

**Kennebunkport Planning Board**  
**April 5th, 2017 ~ 7:00 PM**  
**Kennebunkport Village Fire Station, 6 Elm Street**

A regular meeting of the Planning Board was held on Wednesday, April 5th, 2017. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Peter Fellenz (Chair), Tom Boak, Russ Grady, D. Scott Mahoney, Mark Messer, Nina Pearlmutter

Approval of Minutes: Mr. Mahoney made a motion to approve the minutes from the March 15<sup>th</sup>, 2017 Planning Board meeting. Mr. Boak seconded the motion and the vote was unanimous.

Items:

1. **170201 Chester Homer, III / Eco-Analysts, Inc., Authorized Agent** – Site Plan Review – **Findings of Fact** – for approval to dredge 904 cubic yards sediment from the Kennebunk River, as well as construct a sheet pile wall along an existing failing bulkhead and reconstruct an existing failing dock. [83 Ocean Avenue, identified as Assessor's Tax Map 8, Block 1, Lot 19 in the Village Residential, Shoreland and Resource Protection Zone.]

Mr. Grady read the Findings of Fact into the record. Mr. Boak made a motion to approve said Findings. Mr. Messer seconded the motion and the vote was unanimous.

2. **170202 Justin & Grace Benincasa / Sandra Guay, Esquire Authorized Agent** – Site Plan Review – **Public Hearing** - for approval to construct a 4' x 30' pier, a 3' x 25' seasonal ramp and a 10' x 20' float. [159 Wildes District Road, identified as Assessor's Tax Map 22, Block 005 Lot 21 in the Cape Porpoise West, Shoreland and Resource Protection Zones.]

Mr. Fellenz introduced the Agenda item and asked the Applicant to give a brief summary of the Application before opening the Public Hearing.

Mr. Zach Taylor of Riverside & Pickering Marine, representing the Applicant addressed the Board. Mr. Taylor stated this Application is to construct a small docking structure along the shoreline of the property consisting of a fixed pier with a short gangway connecting to a 10' x 20' float. Both the gangway and float are seasonal structures, Mr. Taylor added, which will be stored in the upland during the off-season. Mr. Taylor concluded his presentation by stating all approvals from the Army Corps of Engineers, its review agencies, and the Maine DEP are included with the Application.

Mr. Messer asked the Applicant if they identified where the setback was on the northerly lot line from the dock. Mr. Taylor replied it is 29 feet.

There were no further questions from the Board.

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

Mr. Grady made a motion to approve the Application. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Grady was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on April 19<sup>th</sup>, 2017.

3. **170103 Mills Road Subdivision /PDF Development & Construction, Authorized Agent** – Preliminary Subdivision Review – **Continued Initial Review** – for approval of a 14 lot cluster subdivision on Mills Road, identified as Assessor's Tax Map 23, Block 001, Lot 19A in the Free Enterprise and Shoreland Zones.

Mr. Fellenz introduced the Agenda item and invited the Applicant to give a brief presentation.

Mr. Mike Sudak, along with Ken Wood and Paul Flaherty addressed the Board stating the Application is for a 14-lot cluster subdivision on a 27-acre parcel with a 980-foot road to be called Beryl's Way with each lot serviced by public sewer and private on-site drilled wells.

In addressing comments made from the last Planning Board meeting, Mr. Sudak noted the following items:

1. In lieu of requesting a tree waiver, the single 24" pine tree is identified and noted on sheets #2 & #3 on the Site Plan.
2. Sheet #2 shows the actual buildable lot areas with the dedicated drainage easement areas deducted.
3. Per Mr. Gilliam's request and citing Article 12.1.A. in the Kennebunkport Subdivision Regulations, Sheet #3 identifies the well exclusion zone.

4. On sheet #1, Notes #6-8 are pursuant to the re-calculated net residential area and provides the percentages of uplands and wetlands in the open space area.

Lastly, in referring to the waiver request for not tying into the public water system, Mr. Sudak stated the submitted documents on private on-site wells are hopefully a stronger argument for the Board members to consider granting such waiver.

Mr. Sudak handed out copies of a few diagrams to each Board member that were inadvertently left out of the suitability study by Sweet Associates submitted prior to this meeting.

At this time, Mr. Fellenz asked the Board members to concentrate on the issue of whether to grant the waiver on requiring town water for the proposed subdivision. Mr. Fellenz acknowledged receipt of the proposed cost structure and comparable sales analysis. Mr. Sudak pointed out to the Board members a few of the attachments do speak of the anticipated lot sales and the suitability studies submitted show there is adequate flow of the wells. Mr. Sudak also added that Sweet Associates is willing to test the wells and provide a report of said test to the Planning Board.

Mr. Fellenz offered the issue before the Board is two parts: 1.) should the Board grant a waiver on tying into the town water system, and 2.) can the Applicant show they can provide adequate water.

Mr. Sudak explained they would not be asking for a water waiver if they did not believe they had the capacity on site.

Mr. Messer asked Mr. Gilliam if he still maintains the opinion that it is less than 1,000 feet to the connection point. Mr. Gilliam replied the property line 980 feet from the existing water line; however, the Subdivision Regulations do not specify whether the 1,000 foot requirement is from the property line or the road entrance. Mr. Sudak added the distance from the road entrance to the water line is 1,200 feet.

Ms. Pearlmuter asked what would happen if the Board allowed wells and if they were found to have mercury contamination? Mr. Gilliam responded the recommendation that Sweet Associates provided is drilling another well on the site and would provide a testing report from both of the wells.

Mr. Messer asked the Applicant if they intend to drill the wells for the lot owners or would it be each owner's responsibility to drill their own well. Mr. Flaherty explained they would be acting as the General Contractor and will be responsible for drilling and siting the wells as part of their [sales] package.

Mr. Fellenz asked the Board if they had any other questions for the Applicant. The Board members had no questions at this time.

Mr. Fellenz offered his opinion that the information provided on the cost analysis is convincing that it would be more economically feasible to have on-site wells instead of connecting to the public water line.

Mr. Boak raised his concerns of granting the water line waiver during this preliminary review stage.

As guidance for procedural matters, Mr. Gilliam offered the Board has the authority to move forward in the Application process and schedule a Public Hearing and to request results of a water test from the existing well on site with a condition on the Preliminary Approval to receive a positive water test from a second well.

Mr. Grady made a motion the Application is complete. Mr. Boak seconded the motion.

Mr. Messer expressed his hesitation on voting the Application complete without the Board deciding whether to grant the waiver on the water supply.

As reassurance on the proper procedure, Mr. Gilliam read Article 7.1.I-J. of the Kennebunkport Subdivision Regulations on Planning Board Procedure.

Mr. Messer and Mr. Gilliam had a brief discussion on Preliminary Site Plan Review procedure.

Mr. Grady re-iterated his previous motion to find the Application complete. Mr. Messer seconded the motion and the vote was unanimous.

In order for the Board members to receive the peer review report before the Public Hearing, Mr. Fellenz suggested scheduling the Public Hearing for the May 3<sup>rd</sup>, 2017 Planning Board meeting.

Mr. Gilliam reminded the Board members that typically the scope of a peer review has been the road design and the storm water system. The sewer component is reviewed at a separate time after the Sewer Application has been filed, Mr. Gilliam added. Mr. Fellenz asked if the traffic flow on /off Route 9 would be part of the Peer Review. Mr. Gilliam replied the Applicant has proposed submission of the Maine Department of Transportation entrance permit as part of the Final Plan which is within their purview to do so.

Mr. Messer made a motion to grant the waiver for drilled wells instead of town water on condition the well tests come out positive.

The Board members and Mr. Gilliam discussed in some detail whether to request the Applicant to drill and test a second well on the other side of the property before granting the water waiver. Mr. Ken Wood expressed his concern in asking his clients to spend \$8,000-\$10,000 on drilling and testing a second well without any assurance from the Planning Board that the waiver will be granted.

Ms. Pearlmuter suggested the Board should wait until after the Public Hearing to grant the waiver.

Mr. Flaherty offered it would be difficult since the road has not yet been installed to gain access to the other end of the property in order drill and test a second well before the Public Hearing, but assured the testing of the existing well could be accomplished within the set timeframe.

Mr. Messer withdrew his previous motion regarding the water supply waiver as stated.

Mr. Messer made a motion to waive the requirement for municipal water with the condition that the existing drilled well test comes back with an acceptable quality and quantity of water and any other issue the Board may find. Mr. Boak seconded the motion and the vote was unanimous.

Mr. Gilliam clarified with the Board members they were comfortable ordering a peer review on the road design and storm water system. The Board members were also in agreement to hold the Public Hearing on May 3<sup>rd</sup>, 2017 in order to receive the peer review report and the water test results beforehand.

Other Business:

Mr. Messer suggested including Article 5.11 in the Findings of Fact for Application #170202 Justin & Grace Benincasa. Mr. Grady agreed to include that information in preparing the Findings of Fact.

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

**Submitted by:** Patricia Saunders, Planning Board Recording Secretary