

Kennebunkport Planning Board
July 7th, 2021 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, July 7th, 2021. The virtual meeting convened at 6:00 p.m. via Zoom.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmuter, Ed Francis, Larry Simmons, John Harcourt
Mr. Harcourt will have voting privileges for this meeting.

Approval of Minutes: Mr. Boak and Ms. Pearlmuter noted a couple of minor corrections to be made to the minutes of the June 16th, 2021 Planning Board meeting. Mr. Simmons made a motion to approve the amended minutes. Ms. Pearlmuter seconded the motion, and the vote was unanimous.

Items:

1. **210501 Bowsprit Kennebunkport, LLC / William R. Walsh, III, PE, Authorized Agent** – Preliminary Subdivision Review – **Public Hearing** – for approval to create a 4-lot residential subdivision that will use both Route 9 and Wildes District Road as frontage for the lots. (164 Wildes District Road, Assessor's Tax Map 22, Block 3, Lot 6 in the Cape Porpoise West Zone.) *Ed Francis, Case Manager*

Mr. Boak introduced the agenda item.

Mr. Bill Walsh along with Norm Chamberlain, Abby Goldenfarb, and Michael Barowsky joined the meeting. Mr. Walsh explained Mr. Chamberlain would be taking over for him this evening as he needs to attend another meeting.

Mr. Chamberlain shared the site plan on the screen and gave a summary of the project detailing some of the following items:

- The property is located in Cape Porpoise at 164 Wildes District Road at the intersection of Route 9 and Wildes District Road
- The property is a 3.4 acre lot which contains one single family residential structure with a detached garage and driveway that extends through to Route 9
- The property abuts Water district land to the south, Kennebunkport Conservation Trust land on the end of the intersection and Route 9 to the south
- The zoning is Cape Porpoise West which allows for 20,000 square foot lots.
- With 103,306 square feet of net residential area it would be allowable to divide the property into 5 residential lots
- The proposal is to subdivide the parcel into 4 lots
- 3 lots will be on Wildes District Road
- Lots #1 & #2 will have a shared driveway
- Lot #3 will also have a driveway on Wildes District Road
- Lot #4 will have a driveway on Route 9
- All lots will have frontage onto the open space area
- All lots will be on connected to public water and sewer lines.

Mr. Chamberlain also explained they have met with the Water District to discuss the project and received a capacity to serve letter in May and the Water District also did not have any concerns with the construction on their water tower but did note it will need to be painted soon which would generate a fair amount of noise for the new residents.

Mr. Chamberlain continued stating they have also received a capacity to serve letter back in May from the town sewer department. Electric service is expected to be underground service on the site for all the lots, Mr. Chamberlain added.

Lastly, Mr. Chamberlain stated they have received confirmation from the Public Works Department that they will verify the driveways meet the required site distance after the work is completed and have prepared some profiles for that work.

Mr. Francis asked if the removal of the stone wall on Lot #4 will be constrained to the driveway entrance. Mr. Chamberlain replied they don't have to do anything to lot #4 as far as regrading since they can see in both directions quite easily.

Noting the Applicant will be doing a lot of work on the Wildes District side to meet the line-of-sight requirements, Mr. Francis asked how they will maintain those sight distances over time. Mr. Chamberlain responded there is a lot of ledge in that area so they do not anticipate much growth in term of vegetation; adding the maintenance of that could be made part of the Homeowners Association documents.

Mr. Francis commented there is some confusion around the authorization letter from Ms. Goldenfarb and Mr. Barowsky as Bowsprit, LLC and the agent for that company. Ms. Goldenfarb agreed to provide a copy of their operating agreement to add to the Application.

Mr. Francis requested if the Fire Chief could provide a letter for the Final Review stating the driveways are sufficient for emergency vehicle access. Mr. Gilliam commented that the Planning Board doesn't typically get a review letter for driveway access for single family homes, but he will definitely make sure Chief Everett has seen the plans and doesn't have any objections at their next staff meeting when the town's department heads meet to discuss the plan for the Wildes District Road improvement project.

Mr. Francis asked how the ownership of the open space parcel will be handled. Mr. Chamberlain replied that parcel will be in ownership of the four lots as detailed in a deed.

Lastly, Mr. Francis asked if the Applicant could provide a copy of the capacity to serve letters from the Water District and the town Sewer Department. Mr. Chamberlain agreed to provide copies of those letters to Mr. Gilliam.

Mr. Simmons asked for confirmation that the Water District did not have any concerns regarding excavation near the water tower. Mr. Chamberlain agreed, the Water District stated they had no concerns regarding that.

Ms. Pearlmutter confirmed with the Applicant there will be an easement in the Homeowner Association documents to restrict the type of vegetation grown around the sewer line between lots #1 and #2.

Mr. Boak opened the Public Hearing.

Ms. Jennifer Haas of 6 High Street addressed the Board to state her support of the proposed plan and found the relocation of the driveway on Route 9 would reduce accidents along that road.

Ms. Spang also addressed the Board to state her approval of the plan.

There were no further comments. Mr. Boak closed the Public Hearing

Mr. Francis made a motion to approve this Preliminary Application. Ms. Pearlmutter seconded the motion and the vote was unanimous.

2. 210503 Verizon Wireless / Scott Anderson Esquire, Authorized Agent – Site Plan Review – Public Hearing – for approval to install a small cell wireless communications facility on an existing distribution telephone/electrical pole. Located near 674 Kings Highway (formerly known as 180 Kings Highway, Assessor's Tax Map 34, Block 2, Lot 14 in the Goose Rocks Zone.) *Larry Simmons, Case Manager*

Mr. Boak introduced the agenda item and asked the Applicant for the list of existing small cell facilities in town. Mr. Gilliam commented it was discussed at the last meeting there was one located on Jeffreys Way.

Mr. Scott Anderson, representing Verizon Wireless addressed the Board explaining right now Kennebunkport is targeted for a group of 6 small cells; 4 of them have already gone through the permitting which are numbers 2, 3, 4, and 6 and the one before the Board now is #5 with one more that should be coming soon from the engineering team. Mr. Anderson and Mr. Gilliam admitted they did not know if Verizon has installed the other 4 small cells.

Ms. Pearlmutter asked if any of the small cells are proposed to be in Dock Square. Mr. Anderson replied he did not think so as 5 of the 6 are all on Kings Highway. A brief conversation occurred about the location of these small cells and other areas of town that would benefit from increased internet service.

Mr. Simmons asked a series of questions regarding Mr. Anderson's authority as spokesperson for the owner of the Application and asked for a letter from Verizon detailing such as well as a letter detailing the attachment agreement with Verizon, Fairpoint Communications and Central Maine Power.

Mr. Simmons also pointed out a few items on the Application pages 1 and 2 that should be completed. Mr. Anderson agreed to fill in as much information as was accurate. Mr. Gilliam noted this Application technically does not get assigned to a particular parcel of land because it is in the public Right of Way.

Mr. Simmons commented this Application is in the Shoreland Zone and should be identified as such on the Application. Mr. Gilliam agreed with Mr. Simmons statement.

In reviewing the drawings provided in the Application, Mr. Simmons asked a series of questions to reconcile the Application specifications provided with the Kennebunkport Wireless Telecommunications Ordinance requirements. A detailed discussion ensued with the Applicant, Mr. Gilliam and the Board members.

Referring to Appendix K in the Application materials, Mr. Simmons asked if a note could be made identifying the information contained in this section is a prototype and not what is being installed. Mr. Anderson agreed noting the attachment to the access agreement is not the proposed site plan.

A brief discussion occurred between Mr. Simmons and Mr. Anderson regarding the details provided of the cellular license with Verizon Wireless and a copy of their FCC license that was included in the Application.

Mr. Simmons questioned whether the noted wind speed of 39mph in Appendix H was low based on Maine weather. Mr. Anderson explained that is the modeling speed that is used and then the calculations look at worse case scenarios which certainly can go up to 80 mph but this cell design will work at wind speeds far in excess of 39mph.

There were no further questions from the Board members.

Mr. Boak opened the Public Hearing.

Mr. Paul Hogan addressed the Board and asked if this project was just phase 1 and there are dozens or hundreds more coming before the town; and secondly, was wondering about the economics and if the town is making any money on this. Mr. Gilliam replied that to his understanding the town does not own the poles or is receiving any financial compensation for the use of these poles.

A detailed conversation occurred amongst the Applicant, Mr. Gilliam, and Mr. Hogan on who owns the poles and their rights to lease those poles to anyone to conduct business.

There were no further questions from the viewing public.

Mr. Boak closed the Public Hearing.

After a brief discussion on how to proceed with this Application, it was agreed by the Board members and Mr. Gilliam that the requested items of clarification are more clerical than substantive.

Mr. Simmons made a motion to approve the Application subject to receipt of the clarifications as discussed. Ms. Pearlmuter seconded the motion, and the vote was unanimous.

3. 210504 John & Jennifer Schaeffer / Peterson Design Group, Authorized Agent – Site Plan Review – Public Hearing – for approval to remove an existing non-conforming single-family dwelling and replace with a new single family dwelling in a more conforming location. (28 Wildwood Avenue, Assessor's Tax Map 35, Block 1, Lot 12 in the Goose Rocks Zone.)

Mr. Boak introduced the agenda item and asked for Mr. Erik Peterson to be promoted to panelists for this Application.

Mr. Erik Peterson addressed the Board and gave a summary of the Application noting the following items:

- The proposal is to replace the existing structure in a way that is the most conforming to all the setback lines
- The footprint of the structure will be reduced substantially
- The new building will take the 30% allowable expansion by adding the square footage from the ground coverage and putting it on the second floor
- The first floor will be elevated to meet the proposed flood elevation set by FEMA
- The new structure will be under the 30-foot height restriction
- The new structure will be connected to town sewer and water
- A roof overhang will be added to the back door to satisfy the problem of potential bird strikes
- All windows will have screens on them
- There will no fertilizers or pesticides unless they were organic because of the proximity to the wetland.

Mr. Peterson also explained there is approximately 520 square feet of lot coverage that is not being used and asked for the Board's permission to add a walkway from the front door to the driveway which would still leave about 156 square feet of unused lot coverage.

Acknowledging her agreement in the added measures to prevent bird strikes, Ms. Pearlmuter noted the use of inorganic or organic fertilizers can cause nitrogen and phosphorus blooms in the wetlands and asked the Applicant to be very cautious when using any fertilizer or pesticide so close to the wetlands.

Ms. Pearlmuter asked if the proposed walkway would be behind the 20-foot setback and what type of impervious material will be used. Mr. Peterson replied the walkway will be in front of the 20-foot setback and will be 3-4 feet wide and 21-feet long of crushed stone.

Ms. Pearlmuter then asked if all stone patios and walkways count as part of the impervious surface calculations. Mr. Gilliam explained it is not a question of pervious verse impervious but a question of vegetated versus non-vegetated so the walkway would

be considered a non-vegetated surface that would count towards the overall lot coverage since the property is within the shoreland zone.

Ms. Pearlmutter questioned the Board would need to receive revised calculations based on the addition of a walkway and patio. Mr. Peterson explained when they submitted the Application, they stated the lot coverage would remain the same at 35.59% so even with this addition of a walkway and patio it is still less than the existing 35.59% lot coverage.

To further explain, Mr. Peterson stated the way this proposal will be less non-conforming is they are taking the bulk of the house and moving it out of the 75-foot setback line and proposing a smaller footprint and using 156 square feet less of the original building footprint. Mr. Peterson agreed to modify the plans to show the proposed walkway and patio.

Mr. Simmons asked about the chimney and asked if it was for a wood fireplace. Mr. Peterson replied it is for a gas fireplace.

There were no further questions from the Board members.

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

Mr. Boak made a motion to continue the Public Hearing until the next meeting to receive the requested additional information as discussed. Mr. Simmons seconded the motion, and the vote was unanimous.

4. 210502 Dow House Limited Partnership / Bradley Lown, Authorized Agent -- Site Plan Review – Continued Initial Review – for approval to rebuild a dock and some support pilings (2-6). Dock will be 4' x 70' with an 8'x8' "L" shape turn; a possible short ramp/staircase and a stationary year-round pier. (26 Agamenticus Avenue, identified as Assessor's Tax Map 30, Block 3, Lot 32 in the Cape Porpoise East, Shoreland and Resource Protection Zones.) Tom Boak, Case Manager

Mr. Boak introduced the agenda item noting the Board members received several submissions in past few days. Mr. Brad Lown explained he submitted all the requested information discussed at the last Planning Board meeting by June 28th. Mr. Gilliam confirmed the submissions were received at the town offices on June 28th but were delayed in being copied to the Planning Board members.

In response to the requests made at the last Planning Board meeting for additional information, Mr. Lown listed the following items included in his submittals:

- Completed checklist as requested
- Authorization letter from Mrs. Lown
- Copy of the minutes from the Board of Selectmen's meeting unanimously approving this Application
- Requested maps and information from Ransom Engineering
- Several photographs of the dock and stairs to be rebuilt.

Mr. Lown explained the water is approximately 5-6 feet deep at the end of the pier at high tide. Mr. Lown also noted his Maine DEP application is still pending.

Mr. Boak asked where the dock will be located in relation to the topographical map provided. Mr. Lown replied it is 55 feet from the property line to the east and 130 feet from the property line to the west.

Ms. Pearlmutter commented she is confused regarding the L-shape at the end of the dock and what standard that needs to meet along with the staircase that descends into the water. Ms. Pearlmutter also cautioned the boards used in construction must meet standard and are not chemically treated with toxic materials and are designed to be seaworthy.

Ms. Pearlmutter further explained there is the danger of the staircase breaking off and become debris in the ocean or washing up on someone else's shoreline. Mr. Lown responded stating if the Board wished he can take the stairs up over the winter but he doesn't view that as necessary since they don't get waves in there or the alternative is to ask for another 20 feet of pier length if they will not be allowed to have the L.

A lengthy discussion occurred about the shape of the dock, the staircase, and the width of the dock. Mr. Gilliam commented he did not see any particular issue with having a set of stairs and that the location and maintenance of the pier is grandfathered but the decking is not and would need to comply with the town's ordinance standards. Mr. Gilliam also commented that there is nothing in the ordinance that prohibits the L but the width of the L needs to be 4 feet.

After a brief discussion regarding handrails, Mr. Gilliam recommended the Applicant install a handrail on the stairs going down into the water.

Mr. Francis made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on July 21st, 2021.

5. **210405 Ocean Woods / Sebago Technics, Authorized Agent** -- Site Plan /Review -- **Initial Review** -- for approval of a complete reconfiguration of the existing hotel/motel, by replacing the existing buildings with a new one store, 88-seat restaurant and pool, with 30 individual 1 and 2 bedroom cottages, and a reconfiguration of the parking area to create 68 parking spaces, a new main entrance and use the existing driveway for service vehicles and employees. (71 Dyke Road, Assessor's Tax Map 37, Block 5, Lot 2 in the Goose Rocks Zone.)

Mr. Boak introduced the Agenda item.

Mr. Steve Doe and Attorney Ralph Austin addressed the Board. Mr. Doe asked for Mr. Brian Nip to included in the panelists as he is the architect for this Application.

Mr. Doe began his lengthy presentation by explaining that after having several meetings with Mr. Gilliam and Ms. Nolette in the town offices, they have revised their plans to more accurately reflect the existing building calculations. Out of concerns for the existing septic systems failing, Mr. Doe stated they have decided to connect all of the buildings to the town sewer line which is approximately 1,200 feet from the site.

Some of the items Mr. Doe mentioned in his presentation are as follows:

- The Applicant is Ocean Woods Resort LLC and was purchased in 2020 and is 10.41 acres in the Goose Rocks Zone
- Originally the goal was to renovate the existing building however, it is not in good condition and would not meet today's needs
- To bring the building into conformance was not reasonable after looking at all the repairs and the expense so it was decided to demolish the existing building and build new structures.
- According to the conditions set forth in Article 7.7 Hotels, Motels, Bed and Breakfasts, and Inns, if we did not exceed the existing square footage of all the buildings on the property, did not increase the number of bedrooms, and did not increase the restaurant seats we would be able to rebuild the facility.
- The plan is to construct a one story, 88 seat restaurant with a pool and deck.
- Construct 30 individual cottages. These will be one and two bedroom cottages for a total of 43 bedrooms
- The existing driveway will be limited to service vehicles and employees
- A new 20-foot-wide driveway will be constructed for guests
- Reconfigure the parking lot and provide for 68 parking spaces.
- Access to the cottages will be limited to golf carts so there will be no vehicles driving up to the cottages.
- The project will be connected to the public water and public sewers as previously stated.
- There will also be a stormwater management system that will collect all the runoff from the site, detain it, and treat it.

Mr. Doe continued his presentation by sharing the site plans on the screen and providing detailed information for each page shown.

Mr. Nip joined Mr. Doe in the presentation and explained the details of the different cottages along with the proposed restaurant and pool area.

Mr. Boak asked when the resort last had guests. Attorney Austin responded they had rented several rooms on a limited basis during the summer and into the fall of last year and are do so this summer as well.

Mr. Boak also asked if the gold carts will be prohibited from being operated on the streets. Mr. Doe replied he believes that is the goal that they will stay on the property.

Ms. Pearlmutter asked for clarification on the Board of Appeals decision to remove the condominium requirements. Attorney Austin gave a brief history of the property and its use from the original developers and cautioned the Board members not to confuse use with the form of ownership as this property has always been operated as a resort with rental rooms and a restaurant. Attorney Austin offered to provide a better explanation of this issue by the next meeting.

Ms. Pearlmutter expressed her concerns about the wetland impacts and questioned if the Applicant was aware some of the proposed cottages may be in a flood zone which would require them to be elevated. Mr. Doe responded with a detailed explanation of the property's elevations in relation to the new flood maps.

Ms. Pearlmutter also questioned the impact of connecting to the town water main. Mr. Doe explained his office was involved when the water main was extended to serve the Sandy Pines Campground and Goose Rocks Resort and found thee is enough capacity in that line to serve this facility.

Ms. Pearlmutter and the Applicant had a brief discussion over parking and the use of the golf carts on the property.

Ms. Pearlmutter also asked if they were planning on having a shuttle to take guests to the beach. Mr. Doe replied he does not believe there will be a shuttle to the beach as he expects their guests to walk down to Goose Rocks Beach as they do at the campground.

As mentioned by Ms Pearlmutter and out of concern for bird strikes, Mr. Doe acknowledged there will be screens on all the windows on the cottages.

Referring to the numerous letters received from residents, Mr. Francis asked about the waivers being requested. Mr. Doe replied they are not asking for a waiver, so he is unsure what those letters are referring to.

Mr. Francis questioned if this Application is before the Planning Board because it is not an allowed use in the Goose Rocks Zone and asked the Applicant how the Board can justify what is being proposed based on what is grandfathered. A detailed discussion occurred on the grandfathered use of the property with the Applicant and the Board members. Attorney Austin agreed to provide further information.

Mr. Simmons asked if the resort would open year-round. Mr. Doe replied no this is a seasonal operation.

Mr. Harcourt questioned how the number seat count of the restaurant was determined. Mr. Doe explained the seat count was determined from the town records.

After a brief discussion, the Board members agreed to have Acorn Engineering conduct a peer review of the stormwater plan.

Mr. Gilliam also asked the Board members if they would like to town counsel provide a legal opinion on this Application regarding the expansion of use and the zoning components. The Board members agreed it was better to wait before asking for a legal opinion from the town attorney.

After some discussion the Board members and Applicant agreed to have a public site walk of the property. Mr. Gilliam agreed to schedule the site walk providing adequate time for it to be publicly noticed.

Mr. Simmons made a motion to continue this Initial Review until the next meeting. 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