

Kennebunkport Planning Board
August 15, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, August 15th, 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: Ms. Pearlmutter made a motion to approve the minutes from the August 1st, 2018 Planning Board meeting. Mr. Higgins seconded the motion and the vote was unanimous.

Items:

1. **180601 Mary Banks Strohm Revocable Trust / Atlantic Environmental, Authorized Agent - Site Plan Review – Continued Deliberations** – 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 stating based on discussions at the last few Planning Board meetings, they have submitted revised plans which have a reduced ramp of 14 feet and a reduced float size. In accordance with Article 5.11.B.15, Ms. Vickers noted the revised length of the proposed dock is 20 feet which is below the 1/5th requirement of 22.82 feet.

Mr. Boak asked if the Board members had any questions.

Mr. Mahoney commented he has observed low tide in the area of the proposed dock where there is in his opinion at best 4-6 inches of water in the middle of the basin so the notion of navigational obstruction appears to be inaccurate. Ms. Vickers added they did reconfirm with the range finder the length of the channel is 114 feet.

Mr. Higgins made a motion to approve the Application. Mr. Mahoney seconded the motion. The motion passed with a vote of 4-1. Ms. Pearlmutter voted against approval citing Articles 10.10.A.1.n and 10.10.B.1.e as the reasoning for her denial of the Application.

Mr. Mahoney is the Case Manager for this Application and will read the Findings of Fact at the next Planning Board meeting.

2. **180602 Matthew & Donna Enoch / Sebago Technics, Authorized Agent – Site Plan Review – Continued Deliberations** – 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 1-, Block 1, Lot 1- in the Riverfront, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board stating at the last meeting the Board asked about the fill that was placed which was completed in November of 2016 and was approximately 180 sq. ft. The Applicant has complied with all town regulations in obtaining the necessary permits and has kept in contact with the town on their intentions for their property, Mr. Doe continued, but due to illness the process to continue with the site improvements has extended longer than 1 year. Article 8.8.B allows the Planning Board to grant an extension of that time, Mr. Doe added.

Mr. Francis offered his opinion that he is comfortable granting the requested waiver as he sees this Application as a continuation of a single project.

Ms. Pearlmutter expressed her concern in exchanging the square footage of an external staircase and using that square footage to add a portico as it could cause other issues in the future. Ms. Pearlmutter did agree with Mr. Francis in granting the Applicant's waiver to allow the 1 year extension and feels the addition of the proposed portico is also acceptable but not in exchange for the square footage of the external stairs.

In response to Ms. Pearlmutter's concern, the Board members and Mr. Gilliam had a detailed discussion on the definitions of lot coverage, building, and structure, and the requirements contained in Article 8.3.B.1.a Expansion of Non-Conforming Structures.

As a result of said discussion, Mr. Francis proposed to add language to the Findings of Fact that clarifies this Application is not increasing the impervious surface coverage and that any future addition of external stairs would be considered an addition to the building footprint.

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

The Findings of Fact will be read at the next Planning Board meeting on September 5th, 2018.

3. 180201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent – Final Subdivision Review – **Public Hearing** – 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 noting the Board would like to hear from the Applicant before opening the Public Hearing.

Mr. Mike Tadema-Weidlant of Terradyn Consultants addressed the Board along with Attorney Ralph Austin and Geoff Bowley, stating this Application is proposing to build a 13-lot cluster subdivision that is essentially an expansion of Binnacle Hill Phase 1. The proposed expansion will connect Binnacle Lane in Phase 1 to Henchey Way what is a driveway for 2 houses, Mr. Tadema-Weidlant explained.

Mr. Tadema-Weidlant gave a brief overview of the Application using enlarged site plans noting the cluster subdivision will be served by public water and sewer and underground electricity.

Mr. Boak asked if the Board members had any questions for the Applicant before opening the Public Hearing.

Noting the Board has received several letters from abutters since the last Planning Board meeting, Ms. Pearlmuter if it would be a difficult change to move the gate on Henchey Way further up towards the top of the hill where it would be easier to access. Mr. Tadema-Weidlant explained the hammerhead design was more suitable for that intersection rather than a cul-de-sac as it would require the least amount of impervious area.

Mr. Boak commented that the hill is rather steep where the gate is proposed. Mr. Tadema-Weidlant responded the plans have remained unchanged since May and have been reviewed by the Superintendent of Public Works Mike Claus and is the same design as was approved in the preliminary site plan review which has also been peer reviewed by the Town's engineers.

Several of the Planning Board members questioned whether they have received a relief of the slope of Henchey Way where the proposed gate would be located. Mr. Gilliam confirmed each Planning Board member has received a full set of the site plans for this Application.

Mr. Francis clarified his comments that he was referring to the recent letter dated August 11th, 2018 received from Mike Claus stating he has reservations on the hammerhead design. Attorney Ralph Austin asked for a copy of that letter on behalf of his client.

Mr. Gilliam commented the referenced letter was correspondence between the Millers and Mike Claus.

Mr. Mike Claus addressed the Board and explained when he first reviewed the plans for Henchey Way the initial grades were 2% on Timber Lane and sloped down to 8% and the hammerhead design was slightly different. Mr. Claus stated he did review the May 2018 site plans submitted for sewer design and did not notice the change in the hammerhead design. The August 11th letter to Ms. Miller was looking from the viewpoint of a 5% slope transitioning to a 10% slope and if a plow would slide in the winter parking in front of the proposed gate, Mr. Claus said. Although the road is proposed to be built to town standards, Mr. Claus added, the town will not be accepting roads so it is not fair to be reviewing a road design against town standards that will be maintained privately.

In explanation of the timeframe of this review Mr. Tadema-Weidlant gave a brief presentation on the chronology of his Preliminary Site Plan Review and Final Site Plan Review to the present day along with a detail of the grade changes and constraints of Henchey Way.

Mr. Francis asked Mr. Tadema-Weidlant to address the Miller's concern that there is a safety issue with the proposed design of the improvements of Henchey Way. Mr. Tadema-Weidlant explained there is a 10% slope at the top of the hill past the Millers driveway where the only traffic that would be using that section of the road would be emergency vehicles so it will infrequent.

Mr. Mahoney and Mr. Higgins asked the Applicant several questions to try to ascertain the distances and slopes of the proposed improvements to Henchey Way. To summarize, Mr. Tadema-Weidlant explained the slope at the gate is approximately 9% where the steepest section of Henchey Way would be at a 10% slope and stretch for a 20 foot section, then progressing for another 75 feet at a slope between 10% & 8% and then transitions to approximately a 5% slope.

In reference to his comment that the town would not be plowing Henchey Way, Mr. Francis asked Mr. Claus if he sees any safety concerns with this design. Mr. Claus replied he thinks a plow could handle the grade changes; adding his comments to Ms. Miller's letter is that 2% and 8% slope is better than 5% & 10% slopes but both are definitely acceptable.

Mr. Simmons asked if there were any line of sight issues with headlights or obstruction that a car coming up the hill could be invisible to a car coming down the hill. Mr. Tadema-Weidlant replied he does not perceive any safety issues however, Mr. Simmons' question implies the gate would be opened to traffic which it wouldn't be.

The Board members continued their questioning of the Applicant on the slope and grade of the proposed road design and the possibility of moving the hammerhead so it was at a lesser slope.

Mr. Francis cautioned the Board of declaring there is a safety issue with the proposed road design when the Kennebunkport Public Works Superintendent and the Fire Chief have said the design is suitable for its intended use as an emergency access road.

Mr. Bowley addressed the Board asking them to be mindful of common sense as it relates to engineering and design standards where two stamped civil engineers have designed this plan and seen no safety issues with this plan.

Mr. Tadema-Weidlant commented in his discussions with the Fire Chief on the proposed road design, when asked if reducing the width of Henchey Way from 14 feet to 12 feet would be acceptable, the Fire Chief's response was yes it is an emergency access we're happy to have and if it is truly an emergency we will get there.

Mr. Tadema-Weidlant added he feels the design proposed is workable and will provide the Fire Department with an emergency access along with continuing to provide access for the 2 houses on Henchey Way.

In reference to a letter submitted to the Board regarding the forested buffer, Ms. Pearlmutter asked what type of forest management will they provide. Mr. Tadema-Weidlant responded they have had a forested buffer along lots 17, 18, 19, & 20 to provide separation to the back of the lots along New Biddeford Road and as stated in the Homeowners documentation the language regarding the forested buffer was taken directly from the DEP that forbids any disturbance of topsoil or undergrowth but does allow some clearing of trees based on a point system. Given the concern of the neighbor, Mr. Bowley is comfortable re-labeling those areas as a no disturbance area with the exception of removal of dead trees, Mr. Tadema-Weidlant explained.

Mr. Boak opened the Public Hearing for this Item and for Item #4 on the Agenda.

Ms. Ann Kelley of 13A New Biddeford Road addressed the Board asking that the buffer zone be declared a no disturbance buffer zone and that there be very clear enforcement language in the homeowners' documentation.

Ms. Theresa Henchey Debenedicts addressed the Board to reaffirm her concerns about the gate location and the steepness of the road and to also request a buffer zone be established between her property and the 2 lots currently under construction.

Ms. Carrie Fetzner of Henchey Way addressed the Board to express their concern about the developer trespassing onto their property and/or having building equipment or machinery on their property during construction. Ms. Fetzner informed the Board the true Right of Way of Henchey Way has migrated and should be addressed before construction is begun.

Ms. Fetzner also expressed her concern for her parents who are very elderly and do not wish to be inconvenienced during construction by having their electricity or water switched off.

Mr. Bowley responded to Ms. Fetzner's concerns by stating he has no intention of creating any hardship and will instruct his contractors to be mindful of the neighbors' access to their property. Ms. Fetzner agreed to discuss her concerns in more detail with Mr. Bowley if the Application is approved and before construction begins.

Mr. Paul Hogan of 324 Kings Hwy addressed the Board to express his concern about people parking on Timber Way and Binnacle Lane to go to Goose Rocks Beach. Citing the Goose Rocks Beach Use Agreement, Mr. Hogan explained that Agreement outlines the specified number of public parking spaces for beach access and asked the Planning Board and the developer to be mindful of that Agreement by being good neighbors. Mr. Hogan suggested the developer should post signage stating there is no public parking.

Mr. Hogan also expressed his concern that since Henchey Way is to remain a private road that it should not be paved and thus not add to the impervious surface in the area which could cause issues with stormwater drainage.

Ms. Lisa Miller of 4 Henchey Way addressed the Board and read a lengthy statement outlining several issues such as:

- Maintain access to Henchey Way at all times during construction and that water and sewer service is not disturbed
- Change to the proposed signage to state: "Private Road, No Parking or Turning. Towing at Owners Expense"
- Language added to the Binnacle Hill Homeowners Association documentation that grants some sort of enforcement rights to the lot owners on Henchey Way
- Details of the specific landscape plans for the vegetative buffer area between her property and the Applicant's
- The Location of the gate on Henchey Way would encourage people to back up and trespass onto their property, and
- School buses picking up and dropping off children would use the hammerhead as a turn around.

Ms. Pearlmutter asked Ms. Miller who does she expect to tow the cars if they do park on Henchey Way. Ms. Miller replied she has issue with the fact that the Binnacle Hill Homeowners' Association actually owns the road and think better signage would help with trespassers. Ms. Pearlmutter commented she believes only the owners of the property have the authority to tow someone for trespassing.

In reference to the parking issue on Binnacle Lane during the summer, Mr. Bowley stated he has had several conversations with the Police Department regarding such and agreed to add a sign at the end of Henchey Way.

Regarding Ms. Miller's comments on the landscaping plans, Mr. Tadema-Weidlant explained Note 22 on the proposed plan describes the intent of the buffer is to provide visual screening and water intake for stormwater runoff. Mr. Bowley is happy to work with the Millers on the type of vegetation to be planted, Mr. Tadema-Weidlant added and noted the buffers are not required as a performance standard in the Ordinate but are an offering by the developer to mitigate concerns from the abutters.

Ms. Miller also asked the Planning Board to consider continuing the Public Hearing for another meeting as there may still be more public input on this Application.

Mr. Higgins commented he did not believe district school buses go down private ways so the concern of a school bus using the hammerhead to turnaround is not likely to happen.

Attorney Scott Edmunds addressed the Board on behalf of Ms. Kelly and the Fetzner family and asked that their requested conditions be made part of their conditions of approval.

Mr. Marc Veillet of 35 Kings Lane addressed the Board offering his preference there be no street lights on Henchey Way. Mr. Boak responded the developer has already agreed to not install street lights.

Mr. Veillet also expressed his concern regarding the possibility of more houses being built at Goose Rocks Beach if the proposal by the Growth Planning Committee is approved to extend the transitional growth area. In response, Mr. Gilliam gave a brief overview of the proposed changes currently on the agenda of the Growth Planning Committee. Mr. Austin commented this is not an issue for the Planning Board.

Mr. Boak closed the Public Hearing.

Mr. Boak made a motion to suspend deliberations on this Application until the next Planning Board meeting. Mr. Mahoney seconded the motion and the vote was unanimous.

4. **18-2-1 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent** – Final Subdivision Review – **Public Hearing** – for a Private Sewer Extension Application on Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.

Mr. Boak introduced the Agenda item in conjunction with Item 3.

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

Ms. Pearlmuter made a motion to recommend the Board of Selectmen approve the Private Sewer Extension Application. Mr. Mahoney seconded the motion and the vote was unanimous. On behalf of the Planning Board, Mr. Boak will draft a memorandum to the Board of Selectmen regarding this approval.

5. **18-7-2 John & Elizabeth Chambers** - Site Plan Review – **Initial Review** – for approval to construct a new single family residence to include a volume expansion. (5 Ward Road, identified as Assessor's Tax Map 22, Block 5, Lot 12 in the Cape Porpoise West, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. John Chambers addressed the Board stating in the process of trying to refurbish the residence they found there were enormous issues to be resolved that would require a complete reconstruction but will maintain the current footprint with an allowable 30% increase in volume. Mr. Chambers also noted there is only one location on the property that provides a conforming buildable site to locate the structure and comply with all setbacks.

Mr. Francis asked about the inclusion of the basement walk-out in the volume calculations. Mr. Sean Douston, builder for the Applicant replied he did include the basement in his calculations.

Ms. Pearlmuter asked if the Applicant is adding a roof deck onto the house. Mr. Douston replied yes they are. Ms. Pearlmuter questioned whether that roof deck was an extension or expansion. Mr. Boak responded the expansion is within the 30% allowed in the Ordinance.

Mr. Francis noted there was not a specific erosion control plan included within the Application. Mr. Douston replied he did not submit a separate plan but he does take erosion control measures in his construction and he does not anticipate any changes or issues with runoff.

Ms. Pearlmuter asked if the Applicant would need a permit from the Department of Environmental Protection. Mr. Gilliam replied that prior to issuing a building permit; they will be required to submit a Permit By Rule from the DEP. Mr. Gilliam also noted that Mr. Douston does have a Maine state certification for working in the Shoreland Zone. Mr. Douston agreed to provide a copy of that certification for the Board.

The Board members agreed they would like receipt of the details of the Applicant's erosion control measures for during and after construction along with a statement the Applicant will re-vegetate the property in accordance with the Land Use Ordinance. Ms. Pearlmuter added the Board should also receive a copy of their Permit By Rule from the DEP.

Mr. Francis made a motion the Application is complete pending receipt of the items previously discussed. Mr. Higgins seconded the motion and the vote was unanimous. Mr. Simmons was assigned Case Manager for this Application.

A Public Hearing will be held at the next Planning Board meeting on September 5th, 2018.

6. ~~**18-6-3 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 5 in the Village Residential Zone.~~ Removed at the request of the Applicant.

Other Business:

Mr. Gilliam distributed to each Board member a copy of a revised draft of the Town of Kennebunkport's Telecommunications Ordinance and outlined the major changes made to the Ordinance regarding the Spectrum Act provision and other details regarding small cellular nodes.

The Board members and Mr. Gilliam had a brief discussion on the details of the proposed changes.

Mr. Boak instructed the Board members to review the proposed changes in preparation of the next Planning Board meeting.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary