

**Kennebunkport Planning Board**  
**November 18th, 2020 ~ 6:00 PM**  
**Virtual Meeting (Via Zoom)**

A meeting of the Planning Board was held on Wednesday, November 18th, 2020. The virtual meeting convened at 6:00 p.m. via Zoom.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, Ed Francis, D. Scott Mahoney, Larry Simmons, George Lichte, John Harcourt

Approval of Minutes: Ms. Pearlmutter made a motion to approve the minutes from the November 4<sup>th</sup>, 2020 Planning Board meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

Items:

1. ~~201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent~~ North Campus—Site Plan Review—**Public Hearing**—for approval to demolish all existing buildings and parking areas and construct two new building with multiple parking areas. (128 Ocean Avenue / 12 & 14 Colony Avenue, identified as Assessor's Tax Map 8, Block 8, Lots 14, 15 & 16 in the Riverfront and Shoreland Zones.) ~~Nina Pearlmutter, Case Manager~~ Continued to 12/18/2020 to allow for Peer Review.
2. ~~201002 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent~~ South Campus—Site Plan Review—**Public Hearing**—for approval to demolish 4 existing buildings and construct one new building, to include building expansion, and the reconstruction of circular parking area. (140 Ocean Avenue, identified as Assessor's Tax Map 8, Block 6, Lot 4 in the Riverfront and Shoreland Zones.) ~~Nina Pearlmutter, Case Manager~~ Continued to 12/18/2020 to allow for Peer Review.
3. **201003 Taylormade Hospitality, d/b/a/ Hurricane Restaurant / Woodman Edmands Danylik Austin Smith & Jacques, P.A., Authorized Agent** – Site Plan Review -- **Public Hearing** – for approval to reconstruct a portion of the existing deck at the rear of the restaurant and to expand restaurant service to that area. (29 Dock Square, identified as Assessor's Tax Map 11, Block 2, Lot 1 in the Dock Square and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Attorney Amy McNally representing Taylormade Hospitality addressed the Board stating they are requesting to expand service to the back deck which will be rebuilt to allow for drink and food service in that area. Attorney McNally added once rebuilt the deck will have 2 high top tables and 4 barstools along the side railings. Because the deck is actually on town property, Attorney McNally explained they have received permission from the Board of Selectmen and are asking permission from the Planning Board to approve this expansion of use for service to a back deck which will be rebuilt to add a handicapped ramp and extra railings and tables.

Mr. Boak asked the Board members if they had any questions for the Applicant. All Board members responded they had no questions at this time.

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

Mr. Lichte made a motion to approve the Application. Mr. Simmons seconded the motion, and the vote was unanimous. Mr. Boak announced the Findings of Fact will be read at the next Planning Board meeting on December 2<sup>nd</sup>, 2020.

4. **201005 Timothy & Kathleen Berger / John Einsiedler, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to move and attach an existing shed to the house to allow for a volume expansion to expand an existing second floor dormer. (6 Brooks Street, identified as Assessor's Tax Map 21, Block 5, Lot 33 in the Cape Porpoise West, Shoreland and Resource Protection Zones.)

Mr. Boak introduced the Agenda item.

Mr. John Einsiedler representing Kathy and Tim Berger addressed the Board and shared the site plans on the screen for the viewing public. Mr. Einsiedler explained there is a 8.3-foot by 10.3-foot shed that is in the rear and side setback lines and they are asking to remove the shed from its current location and to attach it to the house to get it further away from the resource. The reason for this exercise, Mr. Einsiedler continued, is to take the square footage and volume from the shed and bring it inside of the house to extend the existing dormer. There will be less lot coverage and allow the residents to have a larger bedroom, Mr. Einsiedler continued.

Mr. Gilliam stated this Application is unique in the sense that this is a home that had previously taken advantage of its 30% expansion in the early 2000s so when the Bergers asked how they could acquire some additional volume in their home, this is the only way we could envision this process occurring. Mr. Gilliam added it is not clear that the Code Enforcement Office has the authority to grant this particular expansion so that is why it was referred to the Planning Board and felt it was similar in nature to some recent cases where Applicants have combined non-conforming structures.

Mr. Harcourt asked since this property has already taken advantage of the 30% expansion, the volume of the dormer to be added has to be equal to or less than the volume of the shed, correct? Mr. Gilliam replied yes that was my thought as we are just utilizing the existing volume and square footage of the shed.

Mr. Einsiedler stated he was hoping to use the 30% expansion on the shed for the new dormer. Mr. Gilliam responded that the Applicant could use 1.3% of the shed since the shed has not been expanded previously.

Mr. Francis clarified that the 30% expansion rule is per structure not per property. Mr. Gilliam agreed with Mr. Francis's statement.

Mr. Boak asked when the one-time 30% increase was done on the volume of the house if the volume of the shed was factored in, and is that stated somewhere? Mr. Einsiedler replied the original drawings just show the original house and the 30% added to the house and the shed was never shown on the drawings.

Mr. Francis asked if the shed was on the property when that expansion of the house occurred. Mr. Gilliam replied he has a copy of the site plan from 2001 that shows the location of the shed.

Ms. Pearlmutter commented it is her understanding of the volume expansion ordinance is that one takes into account all of the volume on the property and assumes when the Applicant took the original volume of the house they took the original volume of the shed too. Ms. Pearlmutter questioned whether the expansion was done using the total volume of the house and the shed because if that was the case then the Applicant cannot expand the shed a second time. Mr. Gilliam commented he reviewed the file beforehand and at the time that expansion was done the shed was not incorporated as part of the expansion. Ms. Pearlmutter then asked if the Applicant only took the volume of the house when they expanded it 30%. Mr. Einsiedler replied that is what the drawings indicate.

Mr. Boak asked what the volume of the shed is compared to the volume of the dormer being added. Mr. Einsiedler stated he can send those calculations to the Board after this meeting.

Mr. Francis questioned whether the shed is grandfathered and was on the property before the ordinance went into effect. Mr. Einsiedler responded the best information he has is from the survey from 2001. Mr. Boak suggested the best option for the Applicant is to limit the size of the dormer to the size of the shed.

Ms. Pearlmutter asked Mr. Gilliam if he had any information. Looking at the tax card, Mr. Gilliam replied there is a note that the outbuilding exists on the property but he does not have a date on the tax card, and offered to do some research into the assessing data if that would be helpful.

Ms. Pearlmutter cautioned if the shed were put on after the ordinance went into effect then that would have been an expansion of a non-conforming use and that would have been improper.

Mr. Lichte asked if it turns out they did the expansion on the structure and they expanded only 25% would that allow them to claim that other 5% in the future. Mr. Gilliam responded yes, they have had cases in the past where folks have not done the full 30% and come back to the town to add the other percentage amount.

Mr. Harcourt offered the tax card submitted in the Application had a note stating: "new foundation 30% per the Planning Board".

Mr. Gilliam referred the Board members to Article 8.3 in the Land Use Ordinance regarding non-conforming structures that states replacement structures may not be expanded if the original structure existed on January 1<sup>st</sup>, 1989 had been expanded by 30% since that date.

Mr. Gilliam offered to review the town records to determine the date of the existence of the shed in the tax card records.

Ms. Pearlmutter asked the Applicant to explain where the addition to the house was going to be built. Referring to the photos of the house included in the Application, Mr. Einsiedler stated the dormer would extend to the end of the house where the 2 skylights are currently. Mr. Einsiedler added it would reduce the lot coverage by approximately 80 square feet.

The Board members and Mr. Gilliam had a brief discussion and determined they would need the volume and lot calculations along with any information on the previous expansion of the property in the town records included the previous Findings of Fact.

Ms. Pearlmutter made a motion to continue this initial review to the next meeting pending some information from Mr. Gilliam and the volume and square footage calculations from the Applicant. Mr. Francis seconded the motion, and the vote was unanimous.

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

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