

**Kennebunkport Planning Board**  
**July 5th, 2023 @ 6:00 PM**  
**Hybrid Meeting Via ZOOM and In-Person**  
**32 North Street, Kennebunkport**

A meeting of the Planning Board was held on Wednesday, July 5th, 2023 in-person and via the ZOOM format. The meeting convened at 6:00 p.m.

Members Present: Mr. Tom Boak (Chair), Nina Pearlmutter, Ed Francis, D. Scott Mahoney, Charles “Larry” Simmons, George Lichte, Mike West

Approval of Minutes: Ms. Pearlmutter made a motion to approve the amended minutes of the June 21st, 2023 Planning Board meeting. Mr. Simmons seconded the motion, and the motion passed.

Items:

1. **230502 77 Pier Road – German Lucarelli – Site Plan Review Application – Public Hearing** – This site plan review application is seeking approval to add a refreshment trailer in the existing paved area adjacent to the restaurant located at 77 Pier Road. (Assessor’s Tax Map 29, Block 2, Lot 5B in Cape Porpoise South Zone). *Case Manager: Ed Francis*

Mr. Boak introduced the agenda item.

Mr. Lucarelli addressed the Board stating he corrected the Application to show the property is in the Cape Porpoise Square and Cape Porpoise East zones and provided a map of where the trailer will be located.

Mr. Francis questioned if the Board still felt it necessary to put a restriction on the operating hours of this new business and suggested perhaps the Board just needs to see how many parking spaces are on the property. Mr. Lucarelli responded that he has 58 total parking spaces.

After some discussion on the required number of parking spaces, the Board members asked Mr. Lucarelli to provide a detailed map showing all the parking spaces he has on the property.

There were no further questions from the Board members.

Mr. Boak opened the Public Hearing.

Ms. Ann Campbell of 80 Pier Road addressed the Board to express her concern about the operation hours of the proposed trailer and the increase in traffic in an already crowded area. Ms. Campbell was also concerned about the increase in trash generated from the new business.

After some discussion, Ms. Pearlmutter suggested if people are parking illegally at the pier and blocking Ms. Campbell’s driveway Ms. Campbell should bring her concerns to the police and the Board of Selectmen.

Ms. Sue Rees of 78 Pier Road addressed the Board via Zoom in agreement with Ms. Campbell’s statements adding the bigger issue for her is the employees park their vehicles obstructing their access to their small parking spot.

In response to both Ms. Campbell’s and Ms. Rees’ concerns, Mr. Lucarelli agreed to speak with his employees about where they should be parking.

There were no further comments or questions from the audience in attendance or on Zoom.

The Board members agreed to extend the Public Hearing until the next meeting in order to receive an updated parking map from the Applicant.

2. **230503 7 Belair Avenue, Unit 1 – Gretchen Palmer – David Graham – Graham Architects/Agent – Site Plan Review Application – Public Hearing** This site plan review application is seeking to demolish and replace Unit 1 at 7 Belair Ave. The existing condominium is a nonconforming structure on a nonconforming lot. The structure is nonconforming due to being located within the front setback, triggering planning board approval. The applicant is also seeking to utilize the 30% expansion for an increase in interior square footage and volume. (Assessor’s Tax Map 35, Block 12 Lot 3-A in Goose Rocks Zone). *Case Manager: George Lichte*

Mr. Boak introduced the agenda item.

Mr. David Graham representing Gretchen Palmer who is also in attendance at this meeting, addressed the Board stating this is a non-conforming structure on a non-conforming lot where they propose to tear down and rebuild the house on its current location and utilizing the 30% expansion allowed in the town ordinance. At the request of the Board from the last meeting, Mr. Graham stated he did submit the volume calculations prior to tonight's meeting to show they are adding 8.7 cubic feet.

Mr. Lichte asked if the Applicant will receive any paperwork from the Maine Department of Environmental Protection stating they have approved the proposed project. Mr. Graham replied he received an email from Pheobe Scott who reviewed the Permit-By-Rule on June 12<sup>th</sup> and she accepted it. Mr. Gilliam added there is usually a delay and typically with a Permit-By-Rule if you don't hear anything from the Maine DEP in 14 days it is considered approved.

There were no further questions from the Board members.

Mr. Boak opened the Public Hearing.

Ms. Susan Morton of 5 Belair Avenue addressed the Board via Zoom to ask about the construction timeline and where the construction vehicles will be parking. Mr. Graham responded the proposed construction timeline will be this fall until next year but they do not have a building contractor at this point, and he can discuss that with the contractor when the time comes. Mr. Graham offered that Ms. Palmer would be in contact with Ms. Morton and let her know personally the dates of the demolition and construction.

There were no further questions from the audience in attendance or on Zoom.

Mr. Boak closed the Public Hearing.

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

Before the Findings of Fact are to be read, Ms. Pearlmutter asked to discuss some issues with the way the Findings are being written with the Board members.

At the end of this meeting Mr. Lichte read the revised Findings of Fact into the record. Mr. Simmons made a motion to approve said Findings. Ms. Pearlmutter seconded the motion, and the vote was unanimous.

**3. 230504 195 Log Cabin Road – Seashore Trolley Museum – Henry Hess/Sebago Technics – Site Plan Review Application – Initial Review** – This site plan review application is seeking to add a 2,400 square foot garage at the Seashore Trolley Museum. The current use of this property is a museum, being a conditional use within the farm and forest zone under article four of the LUO (Assessor's Tax Map 3, Block 1, Lot 1 in Farm and Forest Zone). *Case Manager: Nina Pearlmutter*

Mr. Boak introduced the agenda item.

Mr. Henry Hess of Sebago Technics representing the Seashore Trolley Museum addressed the Board stating this project is proposing to build a 2,400 square foot garage that will be used to house trolley accessories, trolley tracks, and maintenance equipment. Mr. Hess added the only utilities going into this structure will be electric utilities. It will not be a heated structure and there will not be a bathroom or water line running to garage, Mr. Hess added. There will be windows on the proposed garage, Mr. Hess stated, and they will make sure the windows are screened to prevent bird strikes.

Noting the minutes from a previous meeting, Ms. Pearlmutter corrected her comment that she did not intend to suggest to the Applicant to plant trees near the building but to consider planting trees near the drainage ditch that would aid in soaking up the water from storms and help keep water away from the foundation. Mr. Hess commented the drainage ditches will be revegetated with a native conservation wildlife mix that is mostly herbaceous with some woody materials that should do a solid job protecting the slopes.

There were no further questions.

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

Ms. Pearlmutter made a motion to approve the Application. Mr. Simmons seconded the motion, and the vote was unanimous.

At the end of the meeting, Ms. Pearlmutter read the revised Findings of Fact into the record. Mr. Simmons made a motion to approve said Findings. Mr. Mahoney seconded the motion, and the vote was unanimous.

4. **230601 845 Kings Hwy – Holly Joel-Mudd – Erik Peterson/Peterson Design Group – Site Plan Review Application – Initial Review** – This site plan review application is seeking a complete replacement of a garage on a new poured foundation. The existing garage is nonconforming structure on a nonconforming lot. The structure is nonconforming due to being located within the setback, triggering planning board approval. The applicant is also seeking to utilize the 30% expansion for an increase in interior square footage and volume (Assessor's Tax Map 34, Block 1, Lot 5 in Goose Rocks Zone).

Mr. Boak introduced the agenda item.

Mr. Erik Peterson representing Holly Joel-Mudd addressed the Board stating this is part of a larger project and are requesting to tear down a garage on the property. Mr. Peterson explained they found the existing garage had no foundation and was just a wooden plank floor sitting on the sand so they would like to also do a 30% upward expansion as this currently has a bedroom and bathroom upstairs and would like to preserve that. Because this garage is so close to the neighbor's property line and their garage, Mr. Peterson added they are proposing to move the new garage over 2 feet to the east that will allow them to put in a proper slab wall foundation.

Ms. Pearlmutter noted that a dormer was added to the property previously in 2009. Mr. Peterson agreed with Ms. Pearlmutter adding when he did his building calculations, he included that dormer counting it towards the 30% maximum allowable expansion and did not include it as part of the existing volume calculation.

Ms. Pearlmutter questioned about the addition of a bay window or something similar. Mr. Peterson explained there was a bay window on the 1<sup>st</sup> floor, and they are not putting it back in the rebuild but were adding a little balcony upstairs that mimics the footprint of the bay window that used to be below it.

Ms. Pearlmutter asked if this would be rented out or used as an accessory apartment. Mr. Peterson replied no, they are restricted from using it as an accessory apartment and it is just part of the residence that is owned by three sisters.

Mr. Boak asked about the sewer line mentioned in the Application. Mr. Peterson indicated on the site plans where the sewer line was located stating it is roughly 10-feet deep and he was instructed by the town sewer department to not touch it.

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 19<sup>th</sup>, 2023.

Mr. Simmons volunteered as Case Manager for this Application.

5. **230405 21 Norwood Lane – Mark and Katherine Badertsher/John Einsiedler, R.A./Agent – Kennebunk River Architects/Agent – Site Plan Review – Findings of Fact** – the Applicant proposes to add a new foundation under the existing structure, elevating the structure to meet FEMA flood requirements. Additionally, they propose to move the barn structure further away from the resource on the southwest side of the property (Assessor's Tax Map 34, Block 2, Lot 2 in the Goose Rocks Zone). *Case Manager: Ed Francis*

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

#### **Other Business:**

As noted previously, Ms. Pearlmutter wished to discuss how the Findings of Fact have been written, specifically when an agent is listed as the applicant and not the owner of the property. Ms. Pearlmutter explained Planning Board members' jurisdiction comes from the Town of Kennebunkport and the Town of Kennebunkport only has jurisdiction over the property of Kennebunkport and the owners of that property. Referring to Article 10.8.F., Ms. Pearlmutter read: "The applicant's case shall be heard first. If the applicant is not present at the hearing, any person acting as the applicant's representative must demonstrate that he/she has written authority to appear on the applicant's behalf" and noted which is why the Board asks for authority. Ms. Pearlmutter also commented that the application is made on behalf of the owner, and it is the owner's application which the agent can sign but basically our jurisdiction is over the owner. In going through the various guidelines and conditions, Ms. Pearlmutter added it states, "the applicant shall notify the Planning Board prior to transfer of rights," etc. and we have no authority over the agent to enforce that. Ms. Pearlmutter concluded that putting the agent as the applicant is not legally correct.

Mr. Francis explained his interpretation of the application process and completing the Findings of Fact is that the application the Board approves is submitted by the applicant/authorized agent and suggested perhaps the site plan application form needs to be changed so that it is more apparent who is the owner, who is the agent, and who is the applicant.

A lengthy and detailed discussion among the Board members, Mr. Gilliam and Ms. Radley occurred.

Mr. Gilliam noted that the owner of the property needs to be on the Findings of Fact so it is searchable in the Registry of Deeds.

After more discussion, the Board members agreed to edit and correct the three sets of Findings of Fact to be read at this meeting and initial those changes.

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

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