

Kennebunkport Planning Board
October 21st, 2020 ~ 6:00 PM
Virtual Meeting (Via Zoom)

A meeting of the Planning Board was held on Wednesday, October 21st, 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, John Harcourt

Approval of Minutes: Mr. Simmons read his corrections to the Board to be incorporated in the minutes from the last meeting. Ms. Pearlmutter made a motion to approve the minutes as amended from the October 7th, 2020 Planning Board meeting. Mr. Simmons seconded the motion, and the vote was unanimous.

Items:

1. **200803 Robert Williamson / Atlantic Environmental, LLC, Authorized Agent** – Site Plan Review – **Findings of Fact** - for approval to do maintenance on the bulkhead, which is failing, by placing pressure treated timbers and a waler along the face of the existing wall. Riprap will also be installed. (47 Ocean Avenue, identified as Assessor's Tax Map 10, Block 1, Lot 7 in the Riverfront, Shoreland and Resource Protection Zones.) *Ed Francis, Case Manager*

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

2. **200802 Kennebunkport Heritage Housing Trust 2 / Sebago Technics, Authorized Agent** – Final Subdivision Review – **Continued Public Hearing** – for approval to create 4 lots consisting of 2 single family dwellings and 2 duplex units on a 4.47 acre parcel. (Main Street, Assessor's Tax Map 22, Block 9, Lot 21 in the Cape Porpoise West Zone.) *Tom Boak, Case Manager*

Mr. Boak introduced the Agenda item and acknowledged receipt of a revised cost analysis as agreed upon by the Applicant and the engineering firm conducting the peer review.

Mr. Steve Doe, along with Patrick Clancy and Attorney Ralph Austin addressed the Board and noted there were several items submitted to the Board prior to this meeting. In addition to the revised cost estimate, Mr. Doe stated some lease agreements and a letter from Attorney Austin regarding the Maine Department of Transportation's discontinuance of the Right of Way were also submitted.

Mr. Boak asked the Board members if they had any questions for the Applicant.

Mr. Simmons asked the Applicant if they could verify whether the material quantities for the roadways align with the cross section in Appendix R of the Subdivision Regulations. Mr. Doe responded he assumes those figures were checked during the Peer Review which was very thorough.

Mr. Simmons also asked if there were going to be any streetlights or fire hydrants. Mr. Doe replied there will not be any streetlights and the fire hydrants are on Main Street.

Mr. Simmons noticed lots 1 & 2 are close to Route 9 and asked if they needed any special roadway barriers or guardrail devices in case of a runaway 18-wheeler going by. Mr. Doe responded the houses are away from the road and there is a ditch in between the road and the dwellings.

There were no other questions. Mr. Boak closed the Public Hearing.

Referring to Mr. Simmons' request to verify the material quantities, Attorney Austin stated that information has been reviewed by the town's engineer and if the Board would like them to do one final review, he would assume it would occur at the time of obtaining the building permit or issuing of the performance bond before work can be done. Mr. Boak offered to add a statement as such to the Findings of Fact.

Ms. Pearlmutter made a motion to approve the Application. Mr. Francis seconded the motion, and the vote was unanimous. Mr. Harcourt had voting privileges for this Application.

Mr. Boak announced the Findings of Fact will be read at the next Planning Board meeting.

3. **200901 Earth Restaurant / Sebago Technics, Authorized Agent** - Site Plan Review - **Public Hearing** - for approval to change the use of the restaurant from seasonal use to year-round use. (356 Goose Rocks Road, Assessor's Tax Map 38, Block 1, Lot 8 and Map 37, Block 3, Lot 3 in the Free enterprise Zone.)

Mr. Boak introduced the Agenda item. Mr. Scott Mahoney joined the meeting.

Mr. Steve Doe addressed the Board stating prior to this meeting he submitted some corrections to the Application and cover letter along with a reply regarding the freezing of the septic system. Mr. Doe also added there will be no increase in seats or employees at the restaurant.

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

Mr. Simmons made a motion to approve the Application. Ms. Pearlmuter seconded the motion, and the vote was unanimous. The Findings of Fact will be read at the next Planning Board meeting.

4. 201001 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent – North Campus – Site Plan Review – **Initial Review** – for approval to demolish all existing buildings and parking areas and construct two new buildings 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.)

Mr. Boak introduced the Agenda item.

Mr. Elliot Siderides along with Bill Walsh and Silas Canavan of Walsh Engineering, Attorney Ralph Austin, and John Martin of the Boughton Hotel Corporation addressed the Board.

Mr. Siderides of Windward Development gave a lengthy detailed presentation on the newly defined North Campus of the property, first providing a history of the property since it was developed in 1872 by John Crookshank. Mr. Siderides’ slideshow presentation included several historical pictures of the property as well as sketch drawings of the proposed master plan to create an entrance to the campus that has visual connections across the property and to create an entrance to the Cape Arundel neighborhood. The entrance, Mr. Siderides continued will contain a green oval organizing the parking that sits back off the road with utilities moved underground and sidewalks. In developing this proposal, Mr. Siderides explained they wished to improve the non-conformities on the property as well as the parking, crosswalks and sidewalks for safety. Continuing his presentation, Mr. Siderides discussed the dimensions and elevations of the proposed new buildings as well as the impervious surface calculations and expansion of less than the allowed 30%. Mr. Siderides also provided pictures of the sample lighting and posts as suggested by the town’s Lighting Committee.

Mr. Bill Walsh addressed the Board and gave a brief explanation with the use of several site plans displayed for the viewing audience on the property lines and setbacks and the proposed new buildings to be constructed.

Mr. Silas Canavan addressed the Board and shared site plans illustrating the proposed impervious surfaces and gave a brief presentation on the building’s footprint and floor area.

Attorney Ralph Austin gave a brief overview of the non-compliances on the property as it exists today and explained this proposal is far less non-conforming and the Board needs to decide if this meets the requirement of “greatest practical extent” as stated in the Land Use Ordinance. Mr. Austin added that the circular drive in between the two campuses is not only important for aesthetic purposes but also in eliminating safety problems for pedestrians on Ocean Avenue.

Mr. Boak confirmed with Mr. Gilliam that the property is not in the Shoreland Zone and asked if they will be seeking approval from the Maine Department of Environmental Protection. Mr. Canavan replied they will be applying for all agency permits as required.

As mentioned in Mr. Siderides presentation, Mr. Boak reminded the Applicant that the Board will need written input from the Lighting Committee.

In reviewing Section 7.7 of the Land Use Ordinance, Mr. Boak commented the Applicant will need reports from the Fire Chief and Fire Marshall and asked if the space between Mabel’s and the proposed new building will satisfy the 20-foot setback for the walkway. Mr. Siderides responded they have had preliminary meetings with the local fire and police chiefs and have submitted their comments to the Code Enforcement Office. Regarding the side yard setback with Mabel’s, Mr. Siderides explained there is currently no side yard setback and they are proposing a 15-foot setback where the nature walk starts. Mr. Boak remarked the 15-foot setback is still less than the 20-feet required and asked if they are seeking to grandfather that piece and ask for a waiver. Mr. Austin reminded the Board that again they are seeking to meet the “greatest practical extent” requirement.

Mr. Boak also commented there will need to be a peer review done for this Application. Mr. Gilliam responded he will work with the Applicant to set that up.

Mr. Boak also asked what the timing was for this Application and how all the phasing will occur. Mr. Siderides replied once the approval process ends the clock starts ticking and the thought is to do most of the road and infrastructure work in the off season, from September to May to cut down on road traffic. Mr. Boak then asked Mr. Gilliam what this means for the town if this is a multi-year process. Mr. Gilliam offered one of the things that would be helpful is to see some type of a timeline for the proposed constructions and to leave some space where they could put some permit dates in to be able to see how the schedule lays out. Mr. Siderides agreed to provide that information.

Mr. Gilliam added since this potentially could be a 5-year project it would be helpful to have a timeline to discuss with the Town Attorney just to be clear what the Applicant’s rights are. Mr. Austin agreed with Mr. Gilliam that having a legal opinion would be good.

Ms. Pearlmuter volunteered to be the Case Manager for both of the Boughton Hotel Corporation’s Applications.

Ms. Pearlmutter noted the first page in the Application incorrectly lists the property address as 140 Ocean Avenue and asked the Applicant to clarify that.

Ms. Pearlmutter asked to receive a letter from the Fire Marshall to make sure it is approved for emergency vehicle access and that the fire hydrants are in the right location. For clarification, Mr. Gilliam stated this part of the Site Plan Review process is to obtain approval from the Fire Chief for items relevant to the site itself. The state Fire Marshal's approval is prior to the approval of the building permit since it is approving travel distances down corridors, sprinkler locations, and egresses which is not a condition within the standard of the Site Plan Review procedure.

Noting the topography of the land, Ms. Pearlmutter asked if there will be any curbing installed in the parking area at the corner of Colony Avenue and Ocean Avenue since the land slopes down and cars will be pointed downward. Mr. Canavan replied they will be cutting that area quite a bit and the parking lot will slope almost parallel to the transition of Colony Avenue to Ocean Avenue and the cars will be parking almost perpendicular to the direction of the slope. There will be curbing along that edge of the parking lot, Mr. Canavan added.

Ms. Pearlmutter also commented the corner of the parking lot towards Mabel's may be in a flood zone as she has noticed that area does flood sometimes. Mr. Canavan responded he doesn't have the flood maps at the moment but that is something he can look into and reply back to the Board.

Regarding the proposed walkway along the creek, Ms. Pearlmutter asked if there will be some sort of railway along the path. Mr. Siderides replied yes they are developing it as it is a steep drop and are working with the Code Enforcement Office to make sure the footings for the rails are not within the setback and will provide more information as that is finalized.

Noting the number of trees and grassy areas on the property, Ms. Pearlmutter asked if they will be using salt on the parking areas in the winter. Mr. Siderides responded they try not to use salt on the roadways and surfaces and if they do it is a diluted material in order to preserve the driveway material. Mr. Canavan added the entire parking lot is curbed and all the landscaped islands would be elevated from the pavement elevation so any runoff would end up in the catch basins not the landscaped areas.

Mr. Francis agreed with Mr. Boak's previous statement that the property is not in the Shoreland Zone and noted the Applicant's narrative needs to be corrected to reflect that. Mr. Siderides agreed to eliminate that reference of the Shoreland Zone overlay in their narrative and their drawings.

Mr. Francis questioned if the 3 structures were considered one building each being connected with a walkway between them. Mr. Siderides explained when you're designing a building around an oval you're dealing various building heights and grades. Mr. Austin added that the Code Enforcement Office considers it to be one building. Mr. Francis summarized that for the purposes of establishing elevations and heights, the 3 connecting structures are considered one building. Mr. Gilliam added that building elevations is a logical application why one would want to consider this as one building. Mr. Austin offered to re-submit a short narrative on the rationale how this building was designed and to be consistent throughout the Application how they refer to the building.

In trying to ascertain the Applicant's argument that this proposal meets the "greatest practical extent" requirement in the Land Use Ordinance, Mr. Simmons asked if it was possible to slightly shift Colony Avenue to the south so that buildings 1A, 1B, and 1C would be shifted south and out of the wetland area. Mr. Austin replied he's not sure they can change the location of Colony Avenue as it is a town Right of Way. Mr. Gilliam added there is the issue of having a landowner in between the Applicant's 2 parcels with the landowner being the town and offered for the greatest practical extent the Board could think of the Right of Way as a hard line and as not a practical alternative to relocate the town ownership of the Right of Way.

Mr. Gilliam reminded the Board members that the purpose of tonight's meeting is determining completeness of the Application.

Mr. Harcourt expressed his concern over the number of new hotel rooms and if that would generate excess traffic on both Colony Avenue and Ocean Avenue. Mr. Canavan replied they have not done a formal traffic study given relatively minor increase in rooms and would not expect there to be an adverse increase in traffic. Mr. Siderides agreed to consult a traffic engineer and provide that information to the Board.

Mr. Francis made a motion the Application is complete. Mr. Mahoney seconded the motion, and the vote was unanimous. Mr. Boak announced a Public Hearing would be held at the next Planning Board meeting on November 4th, 2020.

5. 2.01002 Boughton Hotel Corporation d/b/a The Colony Hotel / Windward Development, Authorized Agent – South Campus – Site Plan Review -- Initial Review – 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.)

Mr. Boak introduced the Agenda item.

Mr. Elliot Siderides of Windward Development again addressed the Board and shared several maps and site plans on the screen for the viewing public as he gave a detailed presentation on the Application for improvements to be made to the South Campus of The Colony Hotel. Mr. Siderides outlined the non-conformities of the property as it exists currently and showed on the site plans which buildings were to be demolished and replaced with 2 green roofed buildings and a conventional building that will not exceed the 30 foot height requirement.

As part of his presentation, Mr. Siderides also discussed the table explaining the existing and proposed parking spaces as required by the Land Use Ordinance. Mr. Siderides stated they are not expanding any rooms on the campus and have allotted for 27 excess spots. Mr. John Martin of the Boughton Hotel Corporation addressed the Board and explained they looked at the overall use and made allowances for people who aren't staying at the hotel but come to dine at the hotel. Mr. Martin added the exiting southern campus parking is hosting all employees for the hotel and the dorms but also those who come in daily to work.

Mr. Francis suggested the Applicant update their parking analysis to account for all guests, employees who both dorm on campus and travel to the site to work, and patrons of the dining room that are not hotel guests in accordance with Article 6.9 in the Land Use Ordinance. Mr. Martin and Mr. Austin agreed to provide that analysis to the Board.

Mr. Siderides continued with his presentation discussing the west elevation of the Meeting House which will be identical in size to the Carriage House with a connection from that building to the kitchen in the commissary.

Mr. Bill Walsh addressed the Board to explain the utilities will be new underground electrical through Colony Avenue to the proposed new buildings and the stormwater will not change much post-development.

As for the non-conformities on the south campus, Mr. Austin stated they are eliminating the non-conformities with no change in usage.

Mr. Boak confirmed with Mr. Gilliam that this Application has been distributed to all town boards and commented the Planning Board would need a letter from the Fire Chief, Police Chief, Public Works Superintendent, and possibly from the Water District. Mr. Gilliam agreed stating there have been some conversations with the Water District in this regard and know the Applications have been presented to those other officials. Mr. Gilliam also added they would also normally hold a staff peer review for both Applications. Mr. Austin added the Fire Chief has already submitted a letter. Mr. Siderides stated he did site walk with Police Chief Sanford and will forward his letter from Chief Sanford to the Board.

Ms. Pearlmuter commented it was difficult to visualize the entrances with the topography of the area. Mr. Siderides offered to provide more detail on the entrances to the kitchen and lower levels as well as the entrance to the dormitories and provide elevations for each along with cut through sections to show the heights of the green buildings.

Mr. Mahoney asked the Application to briefly articulate what the green dorms would look like. Mr. Siderides stated the buildings are underground, made of concrete, reinforced concrete, and steel with one face of them showing. The buildings are approximately 8 feet 6 inches in height and have another 12 inches in structure of steel reinforced roof with rubber to seal it, on top of that would be another 12 inches of soil for a total height of 12 feet with grass, Mr. Siderides continued. The buildings are energy efficient, solid structures, sound proof and a great way to build if you have the right site with the topography that slopes down, Mr. Siderides concluded, so the hotel guests and neighbors will see a green roof structure. Mr. Walsh added these buildings also help from a stormwater perspective as well with runoff.

Ms. Pearlmuter made a motion the Application is complete. Mr. Simmons seconded the motion, and the vote was unanimous. Mr. Boak announced a Public Hearing will be held at the next Planning Board meeting on November 4th, 2020.

6. Other Business: Review Proposed Amendment to Kennebunkport LUO Concerning Tents.

Mr. Boak announced he would not be attending the Board of Selectmen's meeting but will need at least three Planning Board members to attend. Mr. Gilliam explained the proposed amendment is a modification to a portion of the Land Use Ordinance that governs temporary tents and essentially comes from the reaction to COVID-19 to allow for temporary placement of tents between Memorial Day to Labor Day with a 30-day limit outside of that season.

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