

**Kennebunkport Planning Board**  
**July 21st, 2021 ~ 6:00 PM**  
**Virtual Meeting (Via Zoom)**

A meeting of the Planning Board was held on Wednesday, July 21st, 2021. 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 defer approval of the minutes of the July 7<sup>th</sup>, 2021 Planning Board meeting to next meeting. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Items:

Before continuing with the agenda, Mr. Boak stated on behalf of the Planning Board members how much they will miss Ms. Lisa Harmon, Secretary in the Code Enforcement Office and how happy they have been all these years with her work.

1. **210503 Verizon Wireless / Scott Anderson Esquire, Authorized Agent** – Site Plan Review – **Findings of Fact** – 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.) *Larry Simmons, Case Manager*

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

2. **210504 John & Jennifer Schaeffer / Peterson Design Group, Authorized Agent** – Site Plan Review – **Continued Public Hearing** – 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.) *Nina Pearlmutter, Case Manager*

Mr. Boak introduced the agenda item and asked Mr. Erik Peterson to be promoted to panelist.

Mr. Peterson shared the site plans on the screen for the viewing audience and gave a summary of the supplemental materials he submitted to the Board members prior to tonight's meeting. Some of those items included in the supplement information are:

- Included a note on the site plans not to use pesticides or fertilizers on the property.
- All windows will have screens or decals on them to discourage bird strikes.
- An overhang to the rear door has been added to cast a shadow to inhibit bird strikes.
- Added a note on the site plan showing the proposed first floor elevation.
- Added a matrix showing the existing/proposed lot coverage square feet of the house, driveway, walkways, and patio.

Mr. Peterson also commented the Schaeffers were wondering if they could raise the elevation of the house from 15.75 to 16.75, adding the house foundation is a poured concrete crawlspace with access doors and flood vents front and rear. Mr. Gilliam explained this change is not a question of expansion as they may need to add a step or 2 to the entrance to the first floor but it all falls onto the existing coverage which is something that is dealt with at the Code Enforcement Office. For purposes of documenting this potential change in elevation in the Findings of Fact, Mr. Peterson offered it can be addressed by stating 'any corresponding increase in roof height should be allowable as long as it falls under the town's description of maximum building height from the original 30 feet'. Ms. Pearlmutter agreed with Mr. Peterson's language suggestion.

Mr. Boak re-opened the Public Hearing. There were no comments from the viewing public. Mr. Boak closed the Public Hearing.

Mr. Simmons made a motion to approve the Application. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

Mr. Boak announced the Findings of Fact would be read at the next Planning Board meeting.

3. **210502 Dow House Limited Partnership / Bradley Lown, Authorized Agent** -- Site Plan Review – **Public Hearing** – 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.) *Tom Boak, Case Manager*

Mr. Boak introduced the agenda item and asked Mr. Brad Lown to be promoted to panelist.

Mr. Boak asked what the status was with the Maine Department of Environmental Protection's approval. Mr. Lown replied he is still waiting for approval. Mr. Boak commented according to Mr. Gilliam, the Maine DEP approval will include all necessary information from the Maine Inland Fisheries and Wildlife Department.

Mr. Boak asked what the actual size of the dock will be and the size of the L at the end of the pier, reminding the Applicant the Land Use Ordinance says it can be no more than 4-feet wide. Mr. Lown said he would like the L to be 8' x 8' but it will have to be 4' x 8' as mentioned at the last Planning Board meeting.

Mr. Boak questioned if there was an issue with the pier end being directly on the ground and not 1 foot off the ground as required in Article 5.6 of the Land Use Ordinance. Mr. Lown stated the pier is only on the ground where you first step onto it and from the beach the rest of it is off the ground.

A detailed conversation ensued between the Applicant and the Board members on the current condition of the pilings, replacing pilings, and having a backhoe or heavy equipment on the beach. Out of concern this is not within the jurisdiction of the Planning Board, Mr. Francis questioned since this was an existing pier, if one or more of the pilings would need to be replaced, it would not need to be reviewed by the Planning Board. Mr. Gilliam agreed with Mr. Francis' statement adding if this was a maintenance project where a resident requires to replace a couple of pilings, it wouldn't be the Planning Board to grant permission but rather the Code Enforcement Officer would require a permit as it would be considered a structural repair.

Mr. Gilliam also offered his opinion that he is not concerned with a temporary impact on the environment from the storage of equipment.

Mr. Boak asked if the pilings that are currently on the property are grandfathered. Mr. Gilliam replied from a zoning perspective, yes, the pilings are grandfathered.

The Planning Board members and Mr. Gilliam had a detailed discussion on the Applicant's existing grandfathered pilings and Mr. Lown re-phrasing his Application to state he will build this new pier on top of the existing pilings. Mr. Gilliam offered the Board could request that the bracing to support the platforms be brought up to the meet the 1-foot requirement of the Land Use Ordinance if the existing braces do not currently meet that standard.

Using one of Mr. Lown's photos included in his Application, Mr. Gilliam pointed out the transition going from rocky beach to marsh grass that before you get to that marsh grass area all the horizontal structures need to be elevated. Mr. Lown thanked Mr. Gilliam for his explanation and agreed to make sure the structure is raised over the marsh grass.

A brief discussion occurred on the proposed stairs down into the water off the pier with the Planning Board members and Mr. Lown. The Board members decided the impact of the staircase would be much less on the mud flats than if this were a typical dock application that included a float at the end of the pier.

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

For clarification, Mr. Francis asked the Board to state what the conditions are that were just discussed and agreed to by the Applicant and the Board members. Mr. Boak responded the conditions are:

- the L will be 4-feet in width,
- receipt of the Maine DEP approval,
- maintenance only on existing grandfathered pilings, replacement of any pilings will require a permit,
- bottom of the cross beams will be at least 1-foot in height.

Mr. Francis made a motion to approve the Application subject to the conditions just listed. Mr. Simmons seconded the motion, and the vote was unanimous. Mr. Mahoney left the meeting. Mr. Lichte had voting privileges for this Application.

**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.)

Mr. Boak introduced the agenda item and asked Mr. Steve Doe and Attorney Ralph Austin to be promoted to panelists.

Mr. Doe of Sebago Technics addressed the Board and asked if Mr. Brian Knipp of Barrett Made Architects could also be promoted to panelist.

In comparing the Applicant's re-submission of the plans with their previous plans, Mr. Boak asked how many bedrooms are presently on the property and how many is the Applicant proposing. There was confusion on the Applicant's part if they were to count bedrooms or beds. Mr. Knipp admitted he did not do a comparison with the original submission but believed the bed count went down from 47 to what they are proposing of 43.

Mr. Gilliam explained the Ordinance specifically identifies sleeping rooms, so it is the Board's interpretation for purposes of parking or trying to compare the unit numbers from the current existing building to the proposal and determine if it is 1:1. Mr. Austin agreed to provide clarification of that to the Planning Board before the next meeting.

Mr. Boak asked how many rooms will have a wet bar. Mr. Boak reminded the Applicant there is a 1989 Zoning Board of Appeals decision that allowed wet bars in the rooms, but it specifically precluded outlets and plugs capable of providing electricity for a stove, hotplates, microwaves, etc. Mr. Knipp replied the only thing they are providing is a sink as there is no intention of having cooking surfaces in the cottages. Mr. Austin argued when the Zoning Board of Appeal terminated the condominium form of ownership for this property it also terminated those restrictions. Mr. Gilliam offered to do some research on the timing when the Ordinance was amended and report back to the Board. Mr. Gilliam added that Ordinance amendment was done to prohibit hotel/motel rooms that have kitchenettes from becoming dwelling units. Mr. Austin agreed to clarify for the Board exactly what will be in the units.

Mr. Boak acknowledged receipt of the comments from the peer review by Acorn Engineering. Mr. Doe stated he did review those comments and will include a line-by-line response to the Board at a later date.

Ms. Pearlmutter had some questions for the Applicant regarding the easements referred to by some letters from abutters and also asked how they will be using the golf carts on the property and if there will be any kind of burners or heating units in the cottages that could cause a potential fire. Ms. Pearlmutter also expressed some concerns over the questions raised by Acorn Engineering on the stormwater report. Mr. Doe shared the site plans on the screen and identified where the Emmons easement is located on the property which overlaps with the proposed service driveway. Mr. Doe added there will be signage and the easement will be kept clear of parked cars to provide vehicle access.

To answer Ms. Pearlmutter's question about the golf carts, Mr. Doe explained they are still working out the logistics, but the plan now is guests will park their car in the parking lot and a staff member will pick up the guests in a golf cart to take them to their cottage where the cart will remain until they return to their car.

A detailed discussion with the Applicant, Mr. Gilliam, and the Board members occurred on addressing specific questions from abutters regarding stormwater runoff, shoreland zone, setback requirements, the definition of stream in accordance with the USGA maps, and earth disturbance as it relates to the flood plain area.

Mr. Francis made a motion the Application is complete subject to receipt of the responses from the Applicant regarding the number of beds/bedrooms, response from the questions raised by Acorn Engineering and some of the abutter's letters. Mr. Doe admitted he will not be able to provide a response to all of Acorn Engineering's questions before the next Planning Board meeting.

Mr. Simmons seconded Mr. Francis' motion, and the vote was unanimous. Mr. Harcourt had voting privileges for this Application.

Mr. Austin reminded the Board and the viewing audience there is a public Site Walk of the property scheduled for next week. Mr. Boak reminded everyone the guidelines of a Site Walk is such that it is a public meeting, members of the Planning Board will be attending as well as Mr. Gilliam from the town offices and representatives of the Applicant but it is not an opportunity to ask questions or have any sort of detailed discussion of the Application.

Mr. Francis will be the Case Manager of this Application.

**5. 201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent – North Campus – Site Plan Review** – Review of revised application – for approval to demolish all existing buildings and parking areas and construct two new buildings with multiple parking areas. (128 Ocean Avenue / 12 & 14 Colony Avenue, identified as Assessor's Tax Map 8, Block 8, Lots 14, 15 & 16 in the Riverfront and Shoreland Zones.) *Nina Pearlmutter, Case Manager*

Mr. Boak introduced the agenda item and asked Mr. Bill Walsh and John Martin to be promoted to panelists. Attorney Ralph Austin will also participate for this agenda item.

Mr. Bill Walsh of Walsh Engineering addressed the Board and asked if Rob Harbeson of Market Square Architects could also be promoted to panelist.

Mr. John Martin, Managing Partner of the Boughton Hotel Corporation addressed the Board and gave a detailed presentation on the updates to the Application, specifically with their proposed improvements to Colony Avenue which recently received approval from the Kennebunkport Board of Selectmen.

Mr. Martin provided an explanation of the proposed parking configuration along with a matrix of the detailed parking analysis, all of which was shared on the screen for the viewing audience and can be found on the town's website.

Ms. Pearlmutter asked how many ADA spots are planned. Mr. Martin replied the ADA spots are included in their analysis and indicated on the site plans where those spots are located. Ms. Pearlmutter then asked if there is a state requirement to have a particular number of ADA rooms. Mr. Harbeson responded yes there are both federal and state requirements and it is a percentage of the total number of rooms you have, and they need to be equally dispersed, so they have tried to get rooms of every different type and in each location so that no one is excluded from a particular view or floor on the property.

Mr. Walsh then gave a detailed explanation of the utility changes as illustrated on the site plans adding they have met with Central Maine Power and the KKW Water District and they will coordinate their work with each agency.

Mr. Walsh then provided an explanation on the proposed lighting adding he has spoken with Jim Stockman of the Lighting Committee to make sure they are in compliance.

Mr. Walsh then presented their traffic analysis performed and shared that information on the screen as contained in the Application.

Mr. Simmons asked if there was some way to assess the impact of the additional traffic on the road condition and will this increased traffic reduce the time between re-asphalting. Mr. Walsh replied the increase in additional traffic is relatively minor and it would not be noticeable as the majority of the increased trips shown in the study will be for the café on Ocean Avenue not on South Main Street. Mr. Harbeson added passenger cars create a very small portion of the wear on roadways. Mr. Harbeson added all deliveries during construction will be scheduled for off-peak hours. Mr. Walsh added there is no construction during the summer tourist season.

Ms. Pearlmutter asked if there was any indication by the Board of Selectmen that they were interested in altering the intersection of South Main Street and Colony Avenue to make it less dangerous. Mr. Walsh responded he did have a conversation with Mike Claus regarding that and will forward their sketch plans to him for his review. In speaking with Mr. Claus, Mr. Walsh stated he favored their plan of adding a 3-way stop sign along with other improvements to the area as Mr. Walsh demonstrated on the site plans on the screen.

Ms. Pearlmutter also asked about the ledge on Colony Avenue that was causing some sight distance issues. Mr. Walsh again shared the site plans on the screen and indicated where they would have to take out approximately 1 foot of ledge in the process of replacing the water main that runs along Colony Avenue which would improve the vertical profile of the road and provide more sight distance.

Mr. Walsh then gave a detailed presentation of the stormwater management plan with the site plans on the screen and provided a sample photo of what the filtration area would look like.

Mr. Harbeson then gave a presentation on the architecture of each of the proposed buildings showing the detailed drawings on the screen and indicated all windows and doors will have screens to mitigate bird strikes.

Mr. Walsh then shared the detailed project schedule on the screen as prepared by Wright Ryan noting the blue areas represent the summer season where construction will be shut down during that time.

Ms. Pearlmutter made a motion the Application is complete subject to Maine DEP approval and Peer Review of the Stormwater Management Plan. Mr. Simmons seconded the motion, and the vote was unanimous. Mr. Lichte had voting privileges for this Application.

Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting on August 4<sup>th</sup>, 2021.

Mr. Boak again acknowledged Ms. Lisa Harmon for her years of service and noted she will be missed.

Mr. Gilliam asked the Board members to check their schedules if they were available for an in-person meeting with the Growth Planning Committee on August 17<sup>th</sup>, 2021 at 6:00pm to discuss updates to the Comprehensive Plan.

Mr. Boak commented if the meetings will continue to be held at 6:00pm then the Planning Board's Rules and Regulations should be updated to reflect that.

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

**Submitted By:** Patricia Saunders, Planning Board Recording Secretary