

Kennebunkport Planning Board
August 16th, 2017 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A regular meeting of the Planning Board was held on Wednesday, August 16th, 2017. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Russ Grady (Chair), Tom Boak, D. Scott Mahoney, Mark Messer, Nina Pearlmutter, Neil Higgins
Mr. Grady welcomed Mr. Higgins as the newest member of the Planning Board and noted there is still one vacancy if anyone is interested in volunteering.

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the August 2nd, 2017 Planning Board meeting. Mr. Mahoney seconded the motion and the vote was unanimous.

Items:

1. **170402 Binnacle Hill Subdivision/Sebago Technics, Authorized Agent** –Final Subdivision Review – **Findings of Fact** – for approval of a 15 Lot cluster subdivision on New Biddeford Road, identified as Assessor's Tax Map 41, Block 002, Lots 8C & 8D in the Goose Rocks and partial Shoreland Zone.

Mr. Boak read the Findings of Fact into the record. Mr. Mahoney made a motion to approve said Findings. Ms. Pearlmutter seconded the motion and the vote was 4-0-1. Mr. Messer abstained from voting.

2. **Seaside Hotel Associates, d/b/a The Nonantum Resort** – Final Subdivision Review – **Findings of Fact** – for approval to demo the existing staff house and rebuild on the same foundation. [98 Ocean Avenue, identified as Assessor's Tax Map 8, Block 009, Lot 10 in the Riverfront Zone.]

Mr. Messer read the Findings of Fact into the record. Ms. Pearlmutter suggested adding language to indicate the property has been continuously operating as a staff house. The Planning Board members agreed with Ms. Pearlmutter's suggestion. Mr. Boak made a motion to approve said amended Findings. Mr. Mahoney seconded the motion and the vote was unanimous.

3. **170701 Edward Buttner/ Eco-Analysts, Inc., Authorized Agent**–Site Plan Review – **Public Hearing** – for approval to construct a walkway, a 4' x 65' pier, a 3' x 20' seasonal ramp and a 4' x 16' float. [37LangsfordRoad, identified as Assessor's Tax Map 21, Block 011Lot 21 in the Cape Porpoise West, Shoreland and Resource Protection Zones.]

Mr. Grady introduced the Agenda item and asked the Applicant to provide a brief summary.

Mr. Bud Brown of Eco-Analysts addressed the Board stating they have included in their Application a checklist from Article 5.11 adding they have conformed with all standards contained within the Land Use Ordinance. In addition to the request to construct a pier, seasonal ramp and float, Mr. Brown explained they are also requesting to build an elevated path from the building in order to avoid cutting down trees or bushes and will use helix anchors to a standard width as required by the Maine Department of Environmental Protection.

Ms. Pearlmutter asked the Applicant to explain the details of the restriction set forth in an easement on the property deed. Mr. Brown deferred answering and requested the Applicant's Attorney, Sandra Guay to respond.

Mr. Messer suggested to the Board members that the Board address the dock and walkway separately in their review of this Application. After a brief discussion, the Board agreed to assess the Application as a whole and not to separate the dock or walkway from this review.

Mr. Messer questioned the Applicant's submission of "n/a" in answer to the calculation of lot coverage on the Application. Ms. Guay responded there was a detailed survey done of the property by Lower Village Surveyors that provides the exact amount of available lot coverage and would provide a copy of the survey to the Planning Board.

In response to Ms. Pearlmutter's previous question, Ms. Guay replied the easement on the deed grants access to the adjacent property owner access to the Butner property.

Referring to Article 5.11.B.4. which states: "Accessory residential piers, docks, wharves walkways, ramps or floats require the lot to have a minimum of sixty (60) feet of shore frontage", Mr. Grady asked the Applicant to provide documentation that clearly shows this requirement has been met. Ms. Guay agreed to provide a copy of the survey indicating the lot coverage and the total shore frontage.

Mr. Grady also questioned the proposed length of the dock would be over the 100-foot limit. Mr. Brown explained there is some overlap of the ramp and the float which makes the total length less than 100 feet.

Mr. Grady asked how many hours would the float be usable in a tide cycle? Mr. Brown replied it will be 4-6 hours.

Mr. Grady acknowledged receipt of a letter from Nancy Spencer expressing concerns about the depth of the inlet where the ramp will be built and its effect on the eroding marsh. Mr. Brown disagreed with Ms. Spencer's measurements of the inlet.

Ms. Guay distributed a copy of the survey of the property to the Board members which showed the current lot coverage to be 13.2% and the shore frontage to be more than 60 feet.

Mr. Grady asked if the Board members had any further questions for the Applicant.

Mr. Messer stated this lot is only 36,000 square feet and it is required in Article 4 of the Land Use Ordinance to have minimum of 40,000 square feet in order to make improvements on the lot. Ms. Guay responded this lot is a non-conforming lot but it can still have improvements on it as long as other parts of the code are not violated. Mr. Gilliam further explained single-family homes such as this one is a legally conforming use of a non-conforming lot of record.

Ms. Pearlmuter asked if you can't add a deck onto a non-conforming house, how can you add a boardwalk? Mr. Gilliam responded as long as any additions meet the setback requirements it is not considered an expansion of lot coverage. Ms. Guay added this is not an expansion of a non-conforming use and thus, is allowed to make improvements. Mr. Messer stated on non-conforming lots, new uses are not permitted. Ms. Guay argued this Application is not a new use.

Mr. Messer, Ms. Guay and Mr. Brown had a lengthy discussion on permitted uses, non-conforming lots, and the specific language in Articles 4.17, 5.11 and 10.10 of the Land Use Ordinance.

Mr. Messer also noted that some abutters have concerns about this Application's effect on the wildlife. Ms. Pearlmuter added that some of the letters received by the Planning Board seemed to refer more to the Zuke property rather than the Applicant's property.

Ms. Guay pointed out that it isn't enough for someone to say this Application will have a detrimental effect on their property; they have to provide evidence of such detrimental affects.

To address concerns about obstructing scenic vistas, Mr. Brown referred the Board members to Appendix A of the Application with the DEP's findings that state this would not be detrimental.

Mr. Messer asked if anyone from the DEP went out to the site? Mr. Brown replied Yes, Bob Cherry visited the property and passed his notes onto Bob Green of the DEP.

Mr. Brown also addressed concerns raised in a letter submitted to the Planning Board regarding the great blue herons and egrets and noted that wading birds and waterfowl are never at the marsh at the same time.

The Board members continued a lengthy discussion with the Applicant about increased lot coverage, the definition of accessory use, and the number of residential docks in the area.

To move the meeting forward, Mr. Grady asked the Board members the following two questions:

1. Do you need more information and to consult the town attorney before casting a vote? Or
2. Do you feel comfortable voting?

The Board members agreed to obtain an opinion from the town's attorney.

Mr. Grady opened the Public Hearing.

Ms. Louise Mooney, an abutter, addressed the Board to express her concerns in building a walkway rather than clearing a path which is what was done in the past. Ms. Guay responded the DEP looks at alternatives when evaluating a project and felt the walkway was a good use to protect the wetlands with minimal impact on the vegetation.

Ms. Mooney also expressed her objection to the assumption that it is their [the Applicant's] property and can do with it whatever they like. Ms. Mooney asked the Planning Board members to invoke their authority to tell the Applicant what they can and can't do with their property. Ms. Pearlmuter clarified that the Board only has the authority to apply the Ordinance as they do not have the right to tell anyone they're permitted to do whatever they like.

Mr. Rick Spenser, an abutter, addressed the Board and questioned why there were no railings if the walkway was to be 3 feet off the ground. Mr. Gilliam replied the state does not have a specified railing height requirement when it comes to gangways, walkways or things of that nature. Mr. Brown offered a 2'x4' plank could be put along each side of the walkway which would act more like a curb rather than a railing.

Mr. Spenser also asked how they were going to get the dock in and out. Mr. Brown explained they'll be able to pull the ramp up onto the pier at high tide and bring the float over to the shoreline to put on some rollers to store it in the upland during the off-season.

Ms. Kathy Jordan of 33 Langsford Road addressed the Board and asked the Board to require the Applicant to provide 3-D renderings of what the dock and walkway will look like to ensure the scenic views of the neighbors are preserved. Instead of a 3-D rendering, Ms. Jordan suggested perhaps to put stakes and twine for the abutters to see how much it will affect their scenic views.

The Board members and the Applicant had a brief discussion on the Land Use Ordinance standards in Article 10.10.B.1.

Mr. Brown agreed to speak with his client about installing some stakes and ropes to provide the abutters a visual of what they propose.

Mr. Gary Eaton of 46 Langsford Road addressed the Board to express his distaste for the structure at 48 Langsford Road. Mr. Grady explained that his concerns and comments are not relevant to this Application.

Mr. Beth Maloney addressed the Board stating her opinion that Mr. Gilliam's role is not to advocate for the Applicant. Ms. Maloney also commented that she has never seen a dock like the proposed dock anywhere in Kennebunkport and would like to see the marsh area protected.

An audience member asked the Board how they would be notified when the stakes and twine are installed. Mr. Brown agreed to notify the abutters with a certified letter once the stakes have been installed.

Ms. Guay asked if she could be notified when and what the Planning Board drafts as its questions to the town's attorney. On behalf of the Planning Board, Mr. Grady agreed to submit a copy of their questions to town counsel to Ms. Guay. Mr. Grady asked all Planning Board members to submit their questions to Mr. Gilliam by the next morning.

Mr. Grady announced the Public Hearing would be kept open and will be continued at the next Planning Board meeting on September 6th, 2017.

Mr. Grady also asked Mr. Brown to take some photos of the property when the stakes and rope are installed to be included in the Application.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary