

Kennebunkport Planning Board
June 17th, 2020 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, June 17th, 2020. The virtual meeting convened at 6:00 p.m. via Zoom.

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

Approval of Minutes: Mr. Simmons made a motion to approve the minutes from the June 3rd, 2020 Planning Board meeting. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Items:

1. **200301 Edward & Lonna Bassett** – Minor Subdivision Change - **Public Hearing** – for approval to add .59 acres to their land through a purchase to create a larger buffer. Ox Plow Lane Assessor's Tax Map 37, Block 3, Lot 4 in the Free Enterprise Zone.

Mr. Boak introduced the Agenda item.

Mr. Edward Bassett addressed the Board stating he has purchased this 0.41 acre parcel of land that is attached to one lot and would like to attach it to his property for the purpose of using it as an additional buffer. The property is undeveloped and will remain undeveloped, Mr. Bassett added.

There were no questions from the Board members at this time.

Mr. Boak opened the Public Hearing. There were no comments or questions from any abutters or the public. Mr. Boak closed the Public Hearing.

Ms. Pearlmutter made a motion to approve this minor subdivision change. Mr. Francis seconded the motion and the vote was unanimous.

Mr. Boak instructed the Board members that after the Findings of Fact has been read and approved, each Board member will need to go to the Town Offices as soon as possible to sign each set of the Findings of Fact and the Code Enforcement Office will notify the Applicants when they can pick up the signed Findings for recordation.

Mr. Harcourt read the Findings of Fact into the record. Ms. Pearlmutter made a motion to approve said Findings. Mr. Boak seconded the motion and the vote was unanimous.

2. **200503 Michael McKellar d/b/a New Point, LLC** – Site Plan Review - **Public Hearing** – for approval to convert an existing landscape equipment warehouse back to its original permitted use as a lobster and seafood distribution warehouse. 184 Beachwood Avenue, Assessor's Tax Map 24, Block 1, Lot 14B in the Farm & Forest Zone.

Mr. Boak introduced the Agenda item and asked the Applicant to review his responses to some of the comments raised by concerned abutters.

Mr. Mike McKellar addressed the Board stating he is the owner of New Point LLC at 100 Oak Ridge Road in Kennebunkport and is under contract to purchase 184 Beachwood Avenue which is slated to close on July 3rd, 2020. Mr. McKellar explained he is looking to convert the use of this property back to a seafood distribution business with perhaps one other employee to start. The business is a brokerage and fulfillment business for e-commerce and out of state customers, Mr. McKellar added. The operation will bring in product that is already packaged, primarily fresh or frozen seafood, so there will be no processing or fish cutting of any kind, and the fish will be packed in Styrofoam coolers to be shipped via UPS-style trucks, Mr. McKellar continued. In response to some letters from abutters concerning noise from trucks, Mr. McKellar explained he has one large van which he drives himself and the only other truck that normally would come on the property is a UPS-style truck once or maybe twice a day to pick up the packages. Mr. McKellar also added he is planning on installing a small freezer and cooler, both of which will be approximately 8 feet x 12 feet self-contained units with a small compressor that should not make much noise. Mr. McKellar offered he is open to make any changes to the compressor units to help suppress noise for the neighbors.

Mr. Boak asked the Board members if they had any questions for the Applicant.

Mr. Simmons asked if the Applicant could verify whether there is any ammonia in the cooling systems for the freezer or cooler. Mr. McKellar replied there is not.

Mr. Simmons commended the Applicant for his willingness to mitigate noise issues raised by the neighbors and noted he has written a couple of requirements regarding noise into the draft Findings of Fact. Referring to the Environmental Protection Agency requirements and Occupational Safety and Health Administration requirements concerning noise levels in residential areas, Mr. Simmons read from the draft Findings of Fact: "The sound level during the day would be no more than 55 decibels on the A Scale at residences, and at night no more than 47 decibels on the A scale from 10:00pm to 6:00am."

Again, referring to neighbors' concerns about noise, Mr. McKellar stated the cooler previously on the property when it was Cape Porpoise Lobster was a much larger unit with an outdoor compressor/condenser unit than what he is planning to install. Mr. McKellar reiterated if there is a noise issue for the neighbors, he would be glad to do what it takes to mitigate the sound.

Mr. Mahoney asked the Applicant to describe what kind of traffic there would be on a daily basis. Mr. McKellar responded he does not anticipate having any tractor-trailers or other large vehicles coming there, and he will operate a small refrigerated van for picking up product. The only other traffic would be a UPS-style truck once or twice a day to pick up 25-150 Styrofoam boxes, Mr. McKellar added.

There were no further questions from the Board members.

Mr. Boak opened the Public Hearing.

Ms. Lori Doughty of 2 Hickory Lane addressed the Board and asked if there will be any removal of trees. Mr. McKellar explained where on the property three small shrub trees will be removed due to their roots encroaching on the septic field. Ms. Doughty also asked if there is a possibility to add some screening on the front side of the building to provide some buffering from the loading dock. Mr. McKellar replied he will come and go through the door and there is a loading dock beyond that where a UPS-style truck could come in on the back side. Mr. McKellar added there is a perception that there will be all kinds of traffic and that is just not the case but if there is a need he will be happy to put something up.

Ms. Doughty also asked if the restrictions placed on this Application would carry over to a new owner if the property was sold by Mr. McKellar. Mr. Gilliam explained the Findings of Fact run with the property so should there be a change in tenancy, or should Mr. McKellar choose to sell the property those conditions will run with the property. A change in ownership would not bring someone back to the Planning Board provided it is the same use, Mr. Gilliam added.

Mr. Bill Bartlett of 208 Beachwood Avenue addressed the Board and asked that the conditions he has proposed in his email to the Board be reviewed and perhaps included in the approval.

Ms. Pearlmuter commented there a number of limitations and conditions included in the Findings of Fact. Mr. Bartlett asked if the Board could provide what those conditions are before closing the Public Hearing this evening.

Mr. Simmons explained all of Mr. Bartlett's concerns about hours of operation, amount of time a truck can be idling, number of employees, and other items are covered in the Findings of Fact. Mr. McKellar expressed concern about the hours specifically mentioned regarding UPS pick-up as he has no control when the UPS truck will show up as it may occasionally come after 5:00pm. Mr. Simmons stated the language recognizes the possibility for occasional commercial activity after 5:00pm.

Due to the residential area that the proposed business is located, Ms. Pearlmuter suggested putting more shrubbery around the freezer and cooler compressor to provide a barrier.

Ms. Ann Campbell of 207 Beachwood Avenue addressed the Board stating having the Terrapin landscaping business continue to operate out of the location until 01 October 2020 is not ideal, as that will mean additional trucks entering/exiting the property. Mr. McKellar responded he understands about the noise issue and as far as allowing Terrapin to still store materials on the property, that is something that Mike Corsie has made as part of the real estate sales agreement. Furthermore, Mr. McKellar stated he has informed Mr. Corsie that he does not want him impinging on his business and will have to give notice when he would like to come on the property to retrieve the remainder of his materials. Terrapin will not store equipment or machinery on the site after conclusion of the real estate transaction transferring title from Corsie to McKellar.

Ms. Campbell also asked if there will be any overnight lighting. Mr. McKellar stated he will have security cameras installed and a motion light.

Ms. Doughty asked if there is going to be a dumpster on site and if so where will it be located. Mr. McKellar replied he does not anticipate needing a dumpster but if one was required, it would be for normal household trash and he would put it out of sight or in an enclosure if needed.

There were no further questions. Mr. Boak closed the Public Hearing.

Ms. Pearlmuter made a motion to approve the Application with the restrictions as described. Mr. Simmons seconded the motion and the vote was unanimous.

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

3. **200203 Kennebunkport Heritage Housing Trust 2 / Sebago Technics, Authorized Agent Preliminary Subdivision - Public Hearing**— for approval to create 4 lots consisting of 2 single family dwellings and 2 duplex units on a 4.47 acre parcel. Main Street, Assessor's Tax Map 22, Block 9, Lot 21 in the Cape Porpoise West Zone.

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board stating he submitted a response on June 10th to Mr. Kenneth Olson's letter dated June 3rd, 2020. Mr. Doe also noted they have received two Maine Department of Transportation permits for the proposed road and driveway cuts for Lots 1 and 2 and have confirmed all windows are double hung windows and will have full screens on those.

With the Lot Grading Plan appearing on the screen, Mr. Doe described that Lot 1 will have a single-family residence with a common driveway that will also serve Lot 2 which will have a duplex and a septic system located in the rear of the lot. All lots will be served by public water mains from across Route 9. Identifying where the skating rink was located, Mr. Doe explained there will be a hammerhead turnaround with a duplex unit on Lot 3 and a single-family dwelling on Lot 4. There will be a small detention area that is utilizing the berm of the ice skating rink as a backdrop to a basin that will collect water coming from the west before running it into the wetlands by the stream, Mr. Doe continued. Lastly, Mr. Doe pointed out there is an open space area in the back which will have access off the hammerhead turn that is larger than the minimum requirement for a subdivision.

Mr. Francis asked if there is a shared septic field but each home will have their own septic tank. Mr. Doe responded that was his understanding, but he will confirm that for the Board.

Ms. Pearlmuter asked how the Housing Trust is going to guarantee the financing around this project for not just the construction of the houses and the roads but for everything that must be prepared. Attorney Ralph Austin, representing the Kennebunkport Heritage Housing Trust responded that the Board is only approving the division of land and not the construction of the houses. Under the Performance Regulations, Mr. Austin stated, the required improvements are roads, lots, curbing, utilities, septic systems, and water, are secured with the Performance Guarantee but that does not relate to the construction of the houses. Mr. Doe corrected Mr. Austin's statement in that the Performance Guarantee does not include the septic systems and would only be the road, the water mains along with the retention basin and the storm drains for that.

To address the Board's question on the duplex units, Mr. Pat Clancy explained before proceeding to build each duplex, the Trust would have two homeowners identified with mortgage commitments, with Purchase & Sale Agreements, and the demarcation of apportionment that goes with any duplex arrangement with regard to the septic field. Ms. Pearlmuter asked what would happen if they only had one buyer. Mr. Clancy replied the Trust would not proceed with the duplex until they had obtained a buyer for each unit.

Ms. Pearlmuter commented there were a number of requests that were made at the last meeting that did not get addressed by the Applicant such as incorporating bird friendly overhangs and bird friendly glass windows, restricting the use of pesticides and fertilizers, as well as providing an educational component for the homeowners on the preservation of native flora and fauna in Kennebunkport. Ms. Pearlmuter urged having these restrictions made part of the homeowners documentation.

The Board members, Mr. Austin, and Mr. Clancy had a brief conversation regarding Ms. Pearlmuter's comments and the design of the proposed homes.

Mr. Boak opened the Public Hearing.

Mr. Francis cautioned placing certain constraints on this proposed development that has not been done in previous subdivisions.

Mr. Kenneth Olson, a direct abutter, addressed the Board with regard to his second letter submitted prior to this meeting and asked the Board to give extra due diligence on this Application as it is a very unique situation. Mr. Olson questioned whether this Applicant, being a non-profit entity, has the financial and technical capability to do so and disagreed with the wetland analysis provided as he has submitted satellite photos that clearly show a vernal pool. Mr. Doe responded stating Jim Logan has done wetland analysis for many years and found no vernal pools on the property and noted the Board has accepted Mr. Logan's work for many years. Mr. Doe offered to speak with Mr. Logan and ask him to submit a letter to the Board.

To address Mr. Olson's question on the financial capability, Mr. Boak explained that is something that would be submitted as part of the Final Subdivision Application and not for this part of the Application process. Mr. Gilliam explained that a Preliminary Plan Application is a preliminary subdivision plan and as the Board has done in the past, they do not gain any particularly vested rights in the Preliminary Plan for the Final Plan. The financial capacity component is addressed in the Final Plan Application that not only does the Planning Board review but the Town Manager and the Code Enforcement Office review to ensure there is adequate funding relative to the required improvements for any subdivision plan, Mr. Gilliam continued. At that point, the Applicant or developer sets aside funds in escrow that is managed by the town who hires a 3rd-party engineering firm to come out and do inspections for the required improvements as they are being constructed and only after the town gets a satisfactory engineering report from that firm does the town sign off on any reductions in the letter of credit for any of the financial documents that are required, Mr. Gilliam concluded.

Mr. Olson stated he appreciates the fact that Mr. Gilliam and the Town Manager also review the financial information but acknowledged his uneasiness with the fact both of them are ex-officio members of the Kennebunkport Heritage Housing Trust. Mr. Gilliam responded this is a small community and offered before the town signs off on the construction, they will have received actual estimates from contractors who will be doing the work and those numbers are what will be relied upon and signed off by the bank as well. Mr. Olson argued this is not a private developer but it is the town planning this development, so it is a different situation. Mr. Austin added that is outside of the scope of this Planning Board and this Preliminary Review.

Mr. Eric Johnson, an abutter across the street, addressed the Board and asked if there were any plans to have a traffic study conducted. Mr. Doe replied they have not done a traffic study but have submitted to the Maine DOT and received entrance permits where they look at where the entrances are sight distanced. Mr. Johnson added the posted speed is different than the actual speed as most people go 50-60 miles per hour. Mr. Boak asked if the posted speed is 25 mph. Mr. Johnson replied yes, it is and asked if it would be possible to put a metering device at that part of the road and would that not be part of the traffic study. Mr. Doe replied that is an enforcement issue for the Police Department.

Mr. Austin stated that a traffic study analyzes the number of trips, but it does not look at speed and added a traffic analysis is not required under the Subdivision Regulations unless there were more than 200 people for this development.

Mr. Francis asked Mr. Johnson what he is thinking a traffic study would result in as it does not seem the problem will be made much worse by adding 4 homes. Mr. Johnson replied the line of sight at 25 mph represents 250 feet and I do not believe they have a 250-foot line of sight. Mr. Francis added the permitting process would go off the posted speed limit and the Applicant has received permits for their driveways.

Ms. Pearlmutter offered the person who approved the Maine DOT analysis would be the person Mr. Johnson would want to contact if he believes the approval is in error. Mr. Gilliam offered to post a copy of the Applicant's Maine DOT permits onto the town website.

Mr. Johnson also voiced his support of Mr. Olson's comments regarding this Application.

Mr. Olson asked if it would be under the Planning Board's purview to install signage for drivers to slow down. Mr. Gilliam replied that would be a request to make to the Police Department and would recommend engaging the Town Manager about this as well.

Mr. Francis made a motion to continue the Public Hearing at the July 1st, 2020 Planning Board meeting. Mr. Simmons seconded the motion and the vote was unanimous.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous. The meeting adjourned at 8:35PM

Submitted by: Patricia Saunders, Planning Board Recording Secretary