

Kennebunkport Planning Board
March 21, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, March 21st, 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 Pearlmuter, Edward Francis

Approval of Minutes: Mr. Boak made a motion to approve the minutes from the February 21, 2018 Planning Board meeting. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Boak requested a minor change be made to the minutes from the March 7th, 2018 Planning Board meeting. Mr. Boak made a motion to approve said amended minutes. Ms. Pearlmuter seconded the motion and the vote was unanimous.

Items:

1. 180101 Wilson & Elizabeth Goodwin / Atlantic Environmental, LLC, Authorized Agent – Site Plan Review – Findings of Fact – 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. Grady introduced the Agenda item noting Mr. Higgins was Case Manager for this Applicant and prepared the Findings of Fact.

Mr. Grady asked the Board members if they had any comments regarding said Findings. Mr. Francis suggested in Item #1 of said Findings that the Applicant be listed as the owners of the property with Atlantic Environmental listed as the owner's representative. Mr. Francis explained his reasoning for the suggestion is that in the Land Use Ordinance he infers the owner is truly the Applicant since after the fact it is the owner who is responsible for the use of the property as it was approved, not the authorized agent or representative. Mr. Grady and the other Board members agreed with Mr. Francis's suggestion and made the appropriate change on both copies of the Findings of Fact.

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

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.)

Mr. Grady introduced the Agenda item and asked Mr. Steve Doe of Sebago Technics to provide a brief overview of some of the items covered in his latest correspondence to the Board.

Mr. Steve Doe of Sebago Technics addressed the Board and commented on the following items:

1. Relocation of the maintenance building will be in compliance with the 100 foot setback.
2. The model unit will be moved so it will be 20 feet off the property line and have added some evergreens as a buffer to the abutter's property.
3. Have included the calculations for the total open space on the property which is 38.8%.
4. Have reduced the number of campsites to 300 as suggested at the last meeting by Mr. Boak. Mr. Doe indicated on the enlarged site maps which sites would be eliminated and where those sites were located.
5. Reconfigured the area where the new bathhouse is to be located to show no group sites were being eliminated.

Mr. Mahoney asked what the total removed rental units are. Mr. Doe replied they have removed 24 sites.

Mr. Francis asked the Applicant if they could provide a summary of these new changes with a notation stating which set of plans supersedes the previous set of plans and attachments. Mr. Francis also asked if the Applicant could make a notation that the campground has become more compliant with the reduction of sites so that the total area per site is at least 5,000 square feet. Mr. Doe pointed out that all of the site plans submitted throughout this review process have revision dates on them. Mr. Gilliam offered the Board could request the Applicant provide a final plan with all notations incorporated as part of the final review package.

Mr. Francis also requested to have the 76 seasonal sites be included on the same plan. Mr. Doe agreed to incorporate that as well, noting those 76 seasonal sites could be moved around to different sites as most of the sites have full utility hook ups. Mr. Francis explained by making the final plans as complete as possible, it would provide a good baseline to establish all of the aspects of the site.

In reference to Attorney Ralph Austin's letter to the Board received prior to this meeting, Mr. Francis asked if there was a reference that tied into the Applicant's statement of using Best Management Practices. Mr. Doe responded there is a state reference that deals with how one manages the property in terms of erosion control and agreed to include that reference in the final plans.

Mr. Francis also questioned what the Applicant was specifically proposing when they stated they would "inspect the septic on a regular basis"? Mr. Doe replied they would inspect them annually as part of the process and would pump them as required. Mr. Doe offered they would add that the tanks would be inspected annually as a condition of approval.

Mr. Messer asked Mr. Austin that he mentioned a detailed map of the property was completed and submitted to the town but the Board has not received that map. Mr. Austin responded the map is in the Code Enforcement Office and reflects the plan set that was submitted including the location of the sites and the utility upgrades done prior to this Application.

Ms. Pearlmutter commented on Mr. Austin's memo submitted to the Planning Board in that she disagrees with Mr. Austin's assumption that the site walk by the Code Enforcement Officer and the existing maps of the property constituted a permit providing the basis on which the Planning Board should make its decision. Ms. Pearlmutter continued that there was no specific permit given by the Code Enforcement Office that determined what the basis is for conformance with the Land Use Ordinance.

Town Attorney Amy Tchao addressed the Board stating she also disagrees with Mr. Austin's argument that the Planning Board does not have jurisdiction and cited Article 10.4 of the Land Use Ordinance which states: "The Planning Board shall hear and approve with modifications or conditions or disapprove an application for Site Plan Review Approval based on its compliance with standards set forth in this Ordinance." Ms. Tchao explained the Planning Board is charged with looking at an Application and specifically under Article 10.2.A.3 can look at the expansion, enlargement, or change of an existing use and within that jurisdiction that's specifically granted to the Board. Ms. Tchao continued that she believes the Planning Board certainly has the authority to look at this Application as a whole to determine whether or not there is an impermissible expansion of a non-conforming use based on what is being proposed overall on the site. Citing Article 8.8.C Change of Use, Ms. Tchao added this is further support for the Planning Board having explicit jurisdiction in determining whether or not the change of a non-conforming use to another non-conforming use has an impact on other properties.

Mr. Messer questioned whether the Applicant's offer to eliminate 24 grandfathered sites is horse-trading for an expansion of use.

Ms. Pearlmutter offered one of the big issues she was first determining what kind of use there was historically so that there was a basis on which the Board could determine if there was an expansion of use and how much of an expansion there was. Ms. Tchao agreed with Ms. Pearlmutter's assessment adding the Planning Board is uniquely situated to develop factual findings based upon the complete record and the public hearing process.

Mr. Austin explained they do not believe there is an expansion of use on the site and the idea of reducing the number of sites from 324 to 300 was not horse-trading.

Mr. Grady acknowledged that the Applicant agreed not to shuttle guests to the beach and asked what their plans were for kayak rentals. Mr. Doe responded there has been a private company that comes to the campground to rent kayaks and they will continue that service as the previous owners have offered.

Ms. Pearlmutter asked if the campground has a liquor license. Mr. Doe replied yes, they sell beer in the store on the campsite. Mr. Gilliam clarified it is a license to sell prepackaged beer and wine but not have a bar or service drinks.

Mr. Grady announced this is a continued Public Hearing and asked if there were any abutters or members of the public who wished to speak.

Mr. Bob Sherman of Goose Rocks Beach addressed the Board to express his concerns about the residents of Kennebunkport being squeezed out of using the beach because of some extraordinary effort by a development nearby.

Mr. Ray Lockard of Goose Rocks Beach addressed the Board with concerns about increased density and the environmental impact to the river.

Ms. Pearlmutter asked Attorney Tchao to provide some insight on non-conforming uses and case law regarding such. Ms. Tchao summarized a few points of case law which states if you have a legally non-conforming use you can not prohibit that use unless the non-conforming use is expanded impermissible which is more than *de minimus* expansion. Examples of an impermissible expansion of use, Ms. Tchao continued, would be if the owners transformed it into a new use or changed the essential character of the use. Attorney Tchao also gave a brief summary of the facts of *Frost v. Lucy, 231 A.2d 441 (Me. 1967)*.

Ms. Tchao also noted the Planning Board can choose to make factual findings based on all of the evidence to establish a baseline for the number of sites on the property.

Mr. Richard Driver of Goose Rocks Beach addressed the Board suggesting the Applicant should be required to provide a wetland study. Mr. Driver offered his opinion that the Applicant has not been forthcoming about the nature of the park units, the number of sunrooms and decks that have been added to those units, or the kind of extra services or entertainment that is being advertised on the Applicant's website. Mr. Driver concluded that this is not the rustic campground the Spangs had and since this is the largest single development in Kennebunkport, the Board should demand the Applicant provide more information.

Ms. Pearlmutter responded to Mr. Driver's comments stating live bands and entertainment is not part of this Application. Mr. Driver argued the Applicant's advertising for the property lists these activities that are not in keeping with the character of a rustic campground. Again, Ms. Pearlmutter explained that is not something before the Planning Board and should be addressed by the Code Enforcement Office.

Mr. Francis asked the Applicant to comment on the structure of the park models. Mr. Do replied they are on wheels and are registered as RVs with the state.

Mr. Austin responded that the essential character of the use has not changed as this has been a seasonal campground and it remains today as a seasonal campground only it has been updated and modernized.

Mr. Grady closed the Public Hearing.

After some discussion among the Board members, Mr. Francis identified the following areas in which the site is legally non-conforming:

- Use – a campground would not be allowed in the Goose Rocks Zone today.
- Article 7.3.A.1. – Currently the property does not comply with this Ordinance but the Applicant is offering to eliminate site in order to bring it into compliance with the requirement.
- The existing lot coverage will remain the same before/after this approval.
- The Applicant is proposing to add a visual screen from property lines and any new structures will comply with the 100-foot setback.
- 76 RV sites that are grandfathered will not be increased.

The Board members had a brief discussion on Article 7.3 Campgrounds and 8.8A. Expansion of Non-Conforming uses.

Mr. Grady suggested the Board review each item in Article 10.10.A & B to conduct a straw poll. Mr. Messer was absent for previous meetings during the review of this Application and will abstain from voting. Mr. Francis will participate in the voting on this Application.

Mr. Messer suggested in the process of going through the standards of Article 10.10 the Board provide some explanation on the reasoning for voting one or another. Ms. Tchao agreed with Mr. Messer's suggestion of adding notes describing the reasoning the Board members based their consensus on each particular standard.

Mr. Grady read each item in Article 10.10.A.1 and the Board commented as follows.

1. *The Planning Board shall approve an application for Site Plan Review unless it makes one or more of the following written findings with respect to the proposed development:*

- a. *The proposed use does not meet the definition or specific requirements set forth in this Ordinance or will not be in compliance with applicable state or federal laws; &*
- b. *The proposed use will create fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles;*

The Board members agreed 5-0 the Application is in compliance with these two standards.

- c. *The proposed exterior lighting will create hazards to motorists traveling on adjacent public streets or is inadequate for the safety of occupants or users of the site or will damage the value and diminish the usability of adjacent properties;*

The Board members agreed 5-0 this standard is not applicable to the Application.

- d. *The provisions for buffers and on-site landscaping do not provide adequate protection to neighboring properties from detrimental features of the development;*

The Board members agreed 5-0 the Application is compliant with this standard citing the Applicant is adding an evergreen buffer as shown on the site plan.

- e. *The proposed use will have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor dust, glare or other cause;*

The Board members agreed 5-0 the Application is in compliance with this standard.

- f. *The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety;*

The Board members agreed 5-0 the Application is in compliance with this standard by citing there will be an area off of the roadway at the entrance for vehicles and there will be no idling in the queue.

- g. *The proposed use will have a significant detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the plan;*

The Board members agreed 5-0 the Application is in compliance with this standard.

- h. *The design of the site will result in significant flood hazards or flood damage or is not in conformance with applicable flood hazard protection requirements;*

After some discussion the Board members agreed 5-0 the Application is in compliance with this standard.

- i. *Adequate provision has not been made for disposal of wastewater or solid waste or for the prevention of ground or surface water contamination;*

The Board members agreed 5-0 the Application is in compliance with this standard citing there are new septic systems that will be inspected annually and the addition of a new bathhouse.

- j. *Adequate provision has not been made to control erosion or sedimentation;*

The Board members agreed 5-0 the Application is in compliance with this standard citing the proposed plan shows erosion control measures.

k. *Adequate provision has not been made to handle storm water run-off or other drainage problems on the site;*

The Board members agreed 5-0 the Application is in compliance with this standard citing the proposed grading plan and stormwater management plan.

l. *The proposed water supply will not meet the demands of the proposed use or for fire protection purposes; &*

m. *Adequate provision has not been made for the transportation, storage and disposal of hazardous substances and materials as defined by state law;*

The Board members agreed 5-0 these standards are not applicable to the proposed Application.

n. *The proposed use will have an adverse impact on significant scenic vistas or on significant wildlife habitat which could be avoided by reasonable modification of the plan; &*

o. *The proposed use will cause unreasonable highway or public road congestion; or*

The Board members agreed 5-0 the Application complies with these standards citing the improved entryway and reduction in the number of sites.

p. *Existing off-site ways and traffic facilities cannot safely and conveniently accommodate the increased traffic generated by the development as far away from the development as the effects of development can be traced with reasonable accuracy.*

The Board members agreed 5-0 the Application is in compliance with this standard citing there is a reduction of sites which will result in a reduction of traffic.

Mr. Boak read each of the following standards in Article 10.10.B. and the Board commented as follows:

1. *When the proposed development will be located in the Shoreland Zone or Resource Protection Zone, the Planning Board shall approve it with conditions if it makes a positive finding based on the information presented that the proposed use:*

a. *Will maintain safe and healthful conditions; &*

b. *Will not result in water pollution, erosion, or sedimentation to surface waters;*

The Board members agreed 5-0 the Application is in compliance with these standards.

c. *Will adequately provide for the disposal of all wastewater;*

The Board members agreed 5-0 the Application is in compliance with this standard as there are no new septic systems being proposed.

d. *Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*

The Board agreed 5-0 the Application is in compliance with this standard citing they will install signs and barricades preventing guests from dragging kayaks across the marsh area to the water

e. *Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; &*

f. *Will protect archaeological and historic resources as designated in the comprehensive plan;*

The Board members agreed 5-0 these standards do not apply to the proposed Application.

g. *Will avoid problems associated with flood plain development and use; and*

The Board agreed 5-0 the Application is in compliance with this standard.

h. *Is in conformance with the Performance Standards set forth in Article 5.6.*

The Board agreed 5-0 the Application is in compliance with this standard due to the erosion and sedimentation control plan submitted as part of the Application.

Ms. Tchao asked the Board to discuss and provide evidence in the form of factual findings what specifically was more or less compelling with regards to the reduction of sites.

Ms. Pearlmutter pointed out the historical data on the number of sites on the property is confusing and that after due diligence on the part of the board and evidence brought forward by the Applicant and Code Enforcement Office, a plan was devised to determine a reasonable number of sites as close to accurate as possible. Mr. Frances agreed with Ms. Pearlmutter's statement adding that the basis in recent years is there are 324 sites on the property and the Applicant is proposing to reduce that number to 300 but that may not necessarily be a reduction to what was at the site in 1985.

After a brief discussion among the Board members, Mr. Gilliam suggested perhaps the Board should request Mr. Francis, as Case Manager, to create a draft Findings of Fact that could be reviewed, deliberated and modified if needed at the next Planning Board meeting. The Board members agreed with Mr. Gilliam's suggestion to continue deliberations on this Application until the next meeting. Mr. Francis offered he would like to have town counsel Attorney Tchao review the draft Findings of Fact before distributing the document to the members of the Planning Board.

Mr. Grady announced the Public Hearing has been closed and the Board's deliberations and discussion will continue at the next Planning Board meeting on April 4th, 2018.

3. 180102 Deborah Pearse 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 Assessors Tax Map 30, Block 1 Lot 17 in the Cape Porpoise East, Shoreland and Resource Protection Zones.

Mr. Grady introduced the Agenda item.

Mr. Alan Shepard, representing Ms. Pearse and Mr. Donath, addressed the Board and gave a brief summary of the Application.

The Board members had no questions for the Applicant at this time.

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

Mr. Messer was absent during the initial review of this Application and will abstain from voting. Mr. Francis has voting privileges for this Application.

Mr. Grady made a motion to approve the Application. Mr. Boak seconded the motion and the vote was 5-0 in favor of the motion.

Mr. Grady announced the Findings of Fact will be read at the next Planning Board meeting on April 4th, 2018.

6. 180203 Arthur Levin and Joan Rozolis / Walsh Engineering, Authorized Agent – Site Plan Review – **Public Hearing** – 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. Grady introduced the Agenda item.

Mr. Bill Walsh, representing the Applicants addressed the Board and gave a brief summary of the Application utilizing enlarged photos and site maps. At the suggestion of the Board from the last meeting, Mr. Walsh also stated he did speak with the town's Tree Warden Patrick Briggs who agreed with the Applicant it is best to remove the tree and not replace it as it would not survive but instead to plant shrubbery in the area. Mr. Walsh added they would replace the two trees with thorn-less honeysuckle and that the impervious area will not be expanded. Mr. Walsh also stated they are required to file a Permit By Rule but have not done so yet.

Mr. Messer asked if the erosion and sedimentation plan is all set. Mr. Walsh replied yes it is all set, noting the specifics of such plans are included in the materials submitted.

Ms. Pearlmuter asked where the area of the additional stabilization was located. Using an enlarged photo of the property, Mr. Walsh explained the area is at the base of the existing wall in that transition zone between vegetated and non-vegetated stream bank and will be in the same location and elevation as the existing wooden wall.

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

Mr. Grady was absent during the initial review of this Application and will abstain from voting on this Application. Mr. Francis will have voting privileges for this Application.

Mr. Messer made a motion to approve the Application. Mr. Mahoney seconded the motion and the vote was 5-0 in approval of the motion. Mr. Grady abstained from voting.

Ms. Pearlmuter was Case Manager and prepared the Findings of Fact for this Application. Ms. Pearlmuter read the Findings of Fact into the record. Mr. Boak made a motion to approve said Findings. Mr. Grady seconded the motion and the vote was 5-0 in approval of the motion. Mr. Grady abstained from voting.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary