

**Kennebunkport Planning Board**  
**June 6, 2018 ~ 7:00 PM**  
**Kennebunkport Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, June 6, 2018. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Tom Boak (Chair), D. Scott Mahoney, Nina Pearlmutter, Neil Higgins, Edward Francis

**Other Business:** Discussion regarding new Planning Board Chair and Vice-Chair.

Mr. Francis made a motion to nominate Mr. Boak as Chairman of the Kennebunkport Planning Board. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Mr. Boak made a motion to nominate Ms. Pearlmutter as Vice-Chair of the Kennebunkport Planning Board. Mr. Higgins seconded the motion and the vote was unanimous.

Approval of Minutes: Mr. Francis suggested there should be an addition to the minutes from the May 16<sup>th</sup>, 2018 Planning Board meeting to include mention that Mr. Russ Grady announced his resignation from the Planning Board. The Board members agreed with Mr. Francis' suggestion. Mr. Francis made a motion to accept the amended minutes as discussed. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Items:

1. **80201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent** – Preliminary Subdivision Review – **Continued Public Hearing** – for approval of a thirteen (13) lot cluster subdivision on 24.78 acres. (Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Mike Tadema-Wieldant of Terradyn Consultants addressed the Board along with Geoff Bowley the project developer and Attorney Sandra Guay. Utilizing enlarged site plans of the proposed subdivision, Mr. Tadema-Wieldant gave a brief overview of the proposed Phase 2 of the Binnacle Hill Subdivision. Some of the specific items Mr. Tadema-Wieldant discussed were:

- There are 13 new lots connecting to Phase 1 of Binnacle Hill
- Timber Way will be an entirely new road built to public standards
- Henchey Way will continue to serve as a driveway for the 2 existing houses on it and will be improved for use by pedestrians/bicyclists and for emergency access only
- At the end of Henchey Way near Kings Hwy there will be a 12 ft. wide travel way, a narrow esplanade and a sidewalk which will increase to 14 feet wide with a 5 foot esplanade and a 5 foot sidewalk as you go further towards the proposed development.
- The sidewalk will extend from Henchey Way throughout the length of the development
- In order to prohibit any traffic to Henchey Way there is a proposed gate at the top of the hill which will be locked and the keys retained by the Homeowners Association and the Fire Department.
- The design of the end of Timber Way has been reviewed by the Kennebunkport Fire Chief to be adequate for a turnaround for emergency vehicles.
- This new design has received favorable feedback from the Kennebunkport Fire Chief and the Director of Public Works
- The maintenance of Henchey Way would be the responsibility of the Binnacle Hill Homeowners Association.

Mr. Tadema-Wieldant then discussed the details of three waivers they are requesting from the Board which are:

1. To have 3:1 side slopes on the road cross section in the wetland crossing areas. The Applicant noted the Director of Public Works did not see any issues with granting this waiver.
2. Dead-end roads are limited to 1,000 feet. Timber Way is proposed to be 1,492 feet. Due to the fact the Applicant is providing emergency access through Henchey Way, they see no reason to limit the length of Timber Way. Also Subdivision Regulation 12.2.B.1.H. refers to dead-end roads terminating in a cul-de-sac Mr. Tadema-Wieldant added. Due to the increased impact on wetlands, Mr. Tadema-Wieldant stated a hammerhead is proposed which was reviewed and found acceptable by the Director of Public Works.
3. A waiver on the requirement that the 2 shared driveways must meet the private road standards. The Applicant is requesting this waiver to minimize the impacts to the wetlands.

Mr. Tadema-Wieldant concluded his presentation by stating the revised packet also contains staff comments and peer review comments and would be happy to answer any questions.

Mr. Boak pointed out to the Applicant there is a typographical error on page 2 of their proposal referencing an incorrect section of the town regulations.

Mr. Boak asked Mr. Gilliam why there was not a waiver request in Phase 1 of Binnacle for the shared driveways. Mr. Gilliam agreed there should have been but it was overlooked.

Mr. Boak asked the Applicant to provide the same format for this Application as they did for Phase 1. Mr. Tadema-Wieldant agreed to provide that information.

Mr. Boak questioned there would be only one key left with the Fire Department to unlock the proposed gate on Henchey Way. Mr. Tadema-Wieldant replied there is a master key the Fire Department uses for such purposes and there may be one of those keys on multiple trucks.

Mr. Boak asked the Board members if they had any comments or questions.

Ms. Pearlmutter questioned whether the Applicant should install the pedestrian bicycle path on the other side of Henchey Way than as proposed. Mr. Tadema-Wieldant responded by having the path where it is it provides the greatest view to be visible by cars and still keep the foot and bike traffic away from the houses as well. Ms. Pearlmutter added people would have to cross the street in order to continue onto Kings Hwy and the beach. Mr. Tadema-Wieldant offered they would be crossing Henchey Way which is essentially a driveway for 2 houses.

Regarding the proposed hammerhead, Mr. Francis asked what the equivalent dimensions are from the property line as opposed to having a cul-de-sac. Mr. Tadema-Wieldant referred the Board to sheet P1.1 in the proposal indicating the darker line around the outside is the property boundary so a vehicle turning around in the hammerhead would not be crossing the property lines.

Ms. Pearlmutter questioned whether there should be lighting for the pedestrian traffic. Mr. Tadema-Wieldant added there are 6 street lights spaced the same as Binnacle Lane proposed on Timber Way but there is no lighting proposed on Henchey Way.

Ms. Pearlmutter also suggested the Applicant consider installing some screening such as hedges or evergreens at the hammerhead turn to prevent headlights from going into houses.

Mr. Francis asked how the plowing is handled on the shared driveways. Mr. Tadema-Wieldant replied there will be an agreement with the lot owners to maintain them.

Mr. Boak asked if any of the members of the audience had any questions or comments.

Ms. Theresa Hensch Debenedicts of 10 Ocean View Avenue addressed the Board asking what the layout and surface material of Henchey Way would be and if it would remain a private road. Ms. Debenedicts also expressed concern about the sewer line being damaged during construction and asked for assurances that would not happen from the developer. Mr. Tadema-Wieldant responded indicating on the enlarged site map the location of Henchey Way, adding there are no tall plantings proposed and the road would be paved. As for the sewer line, Mr. Tadema-Wieldant offered Mr. Bowley would be happy to do whatever he can to make sure there is no damage done to Ms. Debenedicts sewer line.

Ms. Lisa Miller, along with her husband Robert of 4 Henchey Way addressed the Board stating neither herself nor her architect have had much time to examine the revisions of the Application and requested the Board continue the Public Hearing to allow ample time for review. Ms. Miller read a lengthy letter addressed to the Planning Board of which she discussed three significant issues:

1. The requested waiver to the dead-end road length requirement
2. Safety and trespass concerns
3. Failure of the Applicant to meet all the requirements of a cluster subdivision.

Ms. Miller also requested the preservation of 2 trees, a Norway spruce and oak tree adjacent to the ledge knoll by the developer which were not identified in the Applicant's tree survey.

Ms. Miller read her letter in completion and provided enlarged photos and plans of her property in relation to the proposed subdivision and offered possible changes to the developer's proposal.

Mr. Francis asked where in the ordinance does it not allow gates. Ms. Miller responded it is in section 11.5.B.1 of Subdivision Regulations that states: "*Gates or other form of permanent access restriction across access roads, streets or pedestrian ways are not permitted.*" Ms. Miller added the whole reason for the proposed crash gate is because the road is longer than it needs to be.

Mr. Francis asked how is the road plowed currently. Ms. Miller replied the plow turns around in her driveway as they are hired and paid for by us and the other property owner on Henchey Way, the Fetzners.

Referring to one of Ms. Miller's suggestions to eliminate one less lot in the proposed subdivision, Mr. Francis questioned how that would eliminate all of Ms. Miller's issues with the proposed development by have 12 lots instead of 13. Ms. Miller commented she believes it is a reasonable alternative to make the last lot a bit larger at the top of the hill. Ms. Pearlmutter questioned Ms. Miller's suggestion having the last lot in the proposed development be accessed thru Henchey Way would decrease its value by not being part of the paved subdivision. Ms.

Miller disagreed with Ms. Pearlmutter arguing the lot would be more attractive and keep Henchey Way in its current state as a private Right of Way.

Still addressing Ms. Miller's concerns about the proposed length of Timber Way, Ms. Pearlmutter added even if Timber Way would stay within the 1,000 foot requirement, it is still one road with 13 houses with no alternate means of emergency access.

A brief discussion continued regarding the proposed road design among Mr. and Mrs. Miller and the Board members. The Millers maintain the proposed road design with the crash gate will encourage people to travel on Henchey Way in search of beach parking and potentially trespass on their property to use it as a vehicular turnaround.

Mr. Boak corrected Ms. Miller in her reference that the Subdivision Regulations are an Ordinance, which they are not.

Mr. Boak asked Ms. Miller if she could provide a copy of her remarks to the Code Enforcement Office to be distributed to the Planning Board members. Ms. Miller replied she'd be happy to.

In response to Ms. Miller's comments, Mr. Tadema-Wiedlant explained they too have looked at many alternatives while planning the site and the reason it is presented as such today is because there are 2 significant environmental areas on the property; a significant vernal pool and a manmade pond both of which are habitats for the spotted turtle which is a protected species. Because of those two areas, Mr. Tadema-Wiedlant continued, the DEP and the Department of Inland Fisheries and Wildlife are very much involved in looking at road design, lot layouts and areas of proposed impact. Mr. Tadema-Wiedlant also noted the regulations state based on the size of the parcel that it can support up to 18 lots when they have proposed only 13 lots with over 14 acres of open space the vast majority of which is forested and put into deed restricted conservation land.

Mr. Bowley added that the paving of Henchey Way is more of a practical and maintenance standpoint as it will most likely be himself that plows the road.

Mr. Francis asked Mr. Bowley if he could provide a description of how both Henchey Way and Timber Way would be plowed and where the snow would be pushed off the road.

Attorney Sandra Guay, representing the Applicant addressed the Board stating the revised packet was submitted to the town on May 30<sup>th</sup>, 2018. Ms. Guay also made a distinction between the town ordinance which is a legislative document and the Subdivision Regulations which is controlled by this Board who has the authority to grant waivers at their discretion.

Ms. Pearlmutter noted it states in the Subdivision Regulations that approval of a preliminary site plan does not guarantee a final approval.

Attorney Scott Edmunds, representing the Fetzners addressed the Board and concurred with Ms. Miller's statements that there was not enough time to review the newly submitted plans before tonight's meeting and requested a continuation of the Public Hearing until the next meeting.

The Board members and the Applicant had a brief discussion about the new proposal for Henchey Way and the concerns about screening to avoid headlights entering people's houses.

The Board members did agree they did not have enough time to thoroughly review the newly submitted materials even though the Applicant did submit the materials within the required timeframe.

Mr. Boak made a motion to continue the Public Hearing to the next Planning Board meeting on June 20, 2018. Mr. Francis seconded the motion and the vote was unanimous.

After some discussion the Board members requested to have the town's 3<sup>rd</sup> party review comment on some of the more technical changes being proposed in this new revision to the Application. Mr. Gilliam asked the Board members to submit the specific questions they had and what they are related to and he would have the town engineers review them for feedback.

2. **180401 Katherine S. Eraklis / Walsh Engineering Associates, Inc., Authorized Agent - Site Plan Review – Public Hearing** – for approval to Construct a 200+/- riprap revetment along the edge of the cobblestone beach adjacent to the Applicant's property (30 Skipper Joe's Point Road, identified as Assessor's Tax Map 30, Block 6, Lot 7 in the Goose Rocks, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. Bill Walsh, on behalf of Katherine Eraklis, addressed the Board to give a brief summary the proposed shoreline stabilization project. Using enlarged site plans, maps and photographs of property during a recent storm event, Mr. Walsh provided a brief summary of the Application. Mr. Walsh also explained they have removed the stone pathway as presented at the last meeting and that area will remain grass.

Ms. Pearlmutter questioned why the Applicant was keeping the stone stairway if it is not covered in the Natural Resources Protection Act (NRPA) permit. Mr. Walsh explained the stairs were included in the NRPA permit but the stone pathway was not and so that is why the path was removed from the plans.

Mr. Boak noted an error in the Application regarding the total proposed impervious surface calculation. Mr. Walsh agreed it was a minor error and will correct it.

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

Ms. Pearlmutter made a motion to approve the Application. Mr. Mahoney seconded the motion and the vote was unanimous. Ms. Pearlmutter was assigned as Case Manager and will prepare the Findings of Fact to be read at the next Planning Board meeting on June 20, 2018.

**3. 180402 Robert & Dana Holland / Riverside & Pickering Marine Contractors, Authorized Agent – Site Plan Review – Public Hearing** – for approval to construct a 4"x15' ramp, 4'x35' pier, 4x30' gangway and 10'x20' seasonal float. (255 Wildes District Road, identified as Assessor's Tax Map 33, Block 005, Lot 22 in the Cape Porpoise West, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item and thanked the Applicant for providing a revised packet of information that was well organized and easy to navigate through.

Mr. Zachary Taylor of Riverside & Pickering Marine Contractors addressed the Board and gave a summary of the additional information provided in the revised materials submitted prior to this meeting. Mr. Taylor confirmed the lot acreage is 0.89 acres and in accordance with Article 5.11.B.15 of the Land Use Ordinance does not exceed more than 1/5<sup>th</sup> across the waterway. As indicated on the submitted plans, Mr. Taylor identified the location of the KKW Water District easement and the private water line. After a site walk conducted by the Board of Selectmen on May 22<sup>nd</sup>, 2018 and a Public Hearing held on May 24<sup>th</sup>, 2018, Mr. Taylor added the Kennebunkport Board of Selectmen granted approval of the dock. Copies of the Maine Department of Environmental Protection and Army Corps of Engineers approvals are also included in the revised packet, Mr. Taylor concluded.

Mr. Francis noted a change in the existing lot coverage from +/- 13.28 to +/-13.276. Mr. Taylor acknowledged the change, adding there is an increase of 1.5 square feet.

Mr. Higgins questioned how the Applicant came to the conclusion that the project is in compliance with Article 5.11.B.15. Mr. Taylor responded the site was professionally surveyed to determine the dock was not more than 1/5<sup>th</sup> across the waterway.

Mr. Higgins asked if the seasonal ramp and dock will be stored on the property or elsewhere. Mr. Taylor replied the ideal situation is it will be stored in the upland on the property but if that is not logistically possible it will be hauled away and stored at another location.

Mr. Higgins asked for confirmation on the setback calculations from the norther and southern boundaries of the property. Mr. Taylor apologized and agreed to provide that information to the Code Enforcement Office.

Citing Article 5.11.B.6. that states: "*Deck boards shall be a maximum of six (6) inches in width and spaced one half (1/2) inch apart*", Mr. Higgins asked why they are spacing the boards 3/4" apart. Mr. Gilliam explained the idea behind that requirement is that is a minimum spacing width not an exact requirement. The Board members agreed with Mr. Gilliam's interpretation of that requirement and suggested it should be noted as such in the Findings of Fact. Mr. Taylor added that spacing is what the DEP likes to see to increase the ambient light under the dock.

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

Mr. Higgins made a motion to approve the Application. Mr. Francis seconded the motion and the vote was unanimous. The Findings of Fact will be read at the next Planning Board meeting on June 20<sup>th</sup>, 2018.

**4. 180403 Southern York Properties, LLC / Ralph Austin Esquire, Authorized Agent – Site Plan Review – Public Hearing** – for approval to remove an existing single family dwelling and build new in same location. (4 Mill Lane, identified as Assessor's Tax Map

Mr. Boak introduced the Agenda item.

Attorney Sandra Guay, representing the property owners addressed the Board along with Gary Martin, Contractor for the Applicant. Ms. Guay gave a brief summary of the Application noting there will be stump grindings around the silt fencing installed during the construction process as part of the soil erosion control plan and there will not be any additional hardscape. Ms. Guay also added the new foundation will not be elevated and corrected an error in the plans submitted stating the elevation was 11.76ft. when the existing elevation is 14.65ft. The Applicant has also received their Permit By Rule from the Department of Environmental Protection, Ms. Guay noted.

Mr. Francis asked if the silt fence goes around the perimeter of the property and questioned an item noting an existing fence on the site plans. Ms. Guay responded the silt fence will be around everything but the road with stump grindings all around the silt fencing. The arrow on the plans indicating an existing fence is just indicating there is an old post rail fence on the property, Ms. Guay added.

Citing Article 8.3.B.5. of the Land Use Ordinance that states: "... *When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with section 4 above.*" Mr. Francis noted there was nothing in the Application about the landscaping. Ms. Guay agreed the Applicant would be amenable if the Board wanted to make that a condition of approval.

Mr. Francis questioned the discrepancy between the Applicant's calculation of the living space and what is indicated on the Assessor's tax card. Ms. Guay responded the Applicant has had an architect measure the structure and that would be a more correct measurement than what is indicated on the tax card. Mr. Gilliam concurred with Ms. Guay's statement adding this happens fairly regularly and would place more confidence in an actual field measurement than the tax card.

Mr. Francis asked if there will be any exterior lighting planned. Mr. Martin answered from the audience there is no outside lighting.

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

Mr. Francis made a motion to approve the Application. Ms. Pearlmutter seconded the motion and the vote was unanimous. The Findings of Fact will be read at the next Planning Board meeting on June 20, 2018.

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

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