

Kennebunkport Planning Board
July 17, 2019 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, July 17th, 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, Ed Francis, Neil Higgins, George Lichte, Larry Simmons

Approval of Minutes: Mr. Francis made a motion to approve the minutes from the June 19th, 2019 Planning Board meeting. Ms. Pearlmutter seconded the motion and the vote was unanimous

Items:

1. **190401 Henry Family Trust / Ambit Engineering, Authorized Agent – Site Plan Review – Continued Initial Review** – for approval to install a new 4' x 134' bark mulch pathway, a 4' x 16' access ramp, a 4' x 60' fixed pier, a 3' x 33' gangway and a 10' x 20' float located by two helical moorings. (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.)

Mr. Boak introduced the Agenda item noting there has been a change in the Application's description for this continued Initial Review.

Mr. Steven Riker of Ambit Engineering, along with Christophe Colinet of Riverside & Pickering addressed the Board to state they have revised the Application as well as the submitted site plans to reflect the change to a 4-foot by 134-foot bark mulch pathway, a 4-foot by 16-foot access ramp, a 4-foot by 60-foot pier, a 3-foot by 33-foot gangway, and a 10-foot by 20-foot float. Mr. Riker added the total length will be 116 feet. Utilizing enlarges maps and plans of the site, Mr. Riker indicated for the Board and the audience in attendance where the proposed access ramp would be located over the freshwater wetland as well as the pier that will expand over the tidal marsh.

In reference to the waiver request to Section 5.11.B.15, Mr. Riker explained the proposed length is needed to provide adequate water depth for use of the dock for the duration of the tide cycle and have a level substrate for the float to land on at low tide. Mr. Riker further explained the need for a proposed access ramp over the allowed length is for the following two reasons: 1.) improved foot access to the pier elevation as required by the Maine Department of Environmental Protection (DEP); 2.) to span the freshwater wetland by greatly reducing the impacts to the fragile poorly drained soils and vegetation in the freshwater wetland area.

To address the Board's questions at the last meeting regarding adequate depth, Mr. Riker offered the following data:

- Mean High Water (MHW) is at elevation 9.6,
- Mean Low Water (MLW) is at elevation 0.34,
- The difference between MHW & MLW is 9.26 feet,
- It takes 6 hours 24 minutes to go from high tide to low tide,
- The tide rises/drops 1.42 feet in an hour,
- The float will have a vertical fluctuation of 4.6 feet which equates to 6.47 hours of use per tide cycle,
- A complete tide cycle is from low tide to high tide & back to low tide.

Mr. Francis commented the use of the proposed dock for the duration of a tide cycle is 50%. Mr. Riker agreed with Mr. Francis's remark.

As requested, Mr. Riker attached to the Application submitted three alternative sketch plans and gave a brief presentation on each. The Board members and Mr. Riker, along with Mr. Christophe Colinet of Riverside & Pickering, had brief discussions on each alternative design presented.

Referring to the revised Site Plan Application, Mr. Riker pointed out the checklist has been updated to reflect the waiver request on the length of the proposed dock along with a copy of the view easement discussed at the June meeting.

In reference to the Homeowners Association's approval of the docking structure, Mr. Riker read the following language from the view easement which states: "the right to enjoy the use of all of said land and is located easterly of said line above defined including the right to build and construct wharves and boathouses thereon of not more than 1 story in height."

Mr. Francis asked if this dock is for 22 Ebs Cove Lane or for the entire Ebs Cove Homeowners Association. Mr. Riker replied this is a single standalone lot. Mr. Higgins added the deed says it is subject to the declarations, covenants, etc. for Ebs Cove, so it is part of the Homeowners Association; adding there is some ambiguity as to the authority given to the Henry's as to what they could/could not do with a dock.

Ms. Pearlmutter stated she has an issue that the Homeowners Association restricts all the lots within the subdivision to 1 dock and if the Henry's are under the Homeowner's Association approval does that mean their dock is the 1 dock or can the Homeowners Association put in a separate dock.

Mr. Gilliam clarified this property is not a numbered lot in the subdivision so it is not subject to the restrictions that are placed within the Subdivision Regulations.

To address the issue of the width of the waterbody Mr. Riker explained the distance across the waterbody from Mean High Water to Mean High Water is 263 feet where 1/5th of that distance is 52.6 feet. Mr. Riker stated the proposed structure is 45 feet across the waterbody which meets the ordinance.

Mr. Riker also noted he has included copies of the Maine DEP and Army Corps of Engineers approvals.

Mr. Francis commented the need for the additional length is to go across the freshwater wetlands, correct? Mr. Riker agreed with Mr. Francis's statement adding he would be able to shorten it if it were not for the 16 feet of freshwater wetlands.

Mr. Francis made a motion the Application is complete. Mr. Higgins seconded the motion and the vote was unanimous.

Mr. Boak reminded the audience in attendance that there is not Public Hearing scheduled for tonight's meeting.

2. 190601 Wallace Woods Subdivision / Sebago Technics, Authorized Agent – Minor Subdivision Amendment – **Initial Review** – to amend a previously approved subdivision by correcting a lot line discrepancy between the subdivision and front lot owner, Adam Burnett, and to formalize three snow dump easements. (Reid Lane identified as Assessor's Tax Map 9, Block 3, Lot 1B in the Village Residential Zone.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics, representing the Applicant addressed the Board and gave a brief summary of the proposed snow dump easements as agreed with the town's Public Works Department and by the owners in the subdivision.

Noting the Applicant stated the road was designed to public road standards, Mr. Francis asked if the road has been accepted by the town as a public road. MR. Gilliam responded the town did agree to accept the maintenance responsibilities but did not take ownership of the road.

Regarding the lot line adjustment, Mr. Doe explained this lot line adjustment is to correct an error made on the property description on the Burnett's deed.

Mr. Francis asked if there is an authorization letter in the packet. Mr. Doe replied there is not but he will submit one.

Ms. Pearlmuter made a motion the Application is complete pending receipt of the authorization letter. Mr. Boak seconded the motion and the vote was unanimous.

Mr. Simmons was assigned as Case Manager for this Application.

A Public Hearing will be held at the next Planning Board meeting.

3. 190602 Kennebunkport Marina / Sebago Technics, Authorized Agent – Site Plan Review – **Initial Review** – for approval to build two new boat storage buildings with a paved storage yard. (83 Log Cabin Road, identified as Assessor's Tax Map 2, Block 1, Lot 10 in the Farm & Forest Zone.)

Mr. Boak introduced the Agenda item noting this Application is for a conditional use in the Farm and Forest Zone.

Mr. Steve Doe of Sebago Technics along with the property owner Sean Dumas addressed the Board stating this property consists of 8.31 acres of undeveloped land and is located at 83 Log Cabin Road. Using enlarged site plans, Mr. Doe indicated where the wetlands, drainage areas, and culverts are located on the property. Mr. Doe also explained the proposed plan is to do the following:

- Build a heated structure for boat storage approximately 11,610 square feet,
- Build a smaller heated building 2,268 square feet also to house boats,
- The larger building will house 20-28 boats,
- The smaller building may house a few boats but will mostly house tools and trailers,
- 8-10 boats may be stored on the property outside of the buildings,
- There will be 2 curb cuts; one on Log Cabin Road for the primary entrance and one on Fairfield Hill Road,
- Property will be serviced by well water and private septic system.

Mr. Doe indicated on the enlarged maps where the stormwater treatment areas would be located adding they have filed and are in the review process now with the Maine DEP for a permit.

Mr. Higgins asked if after the boats are pulled from the water will they go to the Biddeford property first before being stored on this property. Mr. Doe replied if the boats are just being stored they'll go to this property; if they need maintenance they will go to Biddeford.

Ms. Pearlmuter expressed her concerns if there were to be any boat washing done and the potential for groundwater or wetland contamination.

Mr. Gilliam suggested to the Applicant it would be helpful if he could provide the specifications on the temporary containment tarp to the Board.

Ms. Pearlmuter noticed the copy of the deed submitted does not match the book and page number cited in the Application. Mr. Doe responded he will provide clarification on that.

Ms. Pearlmuter also expressed some concern regarding traffic being backed up on Log Cabin Road and asked if there was some way to have the main entrance on the other street. Mr. Doe replied they are trying to position the buildings farthest away from any neighbors and the road.

Mr. Lichte asked if the owner would be selling boats from this location. Mr. Dumas answered from the audience, no he has Route 1 frontage where he sells boats.

Mr. Simmons asked how much fuel will be stored on the property and will there be some sort of deluge system in case it ignites or a fire suppression system. Mr. Dumas replied the only fuel storage is what is in the boat's fuel cell itself and there is no deluge system required for that.

Mr. Simmons commented that spent batteries are a fire hazard and asked how those would be stored. Mr. Doe replied the batteries stored are just those in the boats. Mr. Doe offered to clarify that with a follow-up letter.

In terms of lot coverage, Mr. Mahoney asked what will this measure in square feet. Mr. Doe replied the total is 1.38 acres of impervious surface which includes buildings and pavement and is about 40% lot coverage.

Ms. Pearlmuter commented that is a lot of impervious surface to be around wetlands.

Mr. Gilliam noted in the Farm & Forest Zone you are limited to 10% for structures but that doesn't include parking lots or driveways.

Mr. Doe agreed to look at the lot coverage and impervious surface amount proposed.

Ms. Pearlmuter suggested adding a wash down station for employees in case of an emergency. Mr. Dumas responded from the audience that the septic system proposed is larger than what is needed so if the Board required to add a shower, the system could handle it.

Mr. Simmons asked the Applicant to verify the drain field for the septic system was big enough. Mr. Doe agreed to provide verification for that.

The Board members and the Applicant had a brief discussion on rights to Fairfield Hill Road. Mr. Doe agreed to provide clarification on their rights use the private road.

In response to concerns from abutters, the Board member suggested to the Applicant to be prepared to answer questions about visual buffers, shielding from abutters, outside lighting, signage, parking and traffic.

Mr. Francis asked if there would be a lot of activity from July to September. Mr. Doe replied no there would be no activity.

The Board members and the Applicant had a lengthy discussion on the number of boats to be stored inside and outside on the property and the potential for fire over concern for the presence of hazardous materials.

The Board members agreed to ask the Code Enforcement Officer to request the Fire Chief to provide his opinion on the proposed Application.

Ms. Pearlmuter requested to have an expert opinion offered on the impact this Application could have on traffic on North Street.

Mr. Lichte asked if the existing vegetation on the property are deciduous or conifer trees. Mr. Doe agreed to provide confirmation on that.

The Board members and Applicant had a short discussion about the site distances, paving and buffering.

Mr. Gilliam asked the Applicant if they know the status of the Maine Department of Transportation permit. Mr. Doe replied he did not know but would provide an update.

Mr. Francis made a motion to accept the Application complete subject to receipt of the information relative to a number of issues raised. Mr. Higgins seconded the motion and the vote was unanimous.

Mr. Boak announced a Public Hearing will be held at the Next Planning Board meeting on August 7th, 2019.

- 4. 190603 Kennebunkport Conservation Trust / Tim Spang, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to remodel an existing trail and create new trail to a proposed labyrinth. (57 Gravelly Brook Road, identified as Assessor's Tax Map 25, Block 1, Lot 1A in the Farm and Forest Zone.)

Mr. Boak introduced the Agenda item.

Mr. Gilliam explained this Application falls under the Planning Board's jurisdiction because it is essentially a request to build a large patio that is greater than 100 square feet.

Mr. Tim Spang, representing Kennebunkport Conservation Trust addressed the Board and gave a brief summary of the Application proposed to build a round trail in order to create a spiritual experience for visitors to the property.

Referring to a deed restriction that prohibits new structures, the Board members questioned whether this Application violates that deed restriction. Ms. Pearlmutter commented if this doesn't meet the deed restriction, the Board would have to report that to the Code Enforcement Office. Mr. Gilliam responded that the Code Enforcement Office has no authority over private deed restrictions.

Ms. Pearlmutter expressed her opinion that it is troublesome when any kind of deed restriction isn't followed. Furthermore, Ms. Pearlmutter added, she does not consider a labyrinth trail as a purpose for conservation of nature when it is a man-made structure overriding nature.

Mr. Spang commented the labyrinth is an outdoor path to add to the enjoyment of nature.

Ms. Juliet Altham, a volunteer member of the Trust addressed the Board stating the site for the labyrinth is not in a location where visitors tend to walk. The reason for the use of the stone dust path was to make it more accessible for those people with disabilities who might not come to the Trust otherwise, Ms. Altham added.

Mr. Spang explained the property is 126,000 square feet on 24 acres and the proposed labyrinth is less than 4,000 square feet.

Due to some questions the Board members expressed as to why this Application requires Planning Board approval, Mr. Higgins asked Mr. Gilliam to provide some clarification. Mr. Gilliam explained if this property were a residential property the labyrinth would be called a structure because it is a non-vegetative zone. Because this is a non-residential property, Mr. Gilliam added, if the Board wanted to make that interpretation that this is not a structure and remand it to the Code Office that is fine, provided such a decision is recorded in the minutes.

Mr. Mahoney asked how much of the surface is going to be removed. Mr. Spang replied between 3-6 inches will be removed and indicated on the site plans where the loam would be deposited on the property as per the deed requirement stating no soil is to be removed from the site.

The Board members had a brief discussion with Mr. Gilliam on the definition of structure and impervious surfaces.

Mr. Francis made a motion the Application is complete. Mr. Higgins seconded the motion and the vote was unanimous.

Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting.

Mr. Boak volunteered to act as Case Manager for this Application.

OTHER BUSINESS: Discussion of proposed changes to the Subdivision Regulations in light of the Road Acceptance Policy of the Board of Selectmen.

After a brief discussion, the Board unanimously agreed with the proposed changes to the Kennebunkport Subdivision Regulations.

Mr. Boak made a motion to approve the proposed changes and to proceed to a Public Hearing. Ms. Pearlmutter seconded the motion 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