

Kennebunkport Planning Board
May 19th, 2021 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, May 19th, 2021. The virtual meeting convened at 6:00 p.m. via Zoom.

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

Approval of Minutes: Mr. Simmons read his proposed changes to the minutes of the May 5th, 2021 Planning Board meeting. Ms. Pearlmutter made a motion to approve the amended minutes from the May 5th, 2021 Planning Board meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

Items:

1. **Henry Family Trust / Civil Consultants, Authorized Agent** -- Site Plan Review -- **Public Hearing** -- for approval to install a tidal docking structure consisting of a 4' x 134' bark mulch pathway, a 4' x 7' fixed stair, a 4' x 51.56' fixed pier, a 3' x 33' gangway and a 10' x 20' float located by helical moorings. Overall pier length will be 98.77'. (22 Ebs Cove Lane, identified as Assessor's Tax Map 21, Block 9, Lot 52B in the Village Residential East, Shoreland and Resource Protection Zones. **CONTINUED TO JUNE 2ND AT THE REQUEST OF THE APPLICANT.**
2. **210401 Ivy Subdivision / Sebago Technics, Authorized Agent** -- Final Subdivision Review -- **Public Hearing** -- for approval of major changes to previously approved subdivision – to subdivide a 7.8 acre lot (previously known as Lot #2 of the 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 Mr. Steve Doe and Attorney Ralph Austin to be promoted to panelist.

Mr. Doe addressed the Board stating he had submitted supplement information on May 12th to address items the Board had asked for. Mr. Doe then provided an update on some of the information in that supplement packet which were:

- Updated stormwater maintenance plan to include comments on the stream and responses to Will Savage's question
- As noted on page 4 of the Application there is very little increase in the runoff based on the soil mapping
- Provided a letter from the KKW Water District
- Submitted revised site plans as discussed at the last meeting
- Provided a letter from Chris Vaniotus regarding ownership and status of "King's Highway".

Mr. Doe also noted they have indicated on the subdivision plans Ivy Lane is the new road name.

Also, at Mr. Simmons' request, Mr. Doe provided a letter regarding the maintenance of the sanitary force main and based on a discussion with their engineer there is no need for cleanouts in that line as it is a self-cleaning line because it is pressurized.

Mr. Francis asked for a summary with respect to the previous discussion regarding the culvert. Mr. Doe replied the size of the culvert is ok and it does not need to be upgraded but they will restabilize the embankment closest to their site with more riprap.

Attorney Austin commented he had forwarded to the Board members and Code Enforcement Office a copy of an agreement on the road maintenance of Endcliffe Road along with some conditions that Ivy III has agreed to such that it can only be used as residential property.

There were no further questions from the Board members. Mr. Boak opened the Public Hearing.

A member of the public called in to the meeting to ask if the Applicant was going to disturb more land in the protected area. Mr. Doe responded no; the old stormwater management plan showed a minor increase in runoff but after they reworked the stormwater management plan based on some additional information they had on the soils, it showed there was no increase in runoff so the need for stormwater retention was eliminated.

Mr. Mahoney asked the Applicant to explain what the marginal increase in runoff would be as stated earlier. Mr. Doe explained the increase is just 1 cubic foot per second of water which is very minimal. Mr. Mahoney then asked if the Maine DEP was ok with that slight increase. Mr. Doe replied the DEP is not reviewing the stormwater management section, but it will have a negligible effect on the culvert and that is addressed in more detail with the report. Mr. Boak asked if Acorn Engineering is fine with the new report. Mr. Doe responded that Mr. Gilliam had sent the new report to Acorn Engineering, and they had one question which we responded to but have not heard any more from them.

Mr. Gilliam offered to contact Acorn Engineering to request they send a letter to the Planning Board stating they are satisfied with Applicant's stormwater report.

Mr. David Strachan addressed the Board questioning why this Application is being allowed when a similar Application proposed in the past was denied due to the affect on the protected wetlands and the endangered species that inhabited those wetlands. Mr. Francis commented in response that the Board has not ignored concerns about the wetlands and asked Mr. Doe to discuss this issue in more detail.

Mr. Doe explained the previously approved Application for this piece of property was for a 7-lot clustered subdivision with a 20-foot wide road that was actually approved by the Planning Board but was denied by the Board of Selectmen due to the proposed road access to Arlington Avenue and South Main Street.

Mr. Strachan stated a report provided from the University of Maine citing endangered salamanders which are unique to this part of the state live in that wetland.

Mr. Strachan also expressed his concern about increased traffic as the corner at South Main Street is extremely dangerous.

A lengthy discussion ensued amongst the Board members, Mr. Gilliam, and the Applicant as to whether a copy of the University of Maine study should be provided as part of the Application and whether the Board was comfortable moving forward with approval of this Application.

After a brief poll of the Board members, Mr. Boak stated the Board would like to see a copy of the environmental report Mr. Strachan was referring to but that the Board would proceed with voting approval and composing the Findings of Fact to be read at the next meeting pending no significant information is rendered from Acorn Engineering's final letter.

Mr. Boak closed the Public Hearing.

Mr. Francis made a motion to approve this Application contingent on Acorn Engineering stating they are satisfied with the latest stormwater report and the responses that they have been given. Mr. Simmons seconded the motion, and the vote was unanimous.

3. 210402 Cape Arundel Woods / Sebago Technics, Authorized Agent -- 3rd Amended Subdivision Minor Amendment regarding Lot 2A -- Public Hearing -- for approval to remove a turnaround easement and increase a side yard setback for Lot 2A. (Endcliffe Road, known as assessor's Tax Map 7, Block 13, Lot 1F in the Cape Arundel Zone.)

Mr. Boak introduced the Agenda item.

Mr. Doe explained this Application was presented at the last meeting in relation to the previous project as they are looking to amend the Cape Arundel Woods subdivision to amend the hammerhead turn and to increase the side yard setback to 30 feet. Upon the Board's request at the last meeting, Mr. Doe stated he has submitted an updated agent authorization letter prior to tonight's meeting.

There were no questions from the Board members.

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

Mr. Boak made a motion to approve this Application. Mr. Francis seconded the motion, and the vote was unanimous. Mr. Francis will prepare the Findings of Fact to be read at the next Planning Board meeting on June 2nd, 2021.

4. 210405 Ocean Woods / Sebago Technics, Authorized Agent -- Site Plan/Review -- Initial Review -- for approval of a complete reconfiguration of the existing hotel/motel, by replacing the existing buildings with a new one store, 88-seat restaurant and pool, with 30 individual 1 and 2 bedroom cottages, and a reconfiguration of the parking area to create 68 parking spaces, a new main entrance and use the existing driveway for service vehicles and employees. (71 Dyke Road, Assessor's Tax Map 37, Block 5, Lot 2 in the Goose Rocks Zone.) **CONTINUED TO JUNE 2ND AT THE REQUEST OF THE APPLICANT.**

5. 210403 St. Onge Property / Mitchell & Associates, Authorized Agent -- Preliminary Subdivision Review -- Initial Review -- for approval to subdivide 5.01 acres to create two lots. (Hillside Drive, Assessor's Tax Map 41, Block 2, Lot 9C in the Goose Rocks Zone.)

Mr. Boak introduced the agenda item.

After some difficulty connecting through the Zoom format, Mr. Bob Metcalf of Mitchell & Associates addressed the Board and gave a summary of the Application. Some of the items Mr. Metcalf discussed were as follows:

- Mr. St. Onge purchased a 5.01-acre portion of the Henchey property located on Hillside Drive
- The road was approved by the Planning Board in 2016 and constructed in 2017
- Mr. St. Onge would like to divide the 5.01-acre lot to build a home for himself on one lot and a home for his in-laws on the other lot

- There are no proposed road improvements as the road is already in place
- The lower lot (lot 2) will have 14,000 square feet of open space while the upper lot (lot 3) will have 35,000 square feet of open space
- Both lots meet the required 15% of open space per the Subdivision Regulations
- Asking for waiver for installation of public water and sewer lines
- Will install NFPA 13 Residential Fire Suppression Systems per Fire Chief's request in each home
- Requesting a waiver for a fire hydrant as there is not adequate water pressure for a hydrant on the property
- There will be no wetland impact
- Lot 2 has suitable soils for a 5-bedroom residence
- Lot 3 has 2 passing fields for a 4-bedroom residence.

Mr. Metcalf concluded his presentation stating all the infrastructure was installed previously by the Henchey family.

Mr. Boak suggested the Applicant may need to request a waiver for the 1,000-foot road length as the road is longer than that.

Mr. Simmons expressed his concern about the wells and the availability of potable water if there have been any sea water intrusions in the area. Mr. Metcalf replied he did speak with his well driller and will forward a letter he received from his builder about the locations of the wells so there does not appear to be an issue with potable water.

Ms. Pearlmutter stated her concerns also about potable water given its close location to the ocean and the proximity to wetlands and questioned whether a sewer line should be installed as a failing septic system in that area would cause considerable pollution. Mr. Metcalf responded stating he understands about failing septic systems and those that fail are mostly due to age since the technology has changed considerably and the soils have been shown to be good for septic system.

As previously discussed in January during the sketch plan for this Application, the Board members agreed a site walk of the property would be beneficial.

Ms. Pearlmutter asked where the utilities are going into the property. Mr. Metcalf replied the power lines have been pulled in and the poles have been set as the overhead service was part of the original private road approval process.

Citing the Kennebunkport Subdivision Regulations, Mr. Francis asked what name this subdivision will be called. Mr. Metcalf replied it can be called the St. Onge Property if permitted. Mr. Gilliam added for all practical purposes that is how it is identified in the town records.

Mr. Francis asked what the total acreage of the subdivision is in order to determine if the open space requirement will be met. After some discussion and reviewing the site plans online, it was determined a waiver to the subdivision regulations will be needed, to allow the open space requirement to apply only to the lot(s) being subdivided.

Referring to the 3 test pit locations shown on the site plans, Mr. Simmons asked if that indicates the location of the house that would be proposed. Mr. Metcalf explained not necessarily as he is not sure if Mr. St. Onge has decided where the house will be but offered to provide further information for the Board on the building envelope once determined. Mr. Gilliam pointed out to the Board that conceptual footprints on a site plan are fine to give a sense of scale but when sitework begins often homes wind up being within the building envelope but may be slightly different as site development plans are merely hypothetical at this stage.

Ms. Pearlmutter pointed out there is an error on the lot number on the Application. Mr. Metcalf agreed and offered to provide a correction to that once a lot number has been assigned to the property.

Ms. Pearlmutter made a motion to approve the Application as complete. Mr. Francis seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on June 2nd, 2021.

Mr. Harcourt volunteered as Case Manager for this Application.

6. 210404 Vincent Thelin / Longview Partners, LL D, Authorized Agent – Sketch Plan – discussion of subdivision of a 10-acre lot to create two lots. (245 Arundel Road, Assessor's Tax Map 15, Block 3, Lot 4 in the Farm and Forest Zone.)

Mr. Boak introduced the agenda item and asked Mr. Jim Logan to be promoted to panelist to present the Application.

Mr. Logan explained this Application is a simple division of 1 lot into 2 in order for the owner, Mr. Thelin, to create a lot for his son and by state law any further division of a previously approved subdivision must go back to the Planning Board for review. Mr. Logan explained the property is in the Farm and Forest Zone and have determined the 50-foot strip of land is not a Right of Way but instead land that belongs to the larger lot behind the property owned by Mr. Tim Harrington. Mr. Harrington has agreed to provide for vehicular access to the drive only for construction purposes of the dwelling and a future driveway is planned off of Arundel Road originally called Lester Wildes Road, Mr. Logan added.

Mr. Logan also explained they have done a wetlands review and found a suitable septic site and will provide an application for subsurface wastewater system with the Application.

Mr. Logan also went into details on a waiver request for a hydrogeological assessment and will obtain approval from the Fire Chief for a farm pond for fire suppression and approval for a curb cut off of Arundel Road from the Code Enforcement Office. Mr. Logan also noted they have no Maine DEP requirements or any Army Corps of Engineers permits to obtain.

The Board members agreed a formal site walk was not necessary for this proposed Application.

7. 210406 250 Ocean Avenue, Ryan Berube / Sebago Technics, Authorized Agent – Site Plan Review -- Initial Review -- for approval to reconstruct a single-family home in a similar location to what was previously approved by the Planning Board on Ma 15, 2019. (250 Ocean Avenue, Assessor's Tax Map 7, Block 13, Lot 8 in the Cape Arundel, Shoreland and Resource Protection Zones.)

Mr. Steve Doe addressed the Board again and asked Mr. Ryan Berube be allowed to participate through phone for this Application.

Mr. Doe shared the site plans on the screen for the viewing public. Mr. Doe explained Mr. Berube purchased the lot and is interested in building a different house on the property while utilizing the allowable 30% expansion and changing the driveway location. Mr. Doe added the impervious surface is slightly less than the previous approval and Mr. Berube would like to add a pool and terrace off the back of the house.

Mr. Doe showed several plans on the screen detailing the grading of the property, the existing and proposed outline of the house, and the location of the pool, and location of the septic system which will be in the same location as previously approved only expanded slightly to accommodate a 5th bedroom.

As for the driveway, Mr. Doe explained they are proposing a loop driveway to come back out to Ocean Avenue in order to meet sight distances for safety and to allow the ability to turn around on the property and get into the garage.

Mr. Doe also showed sketches of each side of the proposed house pointing out the location of the decks, walkout basement, patio and pool area.

Citing *Article 240 §8.3.B.5. Reconstruction or Replacement of a Non-Conforming Structure*, Ms. Pearlmutter cautioned that this must be stated clearly in the Findings of Fact if approved as why this reconstruction is permitted. Mr. Gilliam cited *Article 240 § 8.8.B. Resumption Prohibited which states "This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period."* Mr. Gilliam further explained there is not a loss of use because this has been a residential property that has been maintained in the last 5 years.

Ms. Pearlmutter also voiced her concerns about the having a septic system on a piece of property that is surrounded by wetlands along with her concern for bird safety with the design of the house and asked if the Applicant would consider either birdproof window glass, screens over the windows and doors, and/or architectural designs such as overhangs that protect the glass. Ms. Pearlmutter also cautioned against the use pesticides or other chemicals on the lawn area that could leach into the water and threaten the natural habitats.

Mr. Simmons recalled from the originally approved plan that the Applicant expected to reuse the existing 76-year old water well. Mr. Doe explained they are currently planning on continuing with the well but they do plan on running a water line out to the front where there is public water, but it is a very expensive fee to tie into that which is close to \$40,000-\$50,000.

Mr. Lichte agreed with Ms. Pearlmutter's concerns about the use of pesticides and fertilizers as runoff will be an issue if those are used.

Ms. Pearlmutter made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on June 2nd, 2021.

Mr. Lichte volunteered as Case Manager for this Application.

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

Submitted By: Patricia Saunders, Planning Board Recording Secretary