Use Ordinance. Ms. Hewitt-Gordon noted the resort currently has 221 parking spaces and they are not adding any spaces but removing 19 spaces along the river and reallocating them across the street.

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

**6. 180203 Arthur Levin and Joan Rozolis / Walsh Engineering, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to perform site improvements to their property including removing and replacing a timber section of retaining wall and repairing an existing riprap seawall. (11 New Biddeford Road, identified as Assessor's Tax Map 35, Block 6, Lot 1 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Bill Walsh, representing the Applicant addressed the Board and gave a detailed presentation of the Application utilizing enlarged site maps and aerial photos. Mr. Walsh also addressed a question raised by Mr. Hogan regarding some erosion that is occurring along one side of the property. Mr. Walsh explained in detail their proposal to rebuild the block wall, protecting the base with riprap and put stone and gravel over the top along with some replanting with marsh grass and core matting to help with the deterioration and erosion.

Mr. Boak asked the Applicant about the removal of one of the trees on the property. Mr. Walsh indicated on one of the enlarged site maps which tree was to be removed, adding it is dying and needs to be removed but it will be replaced.

Ms. Pearlmuter asked if the Applicant has spoken with the Tree Warden in Kennebunkport. Mr. Walsh replied he has not but could. Mr. Gilliam offered he believes the tree to be removed is not a tagged tree. Ms. Pearlmuter commented that it may not be a tagged tree but the Applicant may want to consider preserving it as trees absorb a lot of water. Mr. Walsh responded that the tree is dying probably because of the salt water coming in through the wood retaining wall and believes the proposed new plant materials would better withstand the salt intrusion.

Mr. Messer asked what type of vegetation they are proposing to plant. Mr. Walsh replied possibly some sumac, wild blueberries, and maybe junipers to provide a little bit of stormwater treatment before running to the stream. Mr. Walsh offered to provide the Board with more details of the proposed plantings.

Mr. Walsh also noted they have not yet applied for a Permit By Rule with the Maine DEP and believe that is just a 2 week process.

Ms. Pearlmuter made a motion the Application is complete. Mr. Higgins seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on March 21<sup>st</sup>, 2018. Ms. Pearlmuter was assigned as Case Manager.

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

**Submitted by:** Patricia Saunders, Planning Board Recording Secretary