

Kennebunkport Planning Board
June 16th, 2021 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, June 16th, 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 a motion to approve the minutes from the June 2nd, 2021, Planning Board meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

1. **210501 Bowsprit Kennebunkport, LLC / William R. Walsh, III, PE, Authorized Agent** – Preliminary Subdivision Review – **Initial Review** – for approval to create a 4-lot residential subdivision that will use both Route 9 and Wildes District Road as frontage for the lots. (164 Wildes District Road, Assessor's Tax Map 22, Block 3, Lot 6 in the Cape Porpoise West Zone.)

Mr. Boak introduced the agenda item.

Mr. Bill Walsh addressed the Board and asked for the Applicants Abby Goldenfarb and Michael Barowsky who are doing business as Bowsprit Kennebunkport LLC to be added as participants to the meeting

Ms. Goldenfarb addressed the Board and explained as a native of Kennebunkport, her goal is to subdivide the property and rebuild the existing house that is currently on the property that has been abandoned where she and her husband will live.

Mr. Walsh shared the site plan drawings contained in the Application on the screen for the viewing audience and gave a detailed explanation of the property, identified the proposed lots to be subdivided, as well as the adjacent Water District property and Kennebunkport Conservation Trust property. Some other items Mr. Walsh noted in his presentation are as follows:

- The parcel size is 3.4 acres in the Cape Porpoise West Zone which allows for 20,000 square foot lots
- The net residential calculation is approximately 103,000 sq.ft. which would allow for 5 lots
- The Applicant is proposing 4 lots with an open space area
- 3 of the lots will be accessed on Wildes District Road and the other lot will be off Main Street
- Lots 2, 3, & 4 will have town water accessed from the existing water service on Main Street
- Lot 1 will use the existing water service off Wildes District Road
- Sewer connections will be made to the main that runs along Wildes District Road
- Electrical service is anticipated to be underground.

Mr. Walsh also gave a detailed explanation on the proposed driveway entrances for each lot and indicated on the site plans where the shared driveway would be located for lots 1 and 2 and indicated on the plans where the grade would need to be adjusted to maintain sight distances for each of the proposed driveways.

Mr. Boak asked about the existing walkway that is currently on the property. Mr. Walsh replied the stone wall and some vegetation will need to be removed in order to maintain sight distances but they anticipate saving the walkways.

Mr. Boak asked Mr. Gilliam if a waiver would be required for the proposed shared driveway for lots 1 and 2. In reference to another subdivision that required a waiver for a shared driveway, Mr. Gilliam explained that waiver was for the width of the Right of Way for the Subdivision Regulations. Citing Article 12 Design Standards of the Kennebunkport Subdivision Regulations, Mr. Gilliam suggested it would be beneficial to handle the shared driveway through a waiver for the 50-foot Right of Way and the 18-foot width as set in the Subdivision Regulations. Mr. Boak agreed a waiver should be noted in the Findings of Fact if approved.

For future consideration, Mr. Gilliam suggested the table within Article 12 of the Subdivision Regulations may need some refinement when considering a shared driveway for 2 single family homes.

Ms. Pearlmutter cautioned the 20-foot easement for the sewer lines running from Lot 4 to Lot 1 could become included with tree roots and suggested the owners may want to put up a vegetative barrier in addition to a restriction that only shrubs and no trees be planted along that area. Ms. Pearlmutter also suggested the Applicant consider doing the same for their water easement from Lot 1 to Lot 2. Mr. Walsh agreed with Ms. Pearlmutter's suggestions.

Mr. Lichte asked if the grade of the driveway will be level. Mr. Walsh replied there will be a landing spot at the entrance but as you come further into the property it will be steeper. Mr. Lichte then asked if there will be some sort of a Homeowners Association

to cover the snowplowing and maintenance of the shared driveway. Mr. Walsh replied they will work that out with a maintenance agreement. Mr. Gilliam added that most banks will require a maintenance agreement.

Mr. Simmons asked if anyone had contacted the Water District to determine if they have any concerns with excavation near their water tower. Mr. Walsh responded he has not asked that question of them yet, but he will ask them specifically and provide their answer to the Board.

Mr. Francis asked about the sidewalks on the property and if there is an agreement between the town and the Applicant to replace those sidewalks. Mr. Gilliam explained typically whenever there is a curb cut that impacts a town sidewalk there are occasions when the town requires funds to be set aside for replacement but given this is planned to be replaced anyway, he will speak with Mike Clause and arrange for something to be brought back to the Board.

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

Mr. Francis made a motion the Application is complete. Mr. Mahoney seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on July 7th, 2021. Mr. Francis volunteered as Case Manager for this Application.

2. 210503 Verizon Wireless / Scott Anderson Esquire, Authorized Agent – Site Plan Review – Initial Review – for approval to install a small cell wireless communications facility on an existing distribution telephone/electrical pole. Located near 674 Kings Highway (formerly known as 180 Kings Highway, Assessor's Tax Map 34, Block 2, Lot 14 in the Goose Rocks Zone.)

Mr. Boak introduced the agenda item and asked for Mr. Anderson to be promoted as participant.

Mr. Scott Anderson representing Verizon Wireless addressed the Board stating he has submitted an Application to the Board for the installation of a small cell wireless communications facility on an existing utility pole. Mr. Anderson shared the site plans on the screen explaining the telephone pole is near 180 Kings Highway and showed examples of the small cell antenna along with the boundaries of the Right of Way in addition to side views of the pole after installation. Mr. Anderson explained there are 3 pieces of equipment that is part of a small cell tower, which are: the antennae at the top, the radio head, and a standard meter down towards the bottom of the pole. There will be no alteration to the ground level as well as no traffic or land impacts and have provided a structural report that shows the pole can handle the added equipment along with their FCC License, Mr. Anderson stated. Currently, Mr. Anderson added, there are 4 of these small cell towers in Kennebunkport and they have included in their Application the submission requirements as described in the Kennebunkport Wireless Telecommunications Ordinance. Mr. Anderson concluded his presentation by stating they have also included copies of their pole attachment agreement that allows them to go on the pole and the landowner's consent to walk on the property to access the pole.

Mr. Boak thanked Mr. Anderson for his thoroughness in submitting his Application and acknowledged there were a couple of waiver requests included for streams and water crossings.

Ms. Pearlmutter asked if there were any of these poles in Dock Square. Mr. Anderson replied there are 4 in Kennebunkport, but he will confirm where those are located and let the Board know.

Ms. Pearlmutter asked if the Applicant got a permanent easement from the landowner. Mr. Anderson replied the easement is just for construction access for installing and maintaining the tower.

Ms. Pearlmutter questioned if the antennas were susceptible to vandalism or hacking. Mr. Anderson responded he was not sure they are susceptible to hacking because they can be shut down remotely if there is an issue and Verizon monitors their equipment 24/7 and would know if there were any interruption or decrease in power.

Mr. Francis suggested it would be helpful to have the locations of where the 4 existing towers are in town in advance of the Public Hearing especially to those listed as abutters to this proposal. Mr. Anderson agreed to provide that information to the town as soon as possible.

Mr. Simmons asked Mr. Anderson if he had any concerns about lightning hitting the towers. Mr. Anderson explained unlike other towers, there is not a lightning rod but there are grounding rods that are put underground and connected to the system. His understanding, Mr. Anderson continued, is that the antenna can withstand a hit of lightning and go down to the grounding rod but it doesn't require a separate lightning rod.

Mr. Lichte asked why this proposal is before the Planning Board while the other 4 towers in town did not require Planning Board approval. Mr. Anderson explained it is because the ordinance provides that if there is an installation within 50 feet of a house it comes before the Board.

Mr. Harcourt asked if Spectrum uses the same system as Verizon. Mr. Anderson replied he does not think so because Verizon has distinct frequencies that they have to bid for and get from the FCC so any company that is using wireless will have a dedicated frequency to make sure there's not interference between the different systems.

Ms. Pearlmutter made a motion to accept both waiver requests from the Applicant. Mr. Boak seconded the motion, and the vote was unanimous.

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 July 7th, 2021. Mr. Simmons volunteered as Case Manager for this Application.

3. Henry Family Trust / Civil Consultants, Authorized Agent -- Site Plan Review -- **Findings of Fact** -- 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. *Larry Simmons, Case Manager*)

Mr. Simmons read the Findings of Fact into the record. Mr. Francis made a motion to approve said Findings. Mr. Simmons seconded the motion, and the vote was unanimous.

4. 210406 250 Ocean Avenue, Ryan Berube / Sebago Technics, Authorized Agent – Site Plan Review – **Findings of Fact** -- 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.) *George Lichte, Case Manager*

Mr. Lichte read the Findings of Fact into the record. Mr. Gilliam noted a minor correction to made to said Findings. Mr. Boak made a motion to approve said Findings as modified. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

5. *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 AT THE REQUEST OF THE APPLICANT.**

6. 210502 Dow House Limited Partnership / Bradley Lown, Authorized Agent -- Site Plan Review – **Initial Review** – for approval to rebuild a dock and some support pilings (2-6). Dock will be 4' x 70' with an 8'x8' "L" shape turn; a possible short ramp/staircase and a stationary year-round pier. (26 Agamenticus Avenue, identified as Assessor's Tax Map 30, Block 3, Lot 32 in the Cape Porpoise East, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item asked if Mr. Lown could be promoted to participate in the meeting.

Mr. Brad Lown addressed the Board stating he is one of the general partners along with his wife who are the owners of 26 Agamenticus Avenue which is off Fishers Lane.

Mr. Lown shared the site plans on the screen and gave a brief presentation on the Application, some of the items mentioned are as follows:

- The residential pier was first built in the 1940's by Mr. Lown's uncle
- The pier was repaired in the 1970s and again in 1980 and then remained dormant for a period of time
- In 2006 Mr. Lown rebuilt the pier and was informed by the Code Enforcement Officer that piers were no longer allowed as the use had been discontinued
- Mr. Lown then appealed the Code Enforcement Officer's decision to the Zoning Board of Appeals, the Superior Court, and the Maine Law Court
- The Maine Supreme Court issued its decision in 2008
- In November of 2020 FEMA revised their maps and this lot is no longer in a velocity zone
- Approvals have been obtained from the Maine Historic Preservation Commission, Army Corps of Engineers, and the Board of Selectmen.
- Maine Department of Environmental Protection approval is pending.

Mr. Lown then described the proposed structure to be built will be the same length as it was in 2006 which is 70-feet long, 4-feet wide. Mr. Lown concluded his presentation by sharing pictures of the area to show the pilings are still in place though some of those pilings may need to be replaced.

Given the history of this property, Mr. Boak asked if this is an entirely new dock which means it would have to be qualified under the current requirements according to Article 5.11 of the Land Use Ordinance. Mr. Gilliam responded yes, there are existing pilings which were permitted to remain but in terms of meeting setbacks this is treated essentially as a new dock.

With Mr. Gilliam's explanation in mind, Mr. Boak suggested the Applicant review Article 5.11 and provide the Board with sufficient information that outlines how this Application will meet all the requirements of the Land Use Ordinance. Mr. Boak also suggested the Applicant may need approval from the Maine Department of Inland Fisheries and Wildlife as well.

Mr. Boak asked Mr. Gilliam if given the pilings are already in, the fact that they are not 10-feet apart is that something the Board could still approve as is? Mr. Gilliam replied yes, that is something the Board members could take into consideration in their decision.

To assist the Applicant in compiling all the necessary information in a satisfactory format to show compliance with Article 5.11 of the Land Use Ordinance, Mr. Boak offered to provide a Word document to Ms. Harmon in the Code Enforcement Office who would forward it to the Applicant. Mr. Boak asked the Applicant to complete the document and submit it to the town before the Public Hearing is held if possible.

Regarding the fact the Applicant is a limited partnership, Ms. Pearlmutter commented Mr. Lown may need a letter from his wife authorizing him to represent the limited partnership on her behalf.

Ms. Pearlmutter also commented she agrees with Mr. Gilliam's assessment of this property in that the dock is not a grandfathered construction piece and asked for confirmation of the Board of Selectmen's approval. Mr. Gilliam noted the Board of Selectmen approved this dock at a later meeting from their April 12th site walk.

Ms. Pearlmutter also suggested the Applicant get confirmation from the Army Corps of Engineers and the Maine DEP that there is not significant wildlife on the property.

Ms. Pearlmutter also cautioned the Applicant should review the FEMA manual regarding construction; specifically concerning floats not being more than 200 square feet and if the 8-foot ell planned at the end of the dock is even allowed. Ms. Pearlmutter also asked the Applicant to provide more concise diagrams that clearly indicates the property setbacks and indicate what erosion control measures will be taken in addition to meeting the EPA standards for the wood boards to be used.

Ms. Pearlmutter voiced her concern voting this Application complete based on the amount of information that has been requested by the Board of the Applicant at this point as well.

Mr. Lown agreed to meet with Mr. Gilliam to make sure all the standards will be met, especially those concerns raised by Ms. Pearlmutter in accordance with Article 5.11 of the Land Use Ordinance.

Referring to Ms. Pearlmutter's comments, Mr. Francis asked for an updated letter to show the Board of Selectmen have reviewed and approved this proposal.

Mr. Francis questioned how the Planning Board could approve this Application due to the degree of vagueness of the information provided to this point.

Mr. Francis asked what the tidal change in the water level is daily and how long during the day is there water at the pier. Mr. Lown replied the tide goes out several hundred yards so there are mud flats that reach all the way to Redin's Island which is ¼ mile away and at high tide at the end of the pier there may be 6-7 feet of water, so they have approximately 3 hours of use.

Ms. Simmons asked the Applicant if he could provide a topographical map to show the elevation of high/low tide and possibly superimpose the dock to aid the Board members.

Mr. Simmons also suggested the Applicant review the requirements for handrails for walkways and piers.

Mr. Harcourt asked what the proposed use of the dock is. Mr. Lown replied it is for residential use, to dive off of and maybe tie up a rowboat to it.

Mr. Boak made a motion to continue the Initial Review of this Application to the next meeting. Mr. Francis seconded the motion, and the vote was unanimous. Mr. Boak volunteered as Case Manager for this Application.

- 7. 210504 John & Jennifer Schaeffer / Peterson Design Group, Authorized Agent – Site Plan Review – Initial Review –** for approval to remove an existing non-conforming single-family dwelling and replace with a new single-family dwelling in a more conforming location. (28 Wildwood Avenue, Assessor's Tax Map 35, Block 1, Lot 12 in the Goose Rocks Zone.)

Mr. Boak introduced the Agenda item.

Mr. Erik Peterson of the Peterson Design Group addressed the Board and shared the site plans on the screen for the viewing audience. Mr. Peterson explained this is a building reconstruction where they would like to do a 30% expansion as part of the reconstruction and will reduce the footprint. The existing house meets the current FEMA regulations, but they are proposing to raise the new structure to 15.75 and will still fit under the 30-foot height restriction, Mr. Peterson added.

Ms. Pearlmutter asked if the proposed structure is at 29-feet 9-inches to the top of the cupola. Mr. Peterson replied by the Land Use Ordinance the cupola does not count in the height requirement.

Mr. Peterson agreed to forward his email confirmation from the Maine DEP to the Code Enforcement Office that their Permit-By-Rule application was approved.

Due to the location of the property adjacent to open marsh with bird and wildlife habitats, Ms. Pearlmutter asked the Applicant to consider bird-proof glass and/or screens on all windows and sliding doors. Mr. Peterson agreed all windows will have screens and there will be a screen to the sliding glass doors. Mr. Boak offered there are also decals available that can be applied to windows to prevent birds from flying into them. Mr. Peterson also offered to perhaps add an overhang to the door to help prevent bird strikes.

Ms. Pearlmutter also cautioned against the use of fertilizers and pesticides on the lawn due to environmental concerns. Mr. Peterson agreed with Ms. Pearlmutter's suggestion not to use those items.

Ms. Pearlmutter also asked about the existing maple tree in the front of the property and if there will be an impervious surface for the driveway which could cause runoff. Mr. Peterson responded the maple tree will remain as they are not proposing to cut any trees and the driveway will remain gravel as it is now.

Mr. Peterson also commented the property is on town water and sewer and will remain so with the new structure.

Mr. Francis made a motion the Application is complete. Ms. Pearlmutter seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on July 7th, 2021. Ms. Pearlmutter 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