

## Kennebunkport Planning Board

November 4th, 2020 ~ 6:00 PM

Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, November 4th, 2020. The virtual meeting convened at 6:00 p.m. via Zoom.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, Ed Francis, D. Scott Mahoney, Larry Simmons, George Lichte, John Harcourt

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the October 21st, 2020 Planning Board meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

### Items:

- 1. 201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent** – North Campus – Site Plan Review – **Public Hearing** – for approval to demolish all existing buildings and parking areas and construct two new building with multiple parking areas. (128 Ocean Avenue / 12 & 14 Colony Avenue, identified as Assessor's Tax Map 8, Block 8, Lots 14, 15 & 16 in the Riverfront and Shoreland Zones.) *Nina Pearlmutter, Case Manager*

Mr. Boak introduced the Agenda item and explained the order of tonight's meeting.

Mr. Bill Walsh along with Attorney Ralph Austin, Silas Canavan, Eliot Siderides, and John Martin addressed the Board. Mr. Walsh stated they have submitted the following items as requested at the last Planning Board meeting:

- Correction to the property address on the Application form
- Renumbering the buildings on the site plans
- Included FEMA flood maps to note the property is not in a flood zone
- Shoreland Zone delineation was removed from the site plans
- Parking areas were clarified, and the number of employees and dorms rooms were corrected on the table included in the design plans
- Letter from the Fire Chief discussing the design for emergency vehicle access
- Detailed construction schedule to layout the expected timeline
- Note regarding traffic stating the Applicant has retained William Bray to conduct a traffic analysis to include a trip generation and sight distance analysis at nearby intersections
- Peer review fee has been paid to the Code Enforcement Office.

Mr. Walsh also commented he has met with the Water District to talk about the reconstruction of the water main on Colony Avenue and has discussed the same with Mike Claus of the Kennebunkport Public Works Department.

Mr. Canavan shared the site plans on the screen for the Board and viewing public. Mr. Walsh gave a short overview of the property consisting of 1.38 acres located between Colony Avenue and Fairfield Creek in the Riverfront Zone containing multiple grandfathered non-conforming structures. The existing structures: Fontenay Terrace, Wilson House, Cove Dormitories, and East House, Mr. Walsh added, will all be removed, and two new buildings will be constructed. The two new buildings will consist of 3 interconnected structures labeled as sections 1A, 1B, 1C, to be built around the parking crescent, Mr. Walsh explained, and building 2 will be located on Ocean Avenue to contain a market and café on the ground floor with hotel rooms on the 2<sup>nd</sup> floor. The driveway and parking have been put into the crescent shape to provide parking and to give access to the buildings, Mr. Walsh continued. Regarding the parking areas Mr. Walsh explained the Ordinance requires 80 spaces and they have provided 99 parking spaces with 23 overflow spaces on the grass on the inside of the crescent. Due to the reconstruction of Colony Avenue, Mr. Walsh stated the water and sewer lines will also be reconstructed and the overhead utilities will be brought underground. On the last site plan presented Mr. Walsh indicated where the stormwater collection basins would be located before discharging into Fairfield Creek. Lastly Mr. Walsh noted the non-conforming structures are being moved back to the greatest extent possible and the impervious area has been reduced.

Mr. Boak questioned whether the Shoreland Zone requirements still applied to this Application since it was determined not be in the Shoreland Zone. Mr. Gilliam referred the Board to Article 7.7.D. of the Land Use Ordinance regarding Performance Standards for Hotels, Motels, Bed & Breakfasts, and Inns which states: "The total area of Hotels, Motels, Bed & Breakfasts, or Inns, plus the total area of parking spaces and driveways, taken together, shall not exceed one third (1/3) of the total area of the lot, in the case of single story buildings, nor exceed one quarter (1/4) of the total area of the lot, in the case of two story buildings." Mr. Gilliam explained in this situation you are still dealing with a calculated non-conforming allowance for lot coverage.

Ms. Pearlmutter asked if the property was in the Resource Protection zone. Mr. Gilliam replied No, the only potential Resource Protection areas would be the steep slope areas which are within the 75-foot setback. Ms. Pearlmutter commented the Board still needs to consider the 75-foot setback. Mr. Gilliam agreed with Ms. Pearlmutter's comment adding the 75-foot setback still applies even in the Riverfront General Development district.

Mr. Mahoney commented the Applicant is still removing 2 dormitories that are within the 75-foot setback. Mr. Gilliam added it is a decrease in the overall non-conformity of the property.

Mr. Boak asked if the Applicant plans to change the dock on the property in any way. Mr. Siderides replied they intend to leave that dock as it is; it is a seasonal dock, and it will remain so.

Ms. Pearlmuter asked if the dock was within the 25-foot property line. Mr. Gilliam clarified with the removal of the Fontenay Terrace there is a new property line. Mr. Canavan did a rough measurement and stated the dock is 59 feet to the property line. Ms. Pearlmuter then asked if the dock is ever used. Mr. John Martin responded stating the use of dock is more of a destination from the walking area and they do not anticipate using it as a rental place for kayaks/canoes or a launch spot.

Mr. Boak asked for the status of the peer review. Mr. Gilliam responded he is working with Acorn Engineering on that but does not have any analysis for the Board as yet.

In noting several discrepancies and errors in the Application regarding the property deeds, Ms. Pearlmuter suggested to Attorney Austin that perhaps he conduct a title search so they have the correct information. In addition to providing Attorney Austin with the correct Book and Page of some of the deeds, Ms. Pearlmuter also noted she found a couple of Central Maine Power easements in her research along with a mechanics lien that will need to be clarified. Attorney Austin agreed to go through the registry records and provide the Board with the correct information.

Referring to the construction timeline submitted, Ms. Pearlmuter questioned if the Applicant could request a waiver on the requirements of Article 10.8.I. Mr. Gilliam noted the Planning Board does not have the authority to grant a waiver unless it is specifically stated in the Land Use Ordinance. Mr. Gilliam suggested adding a couple of lines at the top of the submitted construction schedule to see how that aligns with the permit timing. Mr. Austin commented they are aware they need to ameliorate the timeline and that not everything that is on the timeline will be a requirement for substantial completion. Mr. Gilliam stated his concern is not on the secondary items such as landscaping issues but that his primary concern is the use of the non-conforming building square footage and volume and how that relates to the 18-month timeframe.

Ms. Pearlmuter asked if the Applicant has applied for the Maine Department of Environmental Protection permits. Mr. Canavan replied they have reached out to the MDEP for pre-applications and will follow up for the final permits

Ms. Pearlmuter asked if the gazebo and patio on building 1A was included in the impervious measurements. Mr. Walsh responded yes both items are included in the impervious surface calculations.

Out of concern for the wildlife on the creek and specifically for the black duck population that frequents the quiet area along Fairfield Creek, Ms. Pearlmuter asked if the Applicant would consider not allowing dogs on the north campus since dogs tend to be a large disruption to wildlife. Mr. Martin responded there are two concerns to address: 1.) the colony is a very dog friendly hotel where almost 99% of those dogs are service dogs so none of them would be banned from any access anywhere, and 2.) it is important to point out they are anticipating this nature walking path be utilized by the neighborhood and don't know if The Colony can be the police for walking dogs and find it is not feasibly operational to achieve.

Ms. Pearlmuter expressed her difficulty in verifying the number of parking spaces for both campuses as outlined in the parking table submitted with both Applications. Mr. Siderides directed the Board members to look at plan #B2 and the table included on that site plan that shows a total of 99 paved spaces with 23 overflow spaces on grass inside the crescent parking area for a total of 122 spaces.

Mr. Siderides and the Board members had a brief discussion on the parking arrangement for the north campus.

Ms. Pearlmuter questioned whether there should be some parking spaces allowed in the north campus for staff members and wondered with 65 dorm rooms the hotel would not be increasing their staff. Mr. Martin explained they have an anticipated maxed staffing of about 30 people on a shift where they have all their staff park on the south campus and walk over to work on the north campus. Mr. Martin added there will be no cooking in the market café and will commissary all the food from the south campus. Mr. Martin also stated currently they use golf cart type vehicles to move the food over to the north campus, adding all staff are uniformed, fed and punch in their timesheets on the south campus all ready as it is the central location for staff.

Ms. Pearlmuter also asked if they expect to have any delivery vehicles on the north campus. Mr. Martin replied there will be no third-party delivery vehicles delivering to the market.

For clarification, Mr. Siderides explained there is not an increase of 65 rooms on the north campus but only 20 rooms than what there is now.

Ms. Pearlmuter commented the Police Chief requested a rail and some lighting along the creek path. Mr. Siderides responded yes, he is working on a design for the rail because it is a steep slope and will work with Mr. Gilliam to ensure everything meets town guidelines. Mr. Siderides also added they will have to put some ground lighting to navigate the trail and the slope and will keep the lighting subtle to not light up the creek and give the area a residential feel.

Regarding the stormwater report, Ms. Pearlmuter expressed concern that the excess water from the road would be draining directly into the creek. Mr. Walsh explained they are creating a sizeable green space behind the new buildings that will help with filtering out some of the pollutants before hitting the creek. Mr. Siderides offered to create a swale along the nature walk to aid with sediment control and a possible berm on the water side of the trail. Mr. Walsh also suggested perhaps adding some small rain gardens to also help filter some of the runoff.

Mr. Francis asked about the type of snow removal there will be and asked where the snow will be stored. Mr. Siderides explained most of the snow will be pushed to the grass area on the inside of the crescent onto the overflow parking area.

Mr. Francis then asked if the Maine DEP will be looking at the stormwater discharge as part of the concern for the Resource Protection area as there will be more stockpiled snow and larger paved areas with different paths than exist today. Mr. Gilliam responded it is his understanding the Maine DEP will be looking at that and is part of a site development permit because of the amount of development and the amount of cleared area. Mr. Canavan commented that they have done some analysis for the DEP and it was determined it does not require a site development permit but it will require a stormwater permit because of the new amount of development but the DEP views this a re-development project so they'll be looking at the pre-development condition compared with the post-development condition.

Mr. Francis asked if the traffic study will include a construction period traffic analysis, specifically the affect the additional construction vehicles will have on Ocean Avenue and South Main Street as there is a lot of pedestrian and local traffic there already. Mr. Walsh responded that they did ask the traffic engineer to look at South Main Street and will discuss those concerns with the engineer.

With the earlier suggestion to add a swale or berm along the slope to the creek to aid with rainwater flow, Mr. Simmons asked if there was a risk it could saturate the soil which would render the area unstable and asked if the walkway would need to be stabilized. Mr. Simmons suggested perhaps gathering the rainwater runoff to have a single point of discharge into the creek. Mr. Walsh responded there are a couple of things that can be done such as install hoods in the catch basins and conduct a geotechnical analysis on the slope which is very well vegetated and seems stable due to the size trees that are along there.

Ms. Pearlmutter asked the Applicant to indicate where the curb cut will be and the crosswalks on Ocean Avenue and Colony Avenue. Mr. Siderides indicated on the site plans where the curb cut and the new crosswalks will be located, noting the Town Manager and the Public Works Superintendent have endorsed the proposed crosswalks.

Mr. Boak opened the Public Hearing. There were no comments or questions from the viewing audience at this time.

Ms. Pearlmutter made a motion to continue the Public Hearing to the next meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

- 2. 2.01002 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent** – South Campus – Site Plan Review – **Public Hearing** – for approval to demolish 4 existing buildings and construct one new building, to include building expansion, and the reconstruction of circular parking area. (140 Ocean Avenue, identified as Assessor's Tax Map 8, Block 6, Lot 4 in the Riverfront and Shoreland Zones.) *Nina Pearlmutter, Case Manager*

Mr. Boak introduced the Agenda item.

Mr. Walsh again addressed the Board on behalf of the Applicant and noted submission of the following additional materials prior to this meeting:

- Revised site plan drawings eliminating the Shoreland Zone setback lines
- Clarification on the number of employees and dorm rooms on the parking table
- Letter from Kennebunkport Fire Chief
- Detailed construction schedule
- Traffic analysis has been initiated as stated previously.

Mr. Canavan shared the site plans on the screen for the Board and the viewing public while Mr. Walsh gave a detailed overview of the south campus. Mr. Walsh explained the south campus consists of 6.33 acres that includes the Colony Hotel, Florence House, Staff House, Carriage House, Boughton House, and Galland House with multiple grandfathered non-conformances. For the proposed project Mr. Walsh stated they will be demolishing 4 structures and replace them with 1 new building, an expansion of a building, and a redesign of the driveway and parking area. Mr. Walsh also explained there will be a new water line brought into the Colony with a new sewer line connecting to the existing sewer main on Ocean Avenue. Lastly, Mr. Walsh added the impervious area will be reduced slightly from what exists today.

Ms. Pearlmutter asked the Applicant to explain the new parking space totals according to the table submitted on the site plans. Mr. Martin explained the main parking area in the crescent on Colony Avenue and pointed out there were also 4 spaces in front of the Galland House, 14 spaces in front of the Boughton House and 1 on Colony Beach.

For clarification, Mr. Siderides explained the building expansion in the Application is the underground green roof dorm that starts at the base of the existing kitchen service building and the new building is denoted as building 3 on the site plans and will be taking the place of the existing Carriage House. Mr. Siderides also shared on the screen new sketches to illustrate what the service walk between the buildings will look like.

Ms. Pearlmutter asked where the delivery vehicles will enter onto the campus. Mr. Siderides indicated on the site plans the curb cut on Colony Avenue that will be widened to receive deliveries.

There were no further questions from the Board members.

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

Ms. Pearlmuter made a motion to continue the Public Hearing to the next meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

3. **201003 Taylormade Hospitality, d/b/a/ Hurricane Restaurant / Woodman Edmands Danylik Austin Smith & Jacques, P.A., Authorized Agent** – Site Plan Review -- **Initial Review** – for approval to reconstruct a portion of the existing deck at the rear of the restaurant and to expand restaurant service to that area. (29 Dock Square, identified as Assessor’s Tax Map 11, Block 2, Lot 1 in the Dock Square and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Attorney Joy Naifeh representing Mr. Taylor Beneti who owns and operates Hurricane Restaurant addressed the Board stating a letter of authorization was submitted to the Code Enforcement Office on October 19<sup>th</sup> from Michael Brannen, Manager of Riverview LLC who rents the property to Mr. Beneti.

Attorney Naifeh shared the site plans and aerial photos of the property and explained they are proposing to rebuild the rear deck area on top of the existing platform which is approximately 16-feet by 16-feet providing seats for 12 people which remains under the maximum seating capacity for the restaurant. Attorney Naifeh continued by stating they did receive permission from the town and the Board of Selectmen since the deck is on town property. Lastly, Attorney Naifeh stated they will also build a new handicap ramp and a railing along the side of the deck to discourage patrons from walking directly into the parking lot from the deck.

Mr. Boak noted the address on the Application is incorrect and questioned whether this property was in the Shoreland Zone. Mr. Gilliam explained there is no separate Shoreland Zone overlay for this property.

Mr. Boak also questioned if this Application is before the Planning Board because it is a change of use. Mr. Gilliam explained currently the exterior area has not been previously approved for permanent outdoor seating for the restaurant and required authorization by the Board of Selectmen due to the fact the deck is located on town property. It is a simple modification to a conditional use where they are expanding the seating area of the restaurant, Mr. Gilliam added.

Ms. Pearlmuter asked if the area indicated on the Application includes this deck area. Attorney Naifeh replied the area in Item 3 of the Application is for map 11, block 2, lot 1 and does not include the town area.

Ms. Pearlmuter asked if there is a set space that has to be allowed for a table in a restaurant. Attorney Naifeh responded currently there are Covid guidelines but with the expansion Mr. Beneti is still within his seating capacity.

Mr. Mahoney commented it is good they are improving the handicapped access to the restaurant and asked if they will be removing any parking spaces in the adjacent lot. Attorney Naifeh replied the deck is being rebuilt on top of the existing deck so it is not encroaching on any parking lot spaces.

Mr. Francis asked what percentage of an increase the 12 seats to the total seating capacity is. Attorney Naifeh replied she does not know what percentage it is, but it is under the total seating capacity.

Mr. Gilliam explained in a non-Covid world the Board would be dealing with a building code density for seating specifically since there isn’t a parking requirement but they are adding square footage of 152 square feet as well as adding additional seating which falls into allowable seating right now because most restaurants have lost seating because of Covid.

Ms. Pearlmuter made a motion the Application is complete. Mr. Mahoney seconded the motion, and the vote was unanimous.

Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting on November 18<sup>th</sup>, 2020. Mr. Lichte volunteered to be Case Manager for this Application.

4. **200802 Kennebunkport Heritage Housing Trust 2 / Sebago Technics, Authorized Agent** – Final Subdivision Review – **Findings of Fact** – for approval to create 4 lots consisting of 2 single family dwellings and 2 duplex units on a 4.47 acre parcel. (Main Street, Assessor’s Tax Map 22, Block 9, Lot 21 in the Cape Porpoise West Zone.) *Tom Boak, Case Manager*

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

5. **200901 Earth Restaurant / Sebago Technics, Authorized Agent** - Site Plan Review - **Findings of Fact** - for approval to change the use of the restaurant from seasonal use to year-round use. (356 Goose Rocks Road, Assessor’s Tax Map 38, Block 1, Lot 8 and Map 37, Block 3, Lot 3 in the Free enterprise Zone.) *George Lichte, Case Manager*

Mr. Lichte read the Findings of Fact into the record. Mr. Boak made a motion to approve said Findings. Mr. Mahoney 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