

Kennebunkport Planning Board
August 1, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, August 1st, 2018. 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, Edward Francis, Neil Higgins, George Lichte, Larry Simmons

Approval of Minutes: Mr. Francis suggested a minor change to be made to the minutes from the July 18th, 2018 Planning Board meeting and made a motion to accept the minutes as modified. Mr. Mahoney seconded the motion and the vote was unanimous.

Items:

1. **180601 Mary Banks Strohm Revocable Trust / Atlantic Environmental, Authorized Agent - Site Plan Review – Public Hearing**
– for approval to install a new 3'x20' ramp and an 8' x 10' float. (86 Ocean Avenue, identified as Assessor's Tax Map 8, Block 2, Lot 3 in the Village Residential, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Ms. Lisa Vickers of Atlantic Environmental addressed the Board and gave a brief summary of the Application noting the proposed dock is made of a lightweight composite design called AccuDock. Ms. Vickers also stated she did consult the Maine Inland Fisheries and Wildlife maps and found the property is not identified as a moderate or high value tidal waterfowl area. Based on comments from the Board members at the last meeting, Ms. Vickers submitted an aerial photo noting the location of six other docks on nearby properties.

As a point of discussion, Mr. Boak reminded the Board members they must make a determination if this Application meets the requirement of Article 5.11.B.15, which states: *"Any accessory residential pier, walkway, dock or wharf, including ramps and floats, shall be no longer than a total length of one hundred (100) feet nor extend more than one fifth (1/5) of the way across a body of water. The Planning Board may, upon review, modify the length requirement if it is demonstrated that no other reasonable alternative exists to provide water access from the lot."*

Mr. Francis commented that the dock protrudes 31.4 feet into the waterway with 82 feet from the dock to the closest land across the creek which calculates that the dock is more than the required maximum distance of 20%.

Ms. Pearlmutter offered her opinion that this is a very problematic location to put a dock which would spoil the scenic view of the area.

Attorney Ralph Austin addressed the Board noting the Kennebunk River Committee explicitly addresses the concern of the dock protruding more than 1/5th into the waterway and voted unanimously to approve it.

Mr. Francis offered his opinion that although the River Committee approved this proposal; the Planning Board needs to decide how to interpret the regulation. Mr. Boak added that the Planning Board does have the authority to modify the dock length requirement if the Applicant has demonstrated no other reasonable alternatives exist.

Ms. Pearlmutter asked if there are other docks that protrude further into the waterway than this proposed dock would. Ms. Vickers responded the most recently approved dock in the area extends further out and has a float that is double the size of this proposed float. Ms. Pearlmutter noted that recently approved dock Ms. Vickers is referring to is located on a much larger portion of the body of water.

Procedurally, Mr. Gilliam reminded the Board members that they need to make a decision of what the interpretation of Article 5.11.B.15 is and specifically state what that interpretation is in their Findings of Fact.

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

Ms. Pearlmutter asked the Applicant if it were possible to make the dock shorter. Ms. Vickers replied they are trying to keep the dock as low impact as possible and for marine construction you would not want to have a dock sitting on ledge, which is why it is proposed at 6 feet beyond the 1/5th rule.

After much discussion among the Board members and the Applicant on the proposed dock length, its intrusion into the channel, the water depth of the channel, and the Application's compliance with the Land Use Ordinance, the Planning Board decided to continue their deliberation until the next meeting. Ms. Vickers agreed to provide the Board members with other proposals in an effort to demonstrate that this Application is the only reasonable alternative to provide water access within the restrictions of the Land Use Ordinance.

The Planning Board will continue their review of this Application at the August 15th, 2018 Planning Board meeting.

2. **180602 Matthew & Donna Enoch / Sebago Technics, Authorized Agent** – Site Plan Review – **Public Hearing** – for approval to make minor site improvements to the driveway to create better parking, as well as landscaping. (41 Ocean Avenue, identified as Assessor's Tax Map 10, Block 1, Lot 10 in the Riverfront, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board and gave a brief overview of the Application noting there has been a modification to the original proposal in that the retaining wall will be a dry stacked wall, 2 feet in height with a gravel backfill. Mr. Doe also noted there is less lot coverage with the new proposed layout.

Ms. Pearlmuter asked when the driveway was removed. Mr. Gilliam replied he would have to look at the permit to provide the specific date but would guess it has been more than a year ago.

The Board members and Mr. Doe had a brief discussion regarding impervious surface calculations. Mr. Doe noted the goal is to create a safer situation instead of backing out onto Ocean Avenue.

In reference to Ms. Pearlmuter's question about the date of the driveway removal, Mr. Gilliam read the following definition of Resumption Prohibited which states: *"A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period. 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."*

Ms. Pearlmuter raised a concern with the town's Land Use Ordinance definitions that external stairs are considered part of a structure and could be used in future scenarios as an way for homeowners to trade the square footage of external stairs as an expansion of the building footprint.

After a brief discussion on the definition of Building Footprint and an expansion of footprint, Mr. Doe agreed to meet with Mr. Gilliam and report back to the Planning Board with their conclusions at the next meeting.

Mr. Boak opened the Public Hearing. There were comments or questions from the audience in attendance. Mr. Boak closed the Public Hearing.

Mr. Boak announced the Planning Board would continue their deliberations on this Application at the next meeting on August 15, 2018.

3. **180201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent** – Final Subdivision Review – **Initial Review** – for approval of a thirteen (13) lot cluster subdivision on 24.78. (Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Mike Tadema-Weidlant, along with Attorney Ralph Austin addressed the Board stating very few changes have been made to this proposal from the preliminary plan. Additional information in response to the second round of peer review comments, updates to the Homeowners Association documents, as well as details on the required financial information have been included with this Final Subdivision Application, Mr. Tadema-Weidlant added.

In reviewing the approved Application from Binnacle Hill Phase 1, Mr. Boak asked why a Maine Department of Transportation approval is not required. Mr. Tadema-Weidlant replied it is not required because this Application is proposing to connect to an existing Right of Way.

Mr. Boak asked Mr. Gilliam if he agrees with the cost estimate submitted with the Application. Mr. Gilliam replied that the financial information the Applicant has submitted typically falls in line with construction cost estimates.

Mr. Boak noted the Homeowners Association documents do not specifically exclude the owners of the 2 properties on Henchey Way from becoming members of the Homeowners Association. Mr. Austin responded the wording presently is that the owners of the lots are the members of the Homeowners Association but if the Board would like it he can change the wording to make it more specific.

Mr. Mahoney asked if the Applicant considered moving the emergency access gate further up the hill as suggested during the Preliminary Subdivision Review. Mr. Tadema-Weidlant replied the gate has not been moved from its proposed location and is in the most practical spot given the conditions; adding, they do not want the gate in the public Right of Way as it should be on land that is owned solely by the Homeowners Association.

In reference to Mr. Boak's question regarding the transfer of ownership of the last 20 feet of the private Right of Way, Mr. Austin agreed to provide the Board members with a redacted copy of the Purchase and Sale Agreement. Mr. Gilliam commented that once this purchase is finalized the GIS maps will be updated.

Mr. Francis expressed his concern if the proposed natural barrier to block headlights entering neighboring properties would be sufficient in the wintertime. Mr. Tadema-Weidlant responded that based on his analysis provided in the Application the proposed vegetation and topography of the land will be sufficient.

Mr. Higgins asked if there should be some specific language regarding a proposed buffer on lot 21. Mr. Austin agreed with Mr. Higgins noting there will be an addition to include a requirement that it is the responsibility of the owner of lot 21 to maintain a buffer and for the Homeowners Association to enforce that requirement. Additionally, Mr. Tadema-Weidlant agreed to provide some more specific language regarding said landscaping buffer, noting their intent is to provide a healthy visible screen but still allow the potential lot owner some flexibility.

Mr. Higgins made a motion this Application is complete. Ms. Pearlmutter was absent from the meeting at this time and did not vote on Mr. Higgins' motion. Mr. Mahoney seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on August 15, 2018.

4. ~~JW Group LLC — Site Plan Review — Initial Review~~ for approval to split one existing lot into two 2.5 acre lots. (Old Cape Road, identified as Assessor's Tax Map 22, Block 9, Lot 1 in the Free Enterprise Zone.) **This item has been continued to August 15th.**
5. ~~180603 Town of Kennebunkport / Wright Pierce, Authorized Agent — Site Plan Review — Public Hearing~~ for approval to make site improvements including grading of a new sledding hill and a bicycle pump track as well as improvements to access road and parking at the back of Parson's Field (School Street), identified as Assessor's Tax Map 9, Block 4 Lot 50 in the Village Residential Zone. **Continued to August 15th at the request of the Applicant.**

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary