

Kennebunkport Planning Board
March 20th, 2019 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, March 20, 2019. 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, Neil Higgins, Ed Francis, George Lichte, Larry Simmons

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the February 20th, 2019 Planning Board meeting. Mr. Simmons seconded the motion and the vote was unanimous.

Items:

1. **190101 Lord & Harrington, The Sanctuary / Sebago Technics, Authorized Agent** – Initial Review – **Public Hearing** – for approval to do a one-time upward expansion on an existing single family dwelling. (250 Ocean Avenue, identified as Assessor's Tax Map 7, Block 13, Lot 8 in the Cape Arundel, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe of Sebago Technics addressed the Board and gave a brief summary of the Application. Referring to a follow-up letter submitted to the Planning Board prior to this meeting, Mr. Doe stated the property is located in the Cape Arundel, Shoreland and Resource Protection Zones and are looking for permission for a one-time 30% expansion. Using enlarged site maps Mr. Doe indicated where the existing house is located, where the proposed new structure will be located and noted the driveway will remain in the same location. Mr. Doe also indicated on the enlarged site plans where the septic system will be located.

Ms. Pearlmutter commented the Applicant is basically putting a septic system in a wetland area and asked if there was any way they could connect to the town water lines. Mr. Doe responded No, there is no town sewer in that location and they are putting the septic system in the same location as it currently exists but replacing it with a better designed system.

Ms. Pearlmutter raised the question whether it was permissible to expand a non-conforming use in the Resource Protection Zone. Mr. Gilliam suggested it would be helpful if the Applicant elaborated on the square foot expansion and how it relates to the basement area.

Mr. Francis agreed with Ms. Pearlmutter's concern that this is an expansion of use to a single-family dwelling by increasing the floor area on the 1st and 2nd floors. Mr. Francis read the definition of Expansion of Use from Article 2 of the Land Use Ordinance which states: "The addition of one (1) or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use." Mr. Francis also cited Article 8.8.A. which states "Expansion of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structure or within expansion of such structures in Shoreland Zones as allowed in Article 8.3.B.1 above". Mr. Francis noted this property is in the Shoreland Zone but it also is in the Resource Protection Zone, unlike the other neighboring properties in the immediate area. Ms. Pearlmutter pointed out it is not the Planning Board's job to question why the property is in the Resource Protection Zone but to accept it is.

Mr. Gilliam explained he has in the past had a discussion about this property's designation in the Resource Protection Zone with the Maine Department of Environmental Protection and requested to make a modification to the map layer. As of yet, Mr. Gilliam added, he has not received any written response about the modification as it is a map layer that is maintained by the Inland Fisheries and Wildlife Dept. and not the DEP.

The Board members had a lengthy discussion whether this Application is allowable under Articles 8.8.A and 8.3.B.5 due to the fact that the property is designated in both the Shoreland Zone and Resources Protection Zone.

Mr. Austin argued there is no specific prohibition against expansion of a non-conforming structure in the Resource Protection Zone; and because of that, if it is permissible in the Shoreland Zone as stated in Article 8.3.B.1 it should be allowed for this instance.

Mr. Francis commented the drawings indicate that 23 trees are being taken out. Mr. Doe replied yes, that is true but they will replant the same number of trees that are being taken out.

To reiterate Mr. Francis's concern, Ms. Pearlmutter cited Article 8.3.B.5. Reconstruction or Replacement of a Non-Conforming Structure: "If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure." Mr. Francis questioned whether more harm would be done to the land in this particular instance as it is a heavily wooded area in order to gain 15 feet.

Mr. Gilliam responded the requirement of “to the greatest extent practicable” gives the Board an opportunity to look at the site overall and determine what is practical and determine if gaining another 10 feet to further comply with the Ordinance does more damage than if the reconstruction occurred within the existing area.

The Board members, the Applicant’s Attorney Mr. Austin and Mr. Gilliam had a brief discussion on the applicability of several Articles in the Land Use Ordinance.

Citing Articles 10.10.A.1.n and 10.10.B.1.d, Ms. Pearlmutter raised her concerns about bird strikes due to the design of the proposed building and the fact that the property is in a significant waterfowl area. Ms. Pearlmutter suggested the Planning Board impose a condition of approval the Applicant use bird friendly or bird proof glass. Mr. Doe offered to conduct some research on types of bird friendly glass. Ms. Pearlmutter provided the Applicant with a few manufacturers of bird friendly glass in the U.S.

Mr. Simmons raised his concern about the potability of the water on the property. Mr. Gilliam explained an acceptable water test is required by the Code Enforcement Office before issuing a Certificate of Occupancy.

Mr. Francis asked the Applicant to confirm the surface area of glass in the proposed structure is significantly higher than the existing structure. Mr. Doe replied he believed it would be higher just on the knowledge of the design of the existing house and the proposed house’s design.

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

The Applicant and the Board members agreed to continue deliberations until the next Planning Board meeting.

2. **190202 Donald & Kelley Jenkins / Peterson Design Group, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to remove the existing single family dwelling and replace new in more conforming location. (25 Pier Road, Assessor’s Tax Map 30, Block 1, Lot 17 in the Cape Porpoise East, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Erik Peterson of the Peterson Design group addressed the Board stating the Application is to remove the existing building and relocate it in a site that is the most conforming place on the property. Referring to the material submitted with the Application, Mr. Peterson pointed out the proposed building is slightly less than the current structure in terms of building volume and building footprint. Due to the fact the property is in the Resource Protection Zone, Mr. Peterson explained the town prefers instead of an elevated deck to turn part of that area into a stone patio. Lastly Mr. Peterson stated the new structure will be elevated to meet the new flood zone requirements so it will be 2.75 feet higher than its current elevation.

Mr. Peterson also noted there is some fencing on the property that will be removed but the retaining walls will remain. The property is on town water and sewer Mr. Peterson also stated.

Mr. Francis asked if the house is on pilings. Mr. Peterson replied yes, it will be on a pier foundation so the flood waters will just run underneath it.

Mr. Pearlmutter asked if the patio would be raised and what it would be constructed of. Mr. Peterson responded it will be ground level and consist of flat stones, flagstones, and some pavers.

Mr. Gilliam commented according to the Coastal Construction Manual it is more preferable in a flood zone to have a flat patio rather than a wooden deck as the deck would increase the potential for debris.

Mr. Boak recalled the Planning Board approved this property to be a year-round residence on March 21, 2018 and suggested that be noted in this Application’s Findings of Fact if approved.

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

Ms. Pearlmutter was assigned as Case Manager for this Application.

A Public Hearing is scheduled to be held at the next Planning Board meeting.

3. **190201 Apple Blossom Lane, LLC / Longview Partners, LLC, Authorized Agent** – Sketch Plan – 20 Apple Blossom Lane, proposed 2 lot subdivision. Map 12, Block 2, Lot 1J in the Farm & Forest Zone.

Mr. Boak introduced the Agenda item.

Mr. Jim Logan of Longview Partners addressed the Board stating this is an amendment to an existing subdivision that was originally approved in 2008. Mr. Logan gave a brief history of the property noting the owner Jonathan Trudeau has a house on Lot 7 on the back 22 acres of land and would like to know if after dividing the 22 acres if something can be done for his sister to build a house.

Mr. Logan acknowledged because the property is in the Farm & Forest Zone there is a 3-acre minimum per building lot.

Mr. Logan also noted their intention to request waivers for the sidewalk requirement and the open space requirement.

Mr. Logan also stated there will be private wells and onsite septic systems and will provide a high-intensity soil survey with the Application.

To clarify, Mr. Francis stated the request is to take the existing Lot 7, divide it into 3 lots with an existing home on one of the lots. Mr. Francis asked if there is an existing Homeowner's Association. Mr. Logan replied no there is not. Mr. Logan also noted there are currently 7 homes in the subdivision which all have their own road frontage off of Apple Blossom Lane.

Ms. Pearlmutter requested a few corrections be made when the Application is submitted to correctly label the 9 lots, change the map number from 15 to 12, and to provide the acreage of the entire subdivision.

After a brief discussion the Board members agreed it would be beneficial to conduct a Site Walk on the property.

A site walk will be scheduled and noticed by the Code Enforcement Office.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary