

**Kennebunkport Planning Board
December 20th, 2017 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street**

A regular meeting of the Planning Board was held on Wednesday, December 20th, 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, Edward Francis
Mr. Grady welcomed Mr. Francis to the Board.

Approval of Minutes: Mr. Boak made a motion to approve the minutes from the December 6th, 2017 Planning Board meeting. Mr. Messer raised a concern on the Board's procedure with respect to an item at the last Planning Board meeting. Mr. Messer explained the Board at the December 6th, 2017 meeting held a Public Hearing for an application and had the Findings of Fact written prior to that meeting which were read after the Public Hearing was closed. Mr. Messer cautioned that the practice of holding the Public Hearing and reading the Findings of Fact at the same meeting gives the perception that the Board has made its decision to approve the Application prior to the Public Hearing. Mr. Messer also commented that, in his opinion, it is presumptuous to write up the Findings of Fact before the Public Hearing in order to read and approve them at the same meeting.

Mr. Boak disagreed with Mr. Messer's comments stating the Board asks questions during the initial presentation of an Application and the purpose of writing up the Findings of Fact ahead of time is only done in cases where the Application is not contentious and/or there is a time constraint due to the nature of the Application. Mr. Boak also added the writing of the Findings of Fact in anticipation is done at a risk in the event there is an issue that arises during the Public Hearing.

Ms. Pearlmutter agreed with Mr. Boak's statements adding the Findings of Fact can be altered or not executed at all if the Board does not agree with what is stated in them and that until the Findings of Fact are executed and signed, it is not a legal document. To have the Findings of Fact in front of you is a better and clearer way for each Board member to see what exactly they are voting on, Ms. Pearlmutter added.

Mr. Grady offered his opinion that the matters that have recently come before the Board have not been contentious, and except for the sake of following procedure and possibly impacting someone's building schedule, the Board owes it to the people of this town to not wait an extra 2 weeks for our approval.

Mr. Messer agreed it is good to work on a draft of the Findings of Fact during the same meeting after the Public Hearing but to have it typed, copied and with signature lines prior to the Public Hearing gives the impression the Board has already made their decision beforehand.

Mr. Grady asked for this discussion to be included in the minutes of tonight's meeting.

Mr. Messer seconded the motion to approve the minutes from the December 6th, 2017 Planning Board meeting and the vote was unanimous.

Items:

1. 171101 Oak Ridge Estates Subdivision / James Logan, Longview Partners, LLC, Authorized Agent – Minor Subdivision Amendment – Initial Review – for approval to relocate building envelope on Lot #4 from location approved on plan, which would require clearing in different location. The approved clearing limits for this lot on the previously approved Plan is 21,500 sq. ft. The new proposed clearing would be 21,409 sq. ft. (Oak Ridge Road, Assessor's Tax Map 39, Block 001, Lot 3F in the Free Enterprise Zone.)

Mr. Grady is recused from this Application Review due to a conflict of interest. Mr. Francis will have voting privileges for this Application.

Mr. Boak, as Acting Chairman of the Planning Board introduced the Agenda item.

Mr. Jim Logan of Longview Partners addressed the Board stating the previous conversation of the Board members is germane to this project as this is a minor subdivision amendment. Using an enlarged site plan, Mr. Logan explained that lot #4 is the last lot in this subdivision to be sold. The potential buyer of lot #4 would like the building area to be further back from the cul-de-sac so in order to keep the identical amount of clearing, Mr. Logan stated, is to propose to relocate the building area further back on the lot while maintaining the 25-foot requirement from the wetlands and further away from the spotted turtle habitat. All originally proposed buffers will be maintained as well, Mr. Logan added. Mr. Logan concluded by stating the proposed house will essentially be the same size but further from wells and other homes in neighboring properties.

Mr. Boak asked if the Department of Inland Fisheries & Wildlife should be notified of this change? Mr. Logan replied he did not believe so since their original review only contained a wetland impact for the road as part of the Maine DEP's approval.

Mr. Logan mentioned that last year when he appeared before the Planning Board for a minor change in lot #1 of this same subdivision, the Board deemed the change diminutive and did not require a Public Hearing. Mr. Logan requested the Board treat this Application the same if possibly since he has already notified all abutters of this request.

Ms. Pearlmutter cautioned that the Board can waive a Public Hearing for issues with an Application that the Board controls. However, this involves approval from the Department of Environmental Protection and it would be wise to request a letter from the DEP stating this change to lot #4 will have no impact, Ms. Pearlmutter added.

Mr. Logan disagreed with Ms. Pearlmutter's suggestion stating the DEP does not have any jurisdiction over this change as this does not involve the wetland impact, or any changes to buffers or to the building envelope as the DEP did not review each of the lots.

Ms. Pearlmutter asked if the DEP review involved the clearing area? Mr. Logan replied they did not as the clearing area was outside the area of their review.

Mr. Mahoney asked Mr. Logan if he would classify the new building area was 1/3 outside of the habitat circle? Mr. Logan responded they are entirely outside of the turtle habitat.

Ms. Pearlmutter acknowledged the difficulty presented to the Applicant in having to obtain acknowledgement from the DEP, but stated it would be best for the Board if they had something official from the Department of Environmental Protection. Mr. Logan stated he would try to make an appointment with the DEP and obtain a written email in response to the Board's request.

Mr. Higgins asked the Applicant what the DEP approved originally? Mr. Logan explained that under Natural Resources Protection Act, the Department of Environmental Protection gave a permit for the road and incorporated in that NRPA permit is the Inland Fisheries & Wildlife Review.

Mr. Gilliam explained that when these Applications are submitted to the DEP they look at different map layers and one layer showed it was on the Inland Fisheries and Wildlife maps. Mr. Gilliam speculated that the DEP's response will be that the clearing limits are outside of their jurisdiction; which is similar to the clearing limits being outside the Shoreland Zone.

The Board members had a brief discussion whether the Applicant should obtain approval from the DEP for this minor change. Due to the fact that the change is completely outside of the DEP's jurisdiction the Board members agreed it was unnecessary to obtain another approval from the Maine Department of Environmental Protection.

Mr. Logan also mentioned that on a similar minor Subdivision Application change, the Planning Board agreed the change was so minor it did not warrant holding a Public Hearing. Mr. Logan argued this Application is similar and also does not warrant holding a Public Hearing.

Mr. Boak acknowledged as a matter of process a Public Hearing would be held at the next Planning Board meeting and, as Case Manager for this Application, would also prepare a draft Findings of Fact for the Board to review and potentially sign at the January 3rd, 2018 Planning Board meeting.

Mr. Mahoney made a motion to approve the Application as complete. Ms. Pearlmutter seconded the motion and the vote was unanimous.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary