

Kennebunkport Planning Board
August 5th, 2020 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, August 5th, 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 commented he had one correction to be made to the minutes of the July 15th, 2020. Mr. Simmons read his suggested change regarding a question Ms. Pearlmutter asked about the proposed elevation of Application #200601. Ms. Pearlmutter and Mr. Simmons had a brief discussion on the exact language that should be changed and agreed the amended sentence should read: "*Ms. Pearlmutter asked if the Applicant could confirm the elevation is at 4ft above flood level.*" Mr. Francis made a motion to approve the minutes of the July 15th, 2020 Planning Board meeting as amended. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Items:

1. **200501 Lauren & Ken Handler / Graham Architects, Authorized Agent – Site Plan Review – Continued Public Hearing** – for approval to demolish the existing residence and rebuild in a different location to the greatest possible extent within the property line setbacks. The seasonal bunkhouse will be removed. 45 Langsford Road, Assessor's Tax Map 21, Block 11, Lot 19 in the Cape Porpoise West Zone. *Larry Simmons, Case Manager*

Mr. Boak introduced the Agenda item.

Mr. David Graham, representing Ken and Lauren Handler, addressed the Board stating this project encompasses consolidating a number of buildings on the site to a single-family residence located to the greatest possible extent within the property line setbacks and as far back from the resource. Regarding the sewer easement on the property, Mr. Graham explained the homeowner will take ownership of the sewer pump which will be relocated adjacent to the building site.

Mr. Boak commented that the proposed new square footage will be increased by 17.9% and the volume will be increased by 21%, both of which are within the 30% allowable by the Ordinance. Mr. Graham agreed with Mr. Boak's comment.

Mr. Boak asked the Board members if they had any comments or questions for the Applicant. The Board had no questions or comments at this time.

Mr. Boak asked if there were any members of the public that had any comments or questions. Hearing no comments or questions regarding this Application, Mr. Boak closed the Public Hearing.

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

The Board members agreed to read the Findings of Fact for this Application at the end of the meeting after all other Agenda items had been discussed.

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

2. **200502 Carol & Kevin Regan / Graham Architects, Authorized Agent – Site Plan Review – Continued Public Hearing** – for approval to demolish the existing residence and rebuild in a different location to the greatest possible extent within the property line setbacks. 9 Sunset Lane, Assessor's Tax Map 33, Lot 16 in the Goose Rocks Zone. *George Lichte, Case Manager*

Mr. Boak introduced the Agenda item.

Mr. David Graham representing Kevin and Carol Regan addressed the Board again and shared the site plans on the screen for the Board members and the viewing public. Mr. Graham explained the existing house is located within a number of different setbacks that leave no option to relocate to make the structure more conforming, so they are proposing to rebuild on the same footprint with a 30% allowable expansion.

Mr. Francis suggested the Board members address concerns raised in a letter sent from Alec MacMartin and Arlene Laurenitis.

Mr. Boak stated one of the items raised in Mr. MacMartin's letter is concerning the notification of a public hearing. Mr. Gilliam added as a matter of procedure, the Planning Board has been holding Public Hearings over two meetings but without delaying the typical Site Plan Review process.

Mr. Francis asked if the town sends out a notice to abutters ahead of a Public Hearing being held. Both Mr. Gilliam and Ms. Pearlmutter replied Yes. Mr. Gilliam explained an abutter is sent 2 notices: 1 is an initial letter that is sent regular mail stating the town has received an Application, and the second mailing that happens is sent certified mail with the date of the Public Hearing.

The Board members and Mr. Gilliam had a detailed discussion on the questions raised in Mr. MacMartin's letter regarding setbacks and the 30% allowable expansion for non-conforming structures.

Mr. Boak reopened the Public Hearing.

Mr. MacMartin addressed the Board stating they only received one letter from the town, via certified mail about the Public Hearing. Mr. MacMartin expressed his biggest concern is the size of the proposed building as it sits close to his property line and views this as an intrusion in the neighborhood. Mr. MacMartin also questioned why one portion of the proposed building has been squared off and suggested perhaps the Planning Board should ask the town attorney for an opinion.

There were no further questions or comments from the public. Mr. Boak closed the Public Hearing.

The Board members and Mr. Gilliam had a lengthy discussion on whether to officially ask for a legal opinion from the town attorney. While acknowledging he can not make decisions or interpretations of the Land Use Ordinance for the Planning Board, Mr. Gilliam cautioned it is tricky when the Board asks for a legal opinion within the context of an open Application.

Mr. Graham offered his opinion he does not believe his proposed design is out of character for the Goose Rocks Beach area.

Mr. Lichte commented that the setbacks are what causes the non-conformity of the existing building and the new design is within the same footprint so the setbacks are exactly the same. Mr. Graham agreed with Mr. Lichte's statement adding there is a section where he has squared off a corner of the building on the new design but has pulled in another corner of the building to offset so the non-conformity or the footprint has not increased.

Mr. Lichte also commented that the Applicant was careful the height of the proposed roof would not go over 30 feet. Mr. Graham agreed with Mr. Lichte's statement.

Mr. Francis asked if the language of the ordinance allows the front side of the house to be expanded as much as is proposed. Mr. Graham replied a portion of the front of the house is not in violation so he would be able to increase that by 30%.

Mr. Francis offered his opinion that the Board should get clarification on this method of calculating expansions from the town attorney.

Mr. Gilliam asked the Board members if their expectation was to seek an interpretation of the Ordinance in general or in relation to this specific Application. Ms. Pearlmuter suggested the Board decide on this Application based on precedent that the Board has gone through before but believes it is worth asking Attorney Amy Tchao to provide some clarification of the Land Use Ordinance.

Mr. Gilliam also suggested the Board could have a separate workshop discussion on this particular situation absent any particular Application to go thru some what-if scenarios to see where the Board's decisions might fall that would be outside of a specific Application.

The Board members agreed a workshop would be most beneficial.

Ms. Pearlmuter offered in following the spirit of the Ordinance and with previous Planning Board decisions, the precedent has been you can aggregate the non-conforming portions if there are 2 or more setbacks to make a reasonable structure that does not affect the neighborhood in terms of being more non-conforming.

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

Mr. Boak announced the Findings of Fact will be read at the next Planning Board meeting on August 19th, 2020.

3. **200601 Michael Spenard & Brian Glaser / Kennebunk River Architects, Authorized Agent** – Site Plan Review – **Public Hearing** – for approval to demolish the existing residence and rebuild in a different location to the greatest possible extent within the property line setbacks. 35 Langsford Road, Assessor's Tax Map 21, Block 11, Lot 22 in the Cape Porpoise West Zone.

Mr. Boak introduced the Agenda item.

Mr. Michael Bedell addressed the Board, shared his site plans on the screen and explained the residence at 35 Langsford Road is a basic wood frame structure that they are proposing to tear down to make it less non-conforming along with a 30% expansion as allowed by the Ordinance. Mr. Bedell added the new structure will conform with all of the property setbacks but not with the high-water setbacks.

Ms. Pearlmuter asked if there was somewhere on the site plans that show where the silt fencing will be. Mr. Bedell indicated on the Lower Village Survey where the proposed silt fencing will be located along the back line and across the left property boundary. Ms. Pearlmuter asked if the corrected survey showing the silt fencing could be filed as part of the Application.

Ms. Pearlmuter commented she believes the property is completely in the flood zone and not partially as is shown on the site plans. Mr. Bedell responded yes, after speaking with the Code Enforcement Office, the property is in the flood zone and have set the first-floor subfloor elevation at 14.25 feet which is actually 2.3 feet above the base flood elevation.

Mr. Gilliam provided a detailed answer as to how the Applicant calculated the elevation based on the current flood maps and an interpretation of what the new FEMA flood zone maps may become using the town's GIS maps.

Ms. Pearlmuter asked about the sewer easement on the property that will be relocated and agreed to by the owner and the town. Mr. Bedell responded in speaking with Chris Simeoni, Deputy Director of Public Works the owners will give the old pump back to the town, buy a new one and relocate the new pump to a new area in compliance with the town regulations.

Ms. Pearlmuter also pointed out an error on the front page of the Application that incorrectly lists the Applicant's address.

Mr. Boak opened the Public Hearing and asked if there were any members of the public who wished to speak.

Mr. Bruce Jordan, an abutter addressed the Board and asked if the new house will be within the setback of his property. Mr. Bedell replied the new design will not encroach in the 15-foot setback on Mr. Jordan's side of the property. Mr. Jordan asked if the Applicant could put some stakes on the property to show where the new structure will be located.

Mr. Jordan also asked about the elevation of the new house. Mr. Bedell responded the new house will be approximately 1 ½ feet higher and the concrete piers are just to allow a flow-through foundation.

Mr. Jordan also asked about 2 large oak trees that are between the two properties and if those were to be cut down. Mr. Bedell stated he does not know about any oak trees to be cut down.

Mr. Mike Spenard addressed the Board stating he would want to keep as many trees as possible so there are no plans to cut down any large trees.

There were no further comments from the public.

Mr. Francis made a motion to continue the Public Hearing until the next Planning Board meeting on August 19th, 2020. Ms. Pearlmuter seconded the motion and the vote was unanimous.

4. **200701 Tidemark Corporation (Chicks Marina) / Eco-Analysts, Inc., Authorized Agent** — Site Plan Review — **Initial Review** — for approval to do a maintenance dredge to remove approximately 1,800 cubic yards of sediment to restore adequate access depths at the marina. The dredge was previously approved by the Planning Board on March 15, 2017, but was never done. 75 Ocean Avenue, identified as Assessor's Tax Map 08, Block 001, Lot 22 in the Riverfront Zone.

Mr. Boak introduce the Agenda item.

Mr. Bud Brown of Eco-Analysts addressed the Board and stated the only item that has changed for this Application is Chick's Marina is not going to build a bulkhead. Mr. Brown added they plan to dredge 1,800 cubic yards of material and the DEP permit is valid through the winter. The Army Corps of Engineers permit will expire in October, Mr. Brown added, but he is already in contact with them and will have a letter to re-authorize it shortly. Prock Marine has already been contracted to do the work starting in November, Mr. Brown stated.

Mr. Boak asked if Mr. Gilliam will be able to verify the proper Army Corps of Engineers permit was obtained before the actual dredge is to occur. Mr. Gilliam replied yes. Mr. Brown added he will be able to give Mr. Gilliam a copy of the permit and re-authorization as soon as it has been issued.

Mr. Mahoney asked if this is for the same amount to be dredged as the original approval. Mr. Brown replied yes, it is for the same amount.

Ms. Pearlmuter commented there were other dredging permits that were granted up and down the river and asked if that will affect the amount of sediment to be dredged for this location. Mr. Brown replied no they plan to dredge the same amount of material as approved before.

Mr. Francis asked if the DEP permit is still in effect and it states the Applicant is going to dredge and build a sheet pile wall, is there any reason to think that these 2 items are coupled and the DEP permit needs to be modified if just one is being done? Mr. Brown explained he received an email from Bob Green of the DEP saying it was all right to proceed as proposed and will be happy to forward that email to the Board members.

Ms. Pearlmuter made a motion the Application is complete. Mr. Simmons seconded the motion and the vote was unanimous. Mr. Mahoney was assigned as Case Manager for this Application.

5. **20072 Aaron & Emily Cooper / Walsh Engineering, Authorized Agent** — Site Plan Review — **Initial Review** — for approval to remove the existing stone seawall and replace it with a new stone revetment using 5' diameter boulders on the eastern property line. This work was previously approved by the Planning Board on February 6, 2019, but was never done. 165 Kings Highway, identified as Assessor's Tax Map 33, Block 1, Lot 3 in the Goose Rocks, Shoreland and Resource Protection Zones.

Mr. Boak introduced the Agenda item.

Mr. Bill Walsh representing Aaron and Emily Cooper addressed the Board stating this Application was previously approved in 2019 and shared the site plans on the screen for the public and Board members to view. Mr. Walsh explained the revetment is approximately 100 feet wide and will be constructed piece by piece by replacing some of the smaller stones with larger ones to be able to better handle the force of the waves. There will be a geotextile fabric behind the wall to mitigate any sand from being washed away and the Permit-By-Rule is still valid and in place, Mr. Walsh added. Mr. Walsh concluded they hope to begin work on the project in late fall or early winter.

Mr. Simmons commented the whole idea is to remove the existing rocks and replace with a stone seawall. Mr. Walsh added as many of the larger stones that can be saved will be saved and reused. Mr. Simmons asked if all the work will be done from the land side and not from a barge offshore. Mr. Walsh replied yes, they have been in contact with the neighbors and they anticipate accessing the property from a couple of houses down the shoreline.

Ms. Pearlmutter asked if the wall will be steeper and if they are moving back on the beach at all. Mr. Walsh replied the wall will be mostly the same as it is now and above the same grade as it is now, so they are not moving back on the beach.

Ms. Pearlmutter pointed out the letter of authorization on file is only from one of the trustees and should be from the Trust. Mr. Walsh stated he can clarify that and provide the proper authorization to the town offices.

Ms. Pearlmutter made a motion the Application is complete. Mr. Boak seconded the motion and the vote was unanimous. Mr. Simmons was assigned as Case Manager for this Application.

6. Other Business: Continued Discussion of Planning Board regulations codification changes — **Public Hearing.**

Mr. Boak explained this is a Public Hearing to discuss the changes that are essentially nuances to the Planning Board Rules and Regulations and Kennebunkport Subdivision Regulations to be included in the town's codification process.

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

Mr. Francis led a brief discussion on proposed language changes to 4 specific items in the Kennebunkport Subdivision Regulations (4.15-7.2.D.20, 4.15-8.1.E, 4.15.8.1.K, and 4.15-12.2.A.3.b). Mr. Gilliam explained all those changes are to make sure the Subdivision Regulations are consistent with the Land Use Ordinance and state statutes.

Mr. Francis made a motion to approve the changes just reviewed and their incorporation into the codification standards subject to the update of the 2019 Subdivision Regulations. 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 was adjourned.

Submitted by: Patricia Saunders, Planning Board Recording Secretary