

**Kennebunkport Planning Board**  
**April 3, 2019 ~ 7:00 PM**  
**Kennebunkport Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, April 3, 2019. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

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

Approval of Minutes: Approval of Minutes was deferred until the next Planning Board meeting.

Items:

- 1. 190101 Lord & Harrington, The Sanctuary / Sebago Technics, Authorized Agent** – Initial Review – **Continued Deliberations** – for approval to do a one-time upward expansion on an existing single family dwelling. (250 Ocean Avenue, identified as Assessor's Tax Map 7, Block 13, Lot 8 in the Cape Arundel, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board stating when the house was first constructed it complied with the 75 foot setback requirement. Mr. Doe illustrated his point about meeting the setback requirement by utilizing a survey and site map from 1976.

Mr. Francis asked if the Applicant feels they have a more precise survey now. Mr. Doe replied the 75 foot setback is measured from the high water mark not the lot lines. Mr. Francis asked if the high water mark was of the Lake of the Woods and if it really is a lake. Mr. Doe responded yes, and it is standing water there.

Mr. Simmons asked if there is a little creek or a drain for the lake. Mr. Doe replied he didn't know but speculated if there is a culvert it is probably on the Bush Compound.

Mr. Simmons asked if the area has ever flooded or if the blue lake has ever threatened to overflow the road. Mr. Doe responded he does not know but if it did it would be near the Bush Compound.

Mr. Simmons then asked if there was a pump in the basement. Mr. Doe replied No, they are far higher than any level to overflow into the basement.

In reference to the Board's request to consider bird-friendly windows in the construction, Mr. Doe explained it is very costly to replace the windows which would result in an upcharge of \$80,000-\$90,000 or more. There is a coating that could be applied to the windows that is less expansive; however, if it is applied it would negate the warranty on the windows, Mr. Doe continued. Mr. Doe also noted these products do not save all birds as most raptor birds cannot see UV light. One item of note that helps reduce bird fatalities, Mr. Doe stated, is having screens on the outside of the windows so the birds bounce off when they fly into it them. Ms. Pearlmutter asked if the windows will have screens with them. Mr. Lord responded all the windows and doors come with screens when ordered: whether the owner decides to use them or not is his decision.

The Board members and the Applicant had a brief discussion on the cost of installing bird-friendly windows.

Ms. Pearlmutter argued the cost is inconsequential when you're talking about a \$2,000,000 house. Attorney Ralph Austin argued the Board is making a major policy change with this request because that has never been imposed on any other Applicant, especially those with houses on the beach which is as much of a habitat for birds as the Lake of the Woods.

Ms. Pearlmutter asked if the screens could be installed when the windows are installed. Mr. Lord replied the screens will go in but he has no control over whether the owner decides to keep them in or not.

Ms. Pearlmutter questioned whether the Applicant's omission of the underground garage in the square footage calculation is allowed. Ms. Pearlmutter added of the 160 sq. ft. of basement area that will be used as a garage is included, it would put this expansion over the allowable 30%. Mr. Doe responded they included the existing garage in their volume calculations but did not include the part of the house that was basement level. The volume is the same, Mr. Doe added, as we're using the new basement as a garage.

Ms. Pearlmutter commented it can be categorized as a basement with an attached garage and if so, then that square footage should be included in the expansion calculations.

The Board members discussed briefly the definition of basement in the Land Use Ordinance and whether this Application is over the percentage allowed for expansion.

Mr. Gilliam pointed out that the definition of basement doesn't specifically talk about two uses one can have in a basement, so whether it is finished living space or storage space having a drive under garage would still be classified as a basement.

Ms. Pearlmutter asked for an opinion from Town Counsel Amy Tchao whether it is permissible to define a garage that is within a basement as part of the basement.

Mr. Gilliam commented if someone came in with a walkout basement and wanted to convert part of that to a garage, the town would not consider that a volume expansion.'

Mr. Lichte and Mr. Higgins agreed the proposed design fits within the definition of a basement and should be excluded in the volume calculations.

Ms. Pearlmutter reiterated her point that the ordinance needs to be clarified.

Raising a different issue Ms. Pearlmutter commented she questions whether expansions are permitted at all in the Resource Protection Zone and suggested perhaps Attorney Tchao should also offer an opinion on this.

Mr. Austin disagreed with Ms. Pearlmutter's assessment that expansions of use are not permitted in the Resource Protection Zone on this Application is not an expansion of use since it is still being used as a single-family dwelling.

The Board members and Mr. Austin had a lengthy discussion about grandfathering uses in the Resource Protection Zone and the proposed expansion of the house.

After some discussion, the Board members agreed to request Mr. Gilliam make an inquiry to the Inland Fisheries and Wildlife Department to consider removing this parcel from the Resource Protection overlay map.

Ms. Pearlmutter made a motion to continue deliberations until the next Planning Board meeting. Mr. Simmons seconded the motion. The motion passed by a vote of 4-1. Mr. Higgins abstained from voting.

**2. 190202 Donald & Kelley Jenkins / Peterson Design Group, Authorized Agent – Site Plan Review – Public Hearing – for approval to remove the existing single family dwelling and replace new in more conforming location. (25 Pier Road, Assessor's Tax Map 30, Block 1, Lot 17 in the Cape Porpoise East, Shoreland and Resource Protection Zones.)**

Mr. Boak introduced the Agenda items.

Erik Peterson addressed the Board on behalf of the Applicants and gave a brief synopsis noting the proposed structure will have a smaller footprint than the current building. Mr. Peterson also noted the Permit By Rule has been completed.

Mr. Boak commented the house was declared by the Planning Board last year to be a year round residence so there is nt increase in use for this Application.

Mr. Boak opened the Public Hearing.

Mr. John Phillips addressed the Board to comment that at some time in the past, probably in the 1990's this house was raised to put in a new foundation.

Mr. Mike Weston, a direct abutter of the Applicant addressed the Board stating he has reviewed the proposed design and feels it blends well with the character of the neighborhood. Mr. Weston did express his concern regarding the lack of bird-friendly glass in the design.

Mr. Boak closed the Public Hearing.

Mr. Simmons asked how much more will the house be raised. Mr. Peterson replied the new structure will be lifted to an elevation of 14.75.

Mr. Francis made a motion to approve the Application. Mr. Higgins seconded the motion and the vote was unanimous.

Ms. Pearlmutter read the Findings of Fact into the record. A motion was made to approve said Findings. It was seconded 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