Kennebunkport Planning Board

**September 18, 2019 ~ 7:00 PM**

# Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, September 18th, 2019. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, Ed Francis, Neil Higgins, Larry Simmons, George Lichte

Mr. Simmons and Mr. Lichte will alternate with voting privileges for tonight’s meeting.

Approval of Minutes: Mr. Boak noted he had submitted a correction to be made to the September 4th, 2019 Planning Board minutes prior to this meeting. Mr. Francis suggested a change to Agenda Item #3, 2nd paragraph Number 1, should state: “In response to Mr. Wyman’s concern having the entrance directly across from his driveway, the access road has been moved to be across from Tucker’s Lane and *have applied for* a Maine Department of Transportation (MDOT) permit for the new driveway entrance location. Ms. Pearlmutter made a motion to approve the amended minutes. Mr. Francis seconded the motion and the vote was unanimous.

Items:

**1. 190801 Apple Blossom Lane, LLC Subdivision / Longview Partners, LLC, Authorized Agent** – Preliminary Subdivision - **Initial Review** – for approval to create two new lots on a 23.36 acre parcel. (Apple Blossom Lane, identified as Assessors Tax Map 12, Block 002, Lot 1J in the Goose Rocks Zone.)

Mr. Boak introduced the Agenda item noting the Board conducted a site walk of this property in April.

Mr. James Logan, Site Evaluator, Septic Designer, Soil Scientist and Wetland Scientist with Longview Partners addressed the Board on behalf the Applicant Johnathon Trudo noting this subdivision was originally approved in 2008. Using enlarged site plans, Mr. Logan gave a detailed presentation outlining the proposed new lots numbered 7A, B, and C indicating the proposed driveways for each lot to access Apple Blossom Lane. Mr. Logan noted he has applied for a Maine DEP Permit By Rule and a Tier 1 application and expect to have both of those approvals to the Board before the next meeting.

Other items Mr. Logan noted that are included in the Application materials are a high intensity soil survey and report, a hydrogeological assessment indicating there is adequate quality and quantity of well water, an engineered driveway plan, and the stormwater calculations. Also included at the end of the packet, Mr. Logan stated, are photos of the small land depression found on the back of Lot 7C that has been recognized by the Department of Inland Fisheries and Wildlife as not a significant vernal pool. Mr. Logan added he will provide documentation of that from the Department of Inland Fisheries and Wildlife as soon as it is available.

Mr. Francis asked the Applicant to provide a written narrative to summarize what they are proposing. Mr. Logan agreed to provide a summary of explanation to be included in the Application.

Ms. Pearlmutter asked about the waiver submissions included in the Application for specimen trees and suggested the Applicant identify those specimen trees. Mr. Logan explained the building areas for each new lot is relatively limited and offered to remove that waiver request. Ms. Pearlmutter suggested perhaps altering their submittal to state no trees will be taken down except in the building area.

Noting one of the deed restrictions submitted that states further subdivisions of the lot is prohibited, Mr. Higgins suggested the Applicant clarify if that is still applicable. Mr. Logan replied he expects to modify the deed restrictions from the previous deed so that would not be an issue.

For clarification purposes, Ms. Pearlmutter stated this Application is solely for the division of the lots and not for building on the newly created lots. Mr. Logan agreed with Ms. Pearlmutter’s statement.

Due to the significant amount of data submitted with this Application, Mr. Boak asked Mr. Gilliam if it was appropriate for the Planning Board to request a Peer Review. Mr. Gilliam replied the culvert sizing is appropriate to match what the flow counts were and it is up to the Board to determine whether this warrants a Peer Review or not. After a brief discussion Board members agreed a Peer Review was not necessary for this Application.

Mr. Boak asked if Apple Blossom Lane is a private road. Mr. Logan responded yes it is a private road and intends to remain a private road.

Mr. Higgins made a motion the Application is complete. Ms. Pearlmutter seconded the motion and the vote was unanimous. Mr. Lichte had voting privileges for this Application.

Mr. Boak announced a Public Hearing would be held at the next Planning Board meeting on October 2nd, 2019.

Mr. Higgins was assigned as Case Manager for this Application.

**2. 190803 Hidden Pond / Sebago Technics, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to revise a previously approved Plan by building the 10 previously approved units, but in a new location within the existing site. Construction of fire lanes and roadways to access these units will be done at the same time. 9356 Goose Rocks Road, identified as Assessor’s Tax Maps 38, Block 001, Lot 08 (Phase II) and Map 37, Block 003, Lot 3 (Phase I) in the Free Enterprise Zone.)

Mr. Boak introduced the Agenda item and acknowledged Mr. Lichte is Case Manager for this Application.

Mr. Steve Doe of Sebago Technics along with Attorney Ralph Austin, addressed the Board on behalf of Hidden Pond LLC and asked if the Board would like him to go through the history of the property or simply speak strictly about the Application presently before the Board.

The Board members agreed it is best to strictly deal with the Application presently before the Board.

Mr. Doe gave a comprehensive presentation on the details of Phase 1 that were not initiated or completed as of today. Mr. Doe explained Phase 1 was approved for 26 cottages but only 16 were actually built and indicated on the site plans where the proposed 10 cottages would be built. Mr. Doe explained the cottages would be serviced by drilled wells and septic systems and indicated where the septic field is located that currently is servicing only 2 cottages but was designed to handle 10 units.

Mr. Doe also indicated on the enlarged site plans the wetland areas and a bike loan area for guests.

Mr. Doe also explained he has met with abutters and has made some amendments to add some evergreens as a buffer along the property line to Mr. Bassett’s property. Due to concerns raised by the Ox Plow Lane Homeowner’s Association, Mr. Doe agreed to their recommendations and requirements involving monitoring wells and reports to be filed with the town’s Code Enforcement Office. A de-nitrification system will also be installed to the septic field as a precautionary measure, Mr. Doe added.

Ms. Pearlmutter asked the Applicant to explain the historic use of the property, specifically regarding past problems with the overloading of the septic system and how that was remedied. Using the enlarged site plans, Mr. Doe indicated where the restaurant Earth was located and the septic field that failed due to overuse and grease traps not being cleaned on a regular basis. The leach field was rebuilt and enlarged with a monitoring system installed as well, Mr. Doe stated. Mr. Gilliam added the town does recieve a copy of those monitoring reports on a yearly basis.

Ms. Pearlmutter brought up her concern about bird strikes on the glass of the proposed cottages. Mr. Doe explained the cottage designs are typical house designs essentially 2-3 feet off the ground with double hung windows and screened porches.

Ms. Pearlmutter also raised her concern about light pollution and that their selection of light will affect the flora and fauna in the area and suggested putting lights in that reflect light downward. Mr. Doe commented the light levels are very low.

Mr. Higgins asked for a copy of the originally approved plan to compare with this Application. Mr. Doe agreed to provide that information for the Board.

Mr. Francis made a motion the Application is complete. Mr. Higgins seconded the motion and the vote was unanimous. Mr. Simmons had voting privileges for this Application.

**3. 190802 James & Susan McMahon / James Logan, Longview Partners, LLC, Authorized Agent** - Preliminary Minor Review – **Initial Review** - for approval to amend a lot line. (18 Northwood Drive, identified as Assessor’s Tax Map 12, Block 005, Lot 05A in the Village Residential Zone.)

Mr. Boak introduced the Agenda item.

Mr. James Logan, representing Dr. and Mrs. McMahon addressed the Board stating the Applicant owns 2 lots in the Bishop Woods Subdivision and is asking for permission to make some internal changes that would not affect any of the other lot owners. Using an enlarged site plan of the 2 lots, Mr. Logan explained they are asking for a revision of the common line of the 2 lots, one lot of which contains the house the owners are currently living in.

Mr. Logan also explained the property deed for each lot has a shared driveway and is asking for the Board to consider removal of that driveway easement to consider a new driveway for the vacant lot. Mr. Logan indicated on the enlarged site plan the proposed location of the new driveway for lot 2.

Mr. Higgins asked what parcel is encumbered by the easement. Mr. Logan replied they are requesting to remove the easement on Parcel A.

Mr. Francis asked about the Applicant’s request to change an existing setback from 75 feet to 25 feet. Mr. Logan explained they are reducing the setback from 75 feet to 25 feet only in areas adjacent to the wetlands that have no waterbody which are typical forested wetlands and not considered wetlands of significance from the Maine Department of Environmental Protection. Mr. Gilliam further explained that sometimes a developer shows setbacks on a plan that generally speaking one would assume there are regulations that are requiring that particular setback but in this instance there is no regulatory requirement for a 75-foot setback as it is an insignificant non-Shorland Zone wetland.

Mr. Logan also indicated on the enlarged site plans a small land swap between the 2 lots that will result in an easement for the septic system that serves lot A to be located on lot B. Mr. Francis asked what the benefit of such a land swap would be. Mr. Logan replied the land swap is intended to enhance the building site on the undeveloped lot and asked that the McMahons are allowed to continue to use the septic system until the second lot is sold or the system fails.

Ms. Pearlmutter asked since the Subdivision Regulations actually describe the restriction on this, is this a waiver request to a Subdivision Regulation or is it to be considered a minor revision request. Mr. Gilliam replied it stays as a minor revision when you look at the description of a minor revision and the regulations specifically state it is with the creation of a new lot so it is dealing with a previous approval in this instance.

Mr. Logan commented the septic easement request is not intended to be an easement in perpetuity.

As a matter of explanation, Mr. Gilliam stated the reason why this Application is before the Board is because the language stating a septic field could not be on one lot in a subdivision while serving another lot within the subdivision is due to situations in the past where 3 or 4 septic fields were located on one lot within a subdivision that obviously created issues in navigating the buildability of that particular piece of property. There is nothing functionally wrong with those types of situations, Mr. Gilliam added, but it is an attempt to simplify future maintenance issues.

Mr. Jim McMahon addressed the Board to explain they would like to be able to keep using the septic if the lot is sold as the most likely purchaser of the second lot is his daughter.

The Planning Board members and the Applicant had a detailed discussion on various scenarios that could arise from having a septic system on one lot that services another lot and on the language of the deed restriction.

After some discussion, Mr. Logan asked if the Board members were comfortable to establish an easement to make this lot line adjustment for the septic system. Mr. Francis agreed the Board would accept this proposal.

Mr. Logan emphasized the point that this request was in no way an attempt to circumvent any rule and it will not affect any net calculations of either lot.

Based on discussions from the Board members, Mr. Boak informed Mr. Logan the Application is not yet complete and asked him to provide revised site plans that show the revised lot lines as well as a copy of the proposed deed restriction. Mr. Logan agreed to revise the plans and resubmit them to the town offices along with recommendations on what the deed restrictions will be for both lots A & B. Ms. Pearlmutter suggested including perhaps a plan that provides the before and after and a step-by-step narrative of the changes in the deed restrictions as well.

No vote was taken on this Application at this time. Mr. Simmons was assigned as Case Manager for this Application.

**4. 190701 Kennebunkport Conservation Trust / Richardson & Associates, Authorized Agent** – Site Plan Review – **Findings of Fact/Decision** – for approval to create a nature park and preserve with new trails and a welcome huts. (Mills Road, identified as Assessor’s Tax Map 42, Block 1, Lot 2A1 in the Goose Rocks Zone.) *George Lichte, Case Manager*

Mr. Lichte read the Findings of Fact into the record. Mr. Francis made a motion to approve said Findings. Ms. Pearlmutter seconded the motion and the vote was unanimous.

**5. 190602 Kennebunkport Marina / Sebago Technics, Authorized Agent** – Site Plan Review – **Findings of Fact** – for approval to build two new boat storage buildings with a paved storage yard. (83 Log Cabin Road, identified as Assessor’s Tax Map 2, Block 1, Lot 10 in the Farm and Forest Zone.) *Ed Francis, Case Manager*

Mr. Francis read the Findings of Fact into the record. Ms. Pearlmutter made a motion to approve said Findings. Mr. Simmons seconded the motion and the vote was unanimous.

**6. 190702 Paul & Lisa Henderson / Peterson Design Group, Authorized Agent** – Site Plan Review – **Findings of Fact** - for approval to remove an existing two family dwelling and rebuild same in a more conforming location outside of the floodplain. (2 Maine Street, Assessor’s Tax Map 11, Block 3, Lot 1 in the Village Residential, Shoreland and Resource Protection Zones.) *Tom Boak, Case Manager*

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

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

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