

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

A regular meeting of the Planning Board was held on Wednesday, August 7th, 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, Larry Simmons

Approval of Minutes: This item was deferred until the next meeting.

Items:

1. **190401 Henry Family Trust / Ambit Engineering, Authorized Agent** – Site Plan Review – **Public Hearing** – for approval to install a new 4' x 134' bark mulch pathway, 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.

Mr. Steve Riker of Ambit Engineering, along with Christophe Colinet of Riverside & Pickering and Christian Henry, addressed the Board and gave a brief description of the Application. Mr. Riker also distributed copies of emails regarding local boat slip availability to each of the Board members. Mr. Riker also stated that tidal docking structures are one of the most highly regulated permits one can apply for in the state of Maine which includes reviews of serious scrutiny from the Department of Environmental Protection, the Army Corps of Engineers, Department of Inland Fisheries & Wildlife, Harbormasters, FEMA and NOAA.

Before opening the Public Hearing, Mr. Boak asked the Board members if they had any questions.

Ms. Pearlmutter commented the Applicant is requesting a waiver because the proposed length is beyond what is normally allowed. Ms. Pearlmutter also asked the Applicant to explain the contents of the documents he just distributed to the Board members. As part of the Maine DEP application, Mr. Riker explained, it's requested that you reach out to any of the marinas to see if there are any slip availabilities as part of the demonstration of need for the Applicant. Mr. Riker added he did speak to the Harbormaster who said he had no moorings available in Turbats Creek itself. Mr. Riker added he also spoke to 3 marinas all of whom did not have any slips available, with 2 of them that had extensive waiting lists.

Mr. Boak opened the Public Hearing.

Mr. Bill Matthews along with his wife Marge addressed the Board stating they owned marshland adjacent to the creek and expressed his concern on the length of the proposed dock and the impact it will have on the people who boat or kayak.

Ms. Maryann Ruggles of 74 Turbats Creek Road addressed the Board stating public use of the creek has increased and adding a dock on this scale will change the natural character of the area. Ms. Ruggles also expressed her concern of increased stormwater runoff which will lead to more erosion and flooding to surrounding properties.

Given that this Application has been amended to a shorter length than originally proposed, Mr. Francis asked Ms. Ruggles if she would amend her comments on stormwater runoff considering the structure has been reduced to 116 feet in total length. Ms. Ruggles responded she understands the Application has been amended but her point is any new structure in the creek would disturb the natural beauty of the area. Mr. Francis asked Ms. Ruggles if she has a dock on her property. Ms. Ruggles replied no, she does not have a dock.

An abutter, Ms. Monica Keady of 24 Bufflehead Lane addressed the Board to express her concerns about the impact on wildlife and erosion due to the increased activity. Ms. Keady added she is definitely against granting a waiver for the additional length arguing if "the water is way out of reach, there may be a reason it's out of reach". Other issues Ms. Keady addressed from her prepared statement are: noise pollution, fumes, effect of the subdivision possibly adding another dock, and concern about the detrimental effect on the use and peaceful enjoyment of the area.

Mr. Boak asked the Applicant to speak about the issues being raised tonight.

Mr. Riker stated boating is already a use on this creek where there are 10 other docking structures and he doesn't believe adding 1 boat will make a significant impact. The Maine DEP has approved this as a seasonal structure, Mr. Riker added, and believes this is inconsequential when there is already plenty of boating use in this creek. In terms of stormwater runoff, Mr. Riker continued, because we do not have any impervious surfaces as the docking structure will have plank boards so water will run through and will not be redirecting water from one area to another. There is no extra stormwater involved here and the length meets the Ordinance in terms of 1/5th across the water body, Mr. Riker concluded.

Mr. Higgins asked the Applicant to expand on that last comment for the public. Mr. Riker explained the dock as proposed extends 45 feet out into the waterbody. The Kennebunkport Land Use Ordinance states it cannot extend more than 1/5th across which is 52.6 feet, so we are 7.5 feet less than what we could potentially have, Mr. Riker added.

Mr. Riker also added their proposal has no clearing of trees.

Mr. Francis asked if this house is a member of the Homeowners Association. Mr. Henry responded he is a member of the Homeowners Association to cover maintenance of the street, but not part of the subdivision. We all use the services of the Association but we're not technically part of the Subdivision, Mr. Henry added.

Understanding that only 1 dock can be built in the Subdivision, Ms. Pearlmutter asked if there is any agreement if this dock would be the Subdivision's 1 dock as well. Mr. Henry replied no, there is no agreement. Ms. Pearlmutter then asked if the Applicant would be willing to make such an agreement. Mr. Henry replied probably not as he would have some concerns about people trespassing on his property.

Mr. Francis asked the Applicant if he has access to the bark-covered pathway to the water to the right of the subdivision. Mr. Henry responded he does believe he has access to that and the public has access as well.

Mr. Francis asked the Applicant how he gets into the creek now. Mr. Henry replied he just walks down in the mud.

Mr. Francis expressed concern for damage during construction by the barge. Mr. Riker responded by saying the use of the barge is the best way to minimize the impact to the area as it is actually elevated off of the floor of the resource when it does the construction. Mr. Riker then gave a more detailed explanation specifically how the barge would be used during the construction.

Ms. Sara Young addressed the Board to express her concerns about the height of the structure at low tide and how it will irrevocably change the view of the creek for everyone forever. Ms. Young also questioned whether this trend of adding man-made structures to one of seven identified scenic areas in the town goes against the Growth Planning Committee's Comprehensive Plan. Ms. Young also cautioned the Planning Board against setting precedence by approving a structure that is beyond the allowable length. Mr. Riker responded to Ms. Young's comment by citing his approval from the Maine DEP. Ms. Pearlmutter commented that even though the Maine DEP may have approved this, the Planning Board makes its own decision based on the goals of the town.

Mr. Christophe Colinet of Riverside & Pickering addressed the Board stating he has lived and kayaked in Kennebunkport for the last 22-23 years and understands people's concerns. Mr. Colinet explained they use the barge because it minimizes the impact on equipment sitting on the mud floor and his company prides themselves on making sure they leave the least amount of impact.

Mr. Francis questioned the Applicant's statement that there are 10 docks in the area. Mr. Riker clarified, there are 10 docks when looking at the aerial photo provided in the Application. Mr. Francis acknowledged Mr. Riker's statement but admitted in the Applicant's area of the creek there aren't 10 piers and that adding a pier would be a significant change.

Mr. Bill Matthews addressed the Board stating the vast majority of the piers do not extend out into the creek to the extent that this proposed one will and it will impact the character of the creek.

The Board members and the Applicant had a discussion on the length of the float, the type of boat and the possibility of shortening the dock to conform to the Land Use Ordinance.

Mr. Boak closed the Public Hearing.

Mr. Boak asked the Board members for a consensus on their opinions of this Application.

Ms. Pearlmutter offered she was unsure the Planning Board should set a precedent in granting a waiver.

Ms. Pearlmutter asked Mr. Gilliam for any historical information that may aid the Board's decision. Mr. Gilliam stated the Board has granted length waivers in the past due to an owner's having a sailboat with a large keel and in a situation where the 100 foot length landed on ledge so a waiver was granted to extend past the ledge.

For reference, Mr. Gilliam added that instance was on the Kennebunk River.

The Board members continued their deliberations while asking questions of the Applicant. Mr. Boak asked the Board members for a consensus. Mr. Francis offered his opinion that he is concerned with the precedent and inquired if there is still opportunity for the Applicant to have water access without the waiver.

Mr. Higgins made a motion to deny the Application. Mr. Francis seconded the motion and the vote was 5-0 in favor of the motion. Mr. Boak and Mr. Gilliam requested the Findings of Fact definitively state in terms of the Performance Standards why the Board voted to deny this Application.

The Findings of Fact will be read at the next Planning Board meeting.

- 2. 190601 Wallace Woods Subdivision / Sebago Technics, Authorized Agent** – Minor Subdivision Amendment – **Public Hearing** – 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 addressed the Board and gave a brief summary of the Application, noting he has resubmitted an Agent Authorization letter from the Burnetts as well as copies of the deeds as required.

Mr. Boak asked the Board members if they had any questions for the Applicant before opening the Public Hearing. The Board members had no questions.

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

Mr. Boak made a motion to approve the Application. Mr. Francis seconded the motion and the vote was unanimous.

The reading of the Findings of Fact was deferred until the end of the meeting.

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

- 3. 190602 Kennebunkport Marina / Sebago Technics, Authorized Agent** – Site Plan Review – **Public Hearing** – 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.

Mr. Steve Doe of Sebago Technics along with the Shawn Dumas, addressed the Board noting he would like comment on a few items discussed in his follow-up letter. Mr. Doe noted there would be no bottom washing conducted on this site only top washing of the boats.

Mr. Francis and Ms. Pearlmutter expressed their concern about bottom washing the boats on this property especially with it being so close to the wetlands. Mr. Doe responded that all of the water goes to a collection system and not into the wetlands. Mr. Dumas added that all bottom washing will continue to occur at the marina. Mr. Francis commented the Applicant does not anticipate storing a boat that hasn't been washed before it is brought into the proposed building on the site. Mr. Dumas agreed with Mr. Francis' statement.

In an effort to highlight some of the modifications made to this Application, Mr. Doe stated the following:

- Removal of almost 12,000 square feet of pavement,
- Eliminated the entrance on Fairfield Hill Road,
- Will preserve the large mature trees along Fairfield Hill Road,
- Will supplement the vegetation around the perimeter to add a visual buffer.

Mr. Doe also stated he has spoken with the Fire Chief who requested the Applicant move the propane tank further away from the proposed building. Mr. Francis commented he did not see on the drawings the parking spaces clearly marked or the fire lanes. Mr. Doe acknowledged he did not show that on the plans but will have signs on the buildings designating No Parking in Fire Lanes.

Since the Applicant acknowledged most of the boats are meant to be stored indoors with only 14 boats stored outside, Ms. Pearlmutter asked if the Applicant was willing to have that limitation written in the Application. Mr. Doe agreed to Ms. Pearlmutter's request.

Mr. Francis noted a correction needs to be made to the Application to note the septic system is adequate to handle the addition of an emergency shower. Mr. Doe agreed to make that correction to the Application.

Mr. Francis commented the Applicant agreed to mark the parking spaces. Mr. Doe replied he will put a note on the plans the spaces will be paint striped.

After speaking with Mr. Gilliam about the possibility of a cemetery being located on the property, Mr. Doe indicated on the site plans where the septic tank will be located away from the cemetery. Mr. Doe also added they could not find any headstones or physical evidence on the property that there is a cemetery and a thorough title search could not confirm its existence either.

Ms. Pearlmutter asked the Applicant to speak about the traffic report. Mr. Doe stated they had a traffic engineer conduct a review of the proposal who concluded there is adequate room and good sight distanced in both directions. Mr. Doe also noted they were required to apply for a Maine Department of Transportation permit and expect to have that approval by the end of next week.

Mr. Higgins asked if they are still waiting for a stormwater permit. Mr. Doe replied yes, they did have a to provide a revised draw-up of the reduced pavement.

Mr. Simmons asked if they would need to also revise the subsurface wastewater application. Mr. Doe replied yes due to the addition of the emergency shower.

Mr. Boak opened the Public Hearing.

Ms. Megan Lovejoy of 95 Log Cabin Road addressed the Board to read a prepared statement opposing the Application and expressed her concerns this conditional use does not fit in this residential area.

Mr. Matt Wyman of 90 Log Cabin Road addressed the Board also in opposition to this Application and provided a packet of photos to each of the Board members. Mr. Wyman stated his biggest issue with this proposal is the entrance location. Mr. Wyman also said he is concerned about the location of the snow dump area and the lack of a fire suppression system.

Mr. Phil Nystrom of 84 Log Cabin Road addressed the Board also in opposition to the Application and expressed his concern of possible contamination of his well.

Mr. Bill Anglin of 80 Log Cabin Road addressed the Board in opposition to the Application citing increased traffic and speeding along Log Cabin Road.

Ms. Charlene Dutremble addressed the Board to speak in favor of Mr. Dumas and his consideration for his neighbors at his Biddeford location.

Ms. Jo Hunt of 79 Log Cabin Road address the Board in opposition of the Application stating this proposal does not consider the history of the area as a rural neighborhood for generations of families.

Ms. Kate McKinnan, an abutter addressed the Board in opposition to the Application by stating this proposal is not good for the ecology of the community.

Mr. Boak reminded the audience in attendance this Application is for a conditional use as specified and allowed in the Land Use Ordinance in the Farm and Forest Zone.

Ms. Pearlmutter read the definition of Conditional Use from the Land Use Ordinance which states: "The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units."

Mr. Jack Hunt addressed the Board to suggest the Application be put on hold until it is established where the cemetery is and to determine the appropriate next course of action if any.

Mr. Boak asked what the setback requirements are if there is a cemetery. Mr. Gilliam replied you cannot do any earth disturbances within 25 feet of the identified boundary of a cemetery.

Mr. Lyman, Mr. Dumas, Mr. Gilliam and the Board members had a brief discussion on possibly moving the proposed entrance so it is not directly across from Mr. Lyman's driveway in addition to reviewing driveway requirements in Article 6.15 of the Land Use Ordinance. Mr. Doe agreed to speak with the Department of Transportation on whether there is another acceptable driveway location.

To address concerns raised earlier about neighboring well contamination, Mr. Doe indicated on the Site Plans the neighbors' wells are over 200 feet from the proposed septic system.

Regarding the possible cemetery on the property, Mr. Doe stated he will be meeting with Mr. Hunt and the Cemetery Committee on Friday to walk the property.

In an effort to ensure the abutters concerns will be addressed, Mr. Francis along with Ms. Pearlmutter listed the following issues the Applicant should consider:

1. Modification to provide adequate buffering from neighboring properties,
2. Adequate drainage has been taken into account within the stormwater management plan, specifically addressing the snow melt from the paved areas,
3. Concerns about fire and the lack of a fire suppression system.

Mr. Dumas commented that boats are water tight so if a battery splits or diesel fuel spills it will fill in the bilge. Mr. Dumas added the boat's batteries are disconnected before they are put into storage into a metal building with concrete floors.

Ms. Pearlmuter asked how much gasoline is left in the boats. Mr. Dumas replied most boats have 100-200 gallons so an average of 150 gallons per boat would not be impossible.

Ms. Pearlmuter also asked if the buildings would have a good security system to prevent vandalism. Mr. Dumas responded it will have steel doors, a security system with cameras, and a lock box for the Fire Department.

Mr. Simmons suggested to the Applicant to review the OSHA requirements as an aid to address some of the neighbors' concerns.

Mr. Boak closed the Public Hearing and continued the Board's deliberations until the next Planning Board meeting.

Due to the late hour, the remainder of the Agenda items was deferred until the next Planning Board meeting on August 21st, 2019.

4. **190603 Kennebunkport Conservation Trust / Tim Spang, Authorized Agent** – Site Plan Review – **Public Hearing** – 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.)
5. **190701 Kennebunkport Conservation Trust / Richardson & Associates, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to create a nature park and preserve with new trails and a welcome hut. (Mills Road, identified as Assessor's Tax Map 42, Block 1, Lot 2A1 in the Goose Rocks Zone.)
6. **OTHER BUSINESS**: Discussion of proposed changes to Subdivision Regulations in light of Road Acceptance Policy of the board of Selectmen – **Public Hearing** to move forward with modifications.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary