

Kennebunkport Planning Board
October 17th, 2018 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, October 17th, 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, Larry Simmons, George Lichte

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the October 3rd, 2018 Planning Board meeting. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Boak noted the next Planning Board meeting will be November 7th, 2018 and there will be no Planning Board meeting on November 21st, 2018.

Items:

1. **180901 Ledges at Ocean Avenue Subdivision / Properties of James & Jennifer Viola and James A. Mandell / Ralph Austin, Authorized Agent for both property owners** – Minor Subdivision Revision – **Initial Review** – for approval to exchange 2,007 square feet of property to each other, thereby changing lot lines. (20 & 22 Washburn Drive, Map 41, Block 2 Lot 3L & 3M in Cape Arundel Zone.)

Mr. Boak introduced the Agenda item.

Attorney Ralph Austin, representing both owners of the lots, addressed the Board and gave a brief summary of the Application noting this is a minor subdivision off of Ocean Avenue where the driveway was originally placed up to the property line which created problems for future maintenance. Mr. Austin noted each lot will remain the exact same size it is currently, there will be no changes in the road frontage for either lot, and there are no setback issues or structures involved in this exchange. As a point of reference, Mr. Austin stated this fits the description of a minor subdivision change as stated in Section 9.4 of the Kennebunkport Subdivision Regulations.

Ms. Pearlmutter commented on the site plan it appears the setback goes through the paved driveway. Mr. Austin responded it is not a requirement that a driveway be set back from a lot line as a structure is required to be. Mr. Gilliam agreed with Mr. Austin's assessment adding the ordinance does require a 5 foot setback once a driveway is over 50 feet. Mr. Austin pointed out that this proposal does provide for a 6.2 foot setback if approved.

Citing a section of the Homeowner Association Covenants that states no lots can be further divided, Mr. Higgins questioned whether the Homeowners Association should be involved in this process. Mr. Austin replied this is not a division of a lot but all the same offered to contact the president of the Homeowners Association.

There were no further questions from the Board members.

Mr. Higgins made a motion the Application is complete. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Due to some time constraints with one of the lot owners' mortgage companies, Mr. Austin asked the Board if it was possible to hold the Public Hearing and if there were no issues at the Public Hearing, to read the Findings of Fact at that same meeting. The Planning Board members agreed to Mr. Austin's request.

Mr. Boak announced the Public Hearing will be held on November 7th, 2018 at the next Planning Board meeting.

Mr. Lichte was assigned as Case Manager to prepare the Findings of Fact.

2. **180902 George H. Walker, III & 91A-B Ocean Avenue Cottage LLC / Riverside & Pickering, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to replace an existing pier, wharf, ramp and float with a shorter pier, longer ramp and similar float. This project was previously approved by the Planning Board on July 16, 2014, but never constructed. (91A-B Ocean Avenue identified as Assessor's Tax Map 8, Block 001, Lot 14 in the Village Residential, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Zachary Taylor of Riverside & Pickering addressed the Board and gave a brief summary of the Application noting this project was previously approved on July 16, 2013 but was never built. Mr. Taylor noted they have received approvals from the Maine Department of Environmental Protection, the Army Corps of Engineers and the River Committee.

Citing Article 5.11.B.9 of the Land Use Ordinance which states: "*A noncommercial ramp, pier, walkway, dock or wharf shall not be wider than four (4) feet*" Mr. Higgins asked why the proposed pier is to be 6 feet. Mr. Taylor replied when this Application was originally approved it was a significantly larger project and this new configuration is a compromise from the original pier.

Ms. Pearlmuter asked the Applicant if this pier is grandfathered. Mr. Taylor replied yes, the dock could be replaced exactly as it is which is a much larger structure than what they are proposing.

Ms. Pearlmuter asked Mr. Gilliam to confirm Mr. Taylor's assessment that the pier is grandfathered. Mr. Gilliam responded by stating currently it is a legally non-conforming structure that is larger than what would be permitted today and does not meet the setback requirements. Mr. Gilliam also noted that the Maine DEP and Army Corps of Engineers did not have an issue with the 6 foot wide pier. Mr. Taylor agreed with Mr. Gilliam's assessment adding the River Committee and the Army Corps appreciated they are proposing to move the pier out of the channel's edge.

Mr. Higgins questioned why the Applicant can't meet the 4 foot width requirement. Mr. Taylor explained there are several family members who have fishing licenses that use it for recreational lobstering and need the larger float to unload traps. In addition, Mr. Taylor added, the Applicant also owns the Pineapple Ketch, and the float is occasionally used to load/unload gear for charter trips when the Nonantum dock is backed up.

Mr. Gilliam asked the Applicant if they were reducing the square footage of the fixed portion of the dock. Mr. Taylor replied yes it is about a 25% reduction.

Mr. Francis commented this Application is a compromise from what is currently there now which is a grandfathered use. Ms. Pearlmuter noted it is not just the use that is grandfathered but also the structure itself in that this is a redesign and reduction of non-conforming structure to maintain the same use.

Mr. Higgins questioned how the proposed pier is more conforming if it is being increased to 6 feet wide.

The Board members and the Applicant had a brief discussion on the details of the proposal.

Mr. Francis asked if the float was always in the water even at the lowest tide. Mr. Taylor replied yes, throughout the normal tide cycles the float is positioned in the water so it is not resting on the bottom at low tide.

Ms. Pearlmuter asked if the dock is pulled out of the water in the off-season. Mr. Taylor responded yes, the gangway and float are seasonal and will be stored in the upland.

Mr. Simmons asked the Applicant to explain why proposed walkway was reconfigured from its original design. Mr. Taylor responded it is because the Maine DEP would not allow them to rebuild it in its current formation.

Ms. Pearlmuter asked what the spacing is of the boards in the 6-foot wide section. Mr. Taylor replied the DEP and the Army Corps requires 3/4" spacing to allow more ambient light under the dock. Mr. Higgins noted the ordinance requires 1/2" spacing.

Mr. Francis made a motion the Application is complete. Ms. Pearlmuter seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on November 7th, 2018.

Ms. Pearlmuter asked the Applicant to provide a map indicating the Velocity Zone, the location of the original pier and where the proposed pier will be so the Board members could see it in relation to the Nonantum.

Mr. Higgins was assigned as Case Manager for this Application.

Mr. Boak reminded the Board members there needs to be at least 3 members of the Planning Board in attendance at the next Board of Selectmen's meeting to discuss the modification of the Telecommunications Ordinance. Mr. Mahoney, Mr. Simmons, and Mr. Lichte agreed to attend the Selectmen's meeting on behalf of the Planning Board.

3. Other Business: Discussion regarding Road Acceptance Policy.

The Board members took a few minutes to review the new Road Acceptance Policy.

Mr. Gilliam explained the Town Manager is asking for the Board to consider modifying the Kennebunkport Subdivision Regulations so that developers are aware of the criteria of the Road Acceptance Policy should they decide to make a road public.

After much discussion amongst the Board members and Mr. Gilliam, Mr. Boak asked all members to write down their comments/questions regarding the new Road Acceptance Policy and submit them to him. Mr. Boak added he will set up a meeting with himself, Mr. Gilliam and the Town Manager to discuss those changes.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary