

**Town of Kennebunk  
Planning Board  
Meeting Minutes  
Monday, June 27, 2016**

**Present:** Chris MacClinchy – Chair; Richard Smith – Vice-Chair; David Smith – Secretary; Robert Metcalf; Janice Vance – Alternate

**Not Present:** Matthew Randall

**Also Attending:** Judy Bernstein – Town Planner

**1. Open Meeting**

C. MacClinchy opened the meeting at 7:02 PM. Today is Monday, June 27, 2016.

**2. Approval of Minutes of Previous Meetings**

Approval of Meeting Minutes to be held until end of meeting.

**3. Shoreland Zone Application of Jonathan Grinder Regarding Proposed Lot Division of 49 Great Hill Road**

J. Bernstein summarized this application. The applicant is Silas Canavan of Walsh Engineering. The property owners are Jonathan Grinder, Timothy Grinder, Elizabeth Grinder-McLean, and the Grinder Family Trust. The property is located at 49 Great Hill Road; Map 67, Lot 114. The applicant is looking to divide the lot into two lots and relocate the cottage that is currently on the property so that it meets setbacks to the greatest extent possible. The Town ordinance allows a property owner to draw a line between buildings as long as they show that they have met standards to the greatest possible extent. There are no comments from the Town Engineer on this applicant. Also enclosed in the Board packet is a copy of the relevant section from the ordinance for the Board to review in terms of address and voting on this application, especially in terms of meeting setbacks to the greatest extent possible and in terms of landscaping that is being kept and what may need to be replaced.

Norman Chamberlain of Walsh Engineering presented on behalf of the applicant. The plan has changed very little from what the Board was shown the last time they presented this application. The biggest change is that they are now planning to connect the cottage to the existing septic for the house and build a new septic for the house. In terms of the landscaping, they are moving 12 shrubs and 1 tree. The area where the cottage is currently will be reclaimed as lawn. There is a hedgerow of roses, but there are no plans for that at this time. One more change refers to the fact that the cottage is currently located 20' from the high water line and 20' from the leach field. The applicant is changing the note to read that the cottage will be located 20' from the leach field or with approved variance as they are not 100% certain of the boundary of the leach field. Finally, they are removing some of the planned driveway, to maintain the limit of 20% impervious surface.

D. Smith noted that he sees the note that Albert Frick determined the intended septic for the repositioning of the cottage is in good condition, however he doesn't see any note as to what is the capacity.

Mr. Chamberlain answered that both systems are, or will be, designed for 3 bedroom homes.

D. Smith asked if the septic would be adequate for a possible change of use of this seasonal cottage.

Mr. Chamberlain answered that the systems will be adequate for the structures are they are currently designed. If the owners would like to expand the structures, they would have to reevaluate the septic.

J. Bernstein asked if the applicant is proposing that the footprint of the structures could expand.

Ralph Austin, attorney for the applicant, answered that they are not proposing to expand the footprint. However, if in the future an applicant would want to expand, they will need to come back to the Planning Board.

D. Smith asked what the intention for the abandoned septic system is.

Mr. Chamberlain answered that as far as he knows, it will be left in place.

D. Smith questioned if there is any danger for cave-in if any vehicles were to drive over it.

Mr. Chamberlain replied that he doesn't know. He went on to state that he also doesn't know that they would be able to get a vehicle over the abandoned septic.

D. Smith explained that he doesn't want to see any possible cave-in problems. He doesn't want to put the applicant to additional expense, but would be concerned about

potential future liability. He added that they would need to know if this is a potential problem. They will also want to know if there is any access to fill it in.

Mr. Chamberlain answered that it is just a leach field, so there is no access.

D. Smith stated that he would like to see some assurance that we know what we are dealing with.

Both Mr. Chamberlain and Mr. Austin stated that after a field determination of the potential liability, if practical they will agree to fill the abandoned leach field.

R. Metcalf noted that is also concerned about the septic. The applicant will need to ID any structures, such as cesspools. They want to make sure that this isn't a danger for the future. He continued that in regards to the footprint expansion, there needs to be a note on this plan which specifies that if they want to expand they will need to return to the Planning Board. He also had a note in regard to back filling the current location of the cottage. Is there a slab in the basement currently?

Mr. Chamberlain answered that he didn't know.

R. Metcalf continued that if there is a slab in the basement, the applicant will need to break it up before the fill the hole. They need to be sure that it will not hold water. He then asked if the design for the new septic is structurally sound to have the leach field moved under the driveway.

Mr. Chamberlain answered yes.

R. Metcalf commented on the landscaping plan. The ordinance calls for native plants to be used. Even though the plants currently on the lot are not native, this isn't his concern. His concern is where they are located on the plan. The plan is calling for the plants to be put in an area that is too wet. They will have wet feet and die. If the Board approves this plan tonight, he would like to condition that the landscaping plan is revised and brought to the Town Planner.

R. Smith stated that he has no questions as he missed the site walk.

J. Vance stated that she has a question on the driveways. She noted that the plan calls for them to reduce the size of the driveways to keep within the standards for impervious surfaces. Would the applicant consider reducing them further, as they can be reduced and still provide the structures with plenty of access.

Mr. Chamberlain answered that they do meet the 20% rule for the standard already. He continued that generally, residents like to have as much parking available as possible for when they have guests visit.

J. Bernstein noted that there is no parking on the street on Great Hill Road, so all parking would have to be on the property.

J. Vance noted that if they won't reduce the size of the driveways, could they please add some plantings to the end of the driveways to catch the water from the driveway run-off.

Mr. Chamberlain answered they can put some plantings at the end to help reduce any run-off issues.

C. MacClinchy stated that most of his questions have already been answered. He did note that he was confused at the reference to the utility easement over Lot 2 for Lot 1; but then he saw it was for overhead utilities.

Mr. Chamberlain answered that they will also need to use that easement for some of the septic but that plan isn't finalized yet. They were waiting to see if they would receive approval at tonight's meeting.

C. MacClinchy asked if the new septic line is going around the back of the house to get to the new system.

Mr. Chamberlain answered yes it was. This was to avoid crossing the water service line. They want to maintain separation between water and septic.

C. MacClinchy noted that this is unusual and he had some concern that the owner may hit the septic line if they are doing any digging in the yard.

D. Smith asked if Mr. Chamberlain could describe where the highest annual tide is.

Mr. Chamberlain answered that the high tide line on the plan is at or close to the highest annual tide.

R. Metcalf asked if there will need to be pumps for piping the septic around the building.

Mr. Chamberlain answered that he doesn't know, but that it will likely depend on the level of the ground water.

D. Smith asked if the existing house will need to be raised.

Mr. Chamberlain answered that his understanding is that the house is already raised.

Mr. Austin added that if the house is torn down, it will need to be raised to whatever the current standards are.

D. Smith stated that while this is not an approval item, he would like to have drawing added which reflect where the septic line will be located around the house.

Mr. Austin answered that they can do an As Built drawing after construction.

J. Bernstein asked if the Board would take comments from the public. She originally thought that this application was going to be a Special Exception, and so she gave notice to the abutters to this property.

C. MacClinchy answered that the Board will take comments from the public.

Natalie and Fred Richdale spoke. Mrs. Richdale passed a picture of the view from her home for the Board to reference. The Richdale's live next door to the property at 49 Great Hill Road. She asked if the ordinances take into consideration spoiling people's view. The photo shows where the view will be changed by the proposed move of the cottage. She asked if it would be possible for the cottage to be a little closer to the road, so it won't disturb the neighbor's view as badly.

Mr. Richdale added that his other thought is in regards to the plantings proposed. Where the plants are currently proposed to go would also impact their view, so they would like to request that the plants be kept short. However, this may be a moot point as the landscaping plan will be changed.

J. Bernstein answered that unfortunately, the ordinance does not take into regard the obstruction of view for the abutting properties.

R. Metcalf added that they will need to maintain the state code which requires keeping the structure 20' from the existing leach field. So they would not be able to allow the cottage to be moved closer to the road.

The Board reviewed the Findings of Fact: Shoreland Zone Permit for this application:

**Town of Kennebunk**  
**Planning Board Findings of Fact: Shoreland Zone Permit**

PROPERTY OWNER  Jonathan Grinder, Timothy Grinder, Elizabeth Grinder McLean, & Grinder Family Trust	SHORELAND ZONING DISTRICT  SZ <u>  X  </u>  RP <u>  X  </u>
ADDRESS OF PROPERTY  49 Great Hill Road	WETLAND FILL APPROVED?  <p style="text-align: center;">_____ 0 _____ SQ. FT.</p>

**FINDINGS OF FACT AND  
 CONDITIONS OF APPROVAL**

BD. OF APPEALS            \_\_\_\_\_

PLANNING BOARD          X  

INFORMATION REVIEWED BY PLANNING BOARD:

- Shoreland Application/Plan dated latest plan date June 17, 2016
- Shoreland Zoning Performance Standards Review (attached)
- Staff reviews (egr., fire, planner) : 6/27/16
- Conservation Commission : \_\_\_\_\_
- State/Fed. Reviews: application for Permit by Rule filed with DEP on 5/10/16
- Site Walk: 6/4/16

CONDITIONS:

1. Note to be added to the plan to inspect the abandoned septic to determine if it will need to be filled to prevent future cave-in liability.
2. Note to be added to the plan to indicate current foundation will need to be inspected to determine if it will act as a container for water. If so, it will need to be broken up so does not hold water in addition to restoring the lawn over the foundation pieces.
3. "As Built" drawings to be created and filed with this plan to show the path of the septic system supply line.
4. Updated planting plan to be created and provided to Town Planner; including addition of plantings at the end of the driveway to act as filter for water runoff.
5. Note to be added that only certified organic fertilizers, pesticides, and herbicides to be used on the property.

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Code Enforcement Officer

Date Approved

Please note that Shoreland Zone permits require approval of the Code enforcement Officer prior to any site disturbance.

## CONCLUSIONS

Pursuant to the requirements of Article 10, Part A., Section 3.C., Filling, Grading, Lagooning, Dredging:

Any work done under this subsection shall not begin until a permit has been issued for the proposed activity by the Code Enforcement Officer. The applicant shall satisfy the Code Enforcement Officer.

Subsections (1) – (9) apply to the Code Enforcement Officer's review of the permit application. The Code Enforcement Officer has issued a permit for the work and so has determined that these standards have been met.

- (10) There shall be no filling of wetlands, except as approved by the Planning Board or Site Plan Review Board, under the provisions of Article 10, Sections 3.E, 3.G and 3.P as applicable, and as approved by the U.S. Army Corps of Engineers and by the Department of Environmental Protection, as applicable.

Note: A person performing any of the following activities shall be required to obtain a permit from the Department of Environmental Protection pursuant to Title 38 M.R.S.A., Section 480-C, if the activity occurs in, on, over, or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them as a result of:

- a) Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- b) Draining or otherwise dewatering;
- c) Filling, including adding sand or other material to a sand dune; or
- d) Any construction or alteration of any permanent structure.

**Section 3.E.** Piers, Docks, Wharves, Breakwaters, Causeway, Marinas, Bridges, and Uses Extending Over or Below the Normal High Water Line of a Water Body or Within a Wetland.

- (1) Any new permanent, temporary, or material expansion or alteration of a pier, dock, wharf, bridge, or other structure or use extending over or below the normal high water line of a water body or within a wetland shall require a building permit; subject to prior Special Exception review and approval by the Planning Board. Any new permanent

structure, or expansion thereof, shall require a permit from the Department of Environmental Protection (DEP) pursuant to the Natural Resources Protection Act, 38 M.R.S. A. Section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters. In addition, the applicant shall be required to obtain any other federal and state approvals that may be needed, including evidence of a submerged land lease from the Maine Bureau of Public Lands, if applicable. Prior to Planning Board's final action on any Kennebunk River related application, a copy of the application shall be forwarded to the Kennebunk River Committee and Harbormaster for review and comment; which shall be made part of the Planning Board's record.

- (2) In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:
- (a) For the purpose of the protection of property against flood and/or storm damage and the protection of identified sensitive environmental habitats, piers, docks, wharves, walkways, ramps or floats shall not be permitted in any areas identified as Velocity Zones as shown on the most recent Flood Insurance Rate Map produced by FEMA,
  - (b) No new permanent, temporary or material alteration of a pier, dock, wharf, bridge, or other structure shall be permitted within the wildlife habitat of species considered endangered or threatened by the Maine Department of Inland Fisheries and Wildlife or U.S. Fish and Wildlife Service,
  - (c) Piers, docks, wharves, walkways, ramps and floats shall be constructed to meet the standards for "Appurtenant Structures" as set forth in FEMA 55, Coastal Construction Manual, third edition, June 2000, as amended. The area of a float or floats shall not exceed 200 square feet, except that when shared by two or more abutting property owners as delineated in 10.3. E. (d), two such floats may be used,
  - (d) Piers, docks, wharves, walkways, ramps or floats require the lot to have a minimum of 60 feet of shore frontage. If a property owner does not meet this standard, the applicant may co-apply with an abutter or abutters and must demonstrate that in combination with such abutting property, this standard will be met. The agreement for shared maintenance, and repair costs, outlining pier location and shared access, including any property easements, must be recorded with the York County Registry of Deeds. Once a property owner has entered into a shared pier agreement, that property owner forfeits the right to build his or her own pier. Subdivisions and Condominium Homeowners Associations with 60 feet or more of frontage are allowed to build only one pier and if the frontage is at least 100 feet, may have a maximum of two floats. All members shall use that pier jointly.
  - (e) No portion of a pier or float shall be located within 25 feet of a property line or property line extension seaward, unless the pier is a shared pier as per 10.3.E.

- (d),
- (f) Access from the shore shall be developed on soils appropriate for such use and constructed so as to control erosion and avoid adverse impact on coastal or freshwater vegetation. Appropriate pile installation techniques shall be utilized to minimize disturbance of sediments. Any ramp, walkway or pier shall be at least one foot above the ground, as measured from the lowest part of the structure. Deck boards shall be a maximum of 6 inches in width and spaced ½ inch apart. Paint, stains and water proofing shall not be applied. Coastal bank shall be protected from erosion by the use of suitable stairs no wider than four feet,
- (g) The location of any structure shall not interfere with existing developed or natural beach areas, nor impede legitimate passage along a beach,
- (h) The facility shall be located so as to minimize adverse effects on fisheries.
- (i) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A noncommercial ramp, pier, walkway, dock or wharf shall not be wider than four feet. Pairs of pilings or supports shall be not closer than ten feet,
- (j) Lighting to illuminate walkways, ramps and floats only, and, any such lighting must meet the private outdoor lighting standards of this ordinance,
- (k) No new structure shall be built on, over or abutting a pier, dock, or other structure extending beyond the normal high waterline of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity,
- (l) New permanent piers and docks on non tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the DEP, pursuant to the Natural Resources Act , 38 M.R.S.A., Section 480-C,
- (m) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high waterline of a water body or within a wetland shall be converted to residential dwelling units in any district,
- (n) Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure,
- (o) Any pier, walkway, dock or wharf, including ramps and floats, shall be no longer than a total length of 100 feet nor extend more than one fifth (1/5) of way

across a body of water. The Planning Board may, upon review, modify the length requirement if it is demonstrated that no other reasonable alternative exists to provide water access,

- (p) Off-season storage of temporary floats, ramps or walkways must be on upland areas so as to not damage marine or freshwater vegetation. Caution must be exercised to avoid damage to shoreline banks and shoreline vegetation. Ramps may be stored on piers or docks. All stored items must be properly and safely secured so as not to become a wind or wave borne hazard in a severe storm or hurricane, and
- (q) Enlargements, alterations, repairs, or the rebuilding of nonconforming piers, docks, walkways, wharves, ramps or floats shall be governed by the provisions of Art. 5. of the ordinance.

**Conclusion:**

Standard is: Met \_\_\_\_\_ Not Met \_\_\_\_\_ N/A  X  Met with the following conditions \_\_\_\_\_;

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**10.3. G. Roads, Driveways and Parking Areas**

The following standards shall apply to the construction of roads, driveways, parking areas and drainage systems, culverts and other related features.

- (1) The Planning Board, (or the Site Plan Review Board or Staff Review Committee in the case of site plan applications), may approve a road, driveway, and/or parking area plan which is exempt from the setbacks imposed by Article 8, Section 16.D upon a finding that no reasonable alternative exists, and upon a clear showing by the applicant that no greater setback can be achieved, and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed as to avoid sedimentation of the water body, tributary stream, or wetland, On slopes of greater than twenty (20) percent, the road, driveway and/or parking area setback shall be increased by ten (10) feet horizontal distance for each five (5) percent increase in slope above twenty (20) percent. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section D. (1) except for that portion of the road or driveway necessary for direct access to the structure.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

Existing driveways to be reduced in length. No other change requested or approved.

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- (2) Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

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- (3) New roads and driveways are prohibited in a Resource Protection District, except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

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- (4) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained herein.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

No new driveway proposed.

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- (5) Road and driveway grades shall be no greater than ten (10) percent, except for short segments of less than two hundred (200) feet.

**Conclusion:**

Standard is: Met \_\_\_\_\_ Not Met \_\_\_\_\_ N/A X Met with the following conditions \_\_\_\_\_;

No new driveway proposed.

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- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet, plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

**Conclusion:**

Standard is: Met X Not Met \_\_\_\_\_ N/A \_\_\_\_\_ Met with the following conditions \_\_\_\_\_;

Some additional plantings to be added at the end of the driveway to help with filtering of water runoff.

As noted by the applicant, no new structures are to be added at the end of the driveway.

- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient column or heat to erode the road, driveway or ditch. To accomplish this, the following shall apply:

- (a) Ditch relief culverts, drainage dips and associate water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

<u>Grade</u>	<u>Spacing</u>
(Percent)	(Feet)
0-2	250

3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

- (b) Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.
- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

**Conclusion:**

Standard is: Met \_\_\_\_\_ Not Met \_\_\_\_\_ N/A X Met with the following conditions \_\_\_\_\_;

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- (8) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**Conclusion:**

Standard is: Met \_\_\_\_\_ Not Met \_\_\_\_\_ N/A X Met with the following conditions \_\_\_\_\_;

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**P. Shoreland Mitigation Plan**

The Planning Board (or Site Plan Review Board in the case of Site Plan Application) may permit minor wetland fills and/or development within the shoreland setback area upon a positive

finding that each of the following criteria have been met:

- (1) for projects that fill less than an acre of Wetland the applicant has made a clear showing that:
  - (a) no reasonable alternative exists and that no greater setback from the shoreland/wetland area can be achieved, and:
  - (b) that project meets all applicable Federal and State permit requirements, and provides evidence that the agency has reviewed the application.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

Applicant has shown that the new structure shall be no closer and to the Resource and has been pulled back as far as possible. Applicant has also shown that they have applied for a Permit by Rule.

- (2) Additionally, for projects filling an acre or more of wetland the applicant shall submit a Shoreland Mitigation Plan which:
  - (a) delineates and evaluates the functions and values of the wetland/shoreland site being impacted by the proposed development,
  - (b) addresses the impacts to the aquatic resource, and
  - (c) proposes a plan for replacing the loss of the aquatic resource and/or buffer area by creating, restoring, and/or enhancing similar aquatic resource functions and values, either within the development site or on a site nearby.

**Conclusion:**

Standard is: Met  Not Met  N/A  Met with the following conditions \_\_\_\_\_;

\_\_\_\_\_

\_\_\_\_\_

**DECISION:**

**Based upon the above findings and conclusions, the Board finds that the Applicant has/has not met the requirements for Planning Board/Site Plan Review Board Approval under Article 10, Sections 3.E, 3.G and 3.P as applicable,**

and the application is therefore APPROVED/DISAPPROVED.

**CONDITIONS OF APPROVAL, IF ANY:**

1. Note to be added to the plan to inspect the abandoned septic to determine if it will need to be filled to prevent future cave-in liability.
2. Note to be added to the plan to indicate current foundation will need to be inspected to determine if it will act as a container for water. If so, it will need to be broken up so does not hold water in addition to restoring the lawn over the foundation pieces.
3. "As Built" drawings to be created and filed with this plan to show the path of the septic system supply line.
4. Updated planting plan to be created and provided to Town Planner; including addition of plantings at the end of the driveway to act as filter for water runoff.
5. Note to be added that only certified organic fertilizers, pesticides, and herbicides to be used on the property.

**Dated: June 27, 2016**

**Applicable Reviewing Board**

Planning Board  X  Site Plan Review Board \_\_\_\_\_

D. Smith moved to approve the Findings of Fact as conditioned.

R. Metcalf seconded the motion.

C. MacClinchy made J. Vance a voting member of the Board for the duration of the night's meeting.

Vote was 4 approve/ 1 abstain (R. Smith).

#### **4. Shoreland Zone Application of James McCarthy regarding 3 Bayberry Avenue**

J. Bernstein summarized this application. The applicant is John Einsiedler. The property owner is the Julia McCarthy Trust. The property is located at 3 Bayberry Ave., Map92, Lot 50. The request is for the reconstruction/ replacement of a single family home with changes to the driveway and other paved areas which are located within the Resource Protection Zone, and also located within the 100' setback. Also included is a letter from the Town Engineer, who looked at this because the area is entirely within the 100' [set back] area. The Board has already taken a site walk. She continued that she is not sure if the applicant has applied to the State yet.

John Einsiedler presented this application. He stated that during the site walk, he was unable to answer the question about where the large willow tree is located. According to the survey, the tree is 100% on the abutting property. Also, he located 2 more trees on the plan. Also added to the plan are the walks and patios. The biggest change is the circular driveway coming in. The reason for including this is the need for parking spaces as well as to serve as walking area for getting into the house. He also noted that per the owner's request, they have eliminated the note for certified organic pesticides, but left in the note for organic fertilizers.

J. Bernstein asked if he is proposing to use concrete pavers.

Mr. Einsiedler answered yes.

J. Bernstein noted that Public Works wasn't thrilled with dealing with pavers in the Town Right of Way.

Mr. Einsiedler answered that they could change the portion in the Right of Way to asphalt.

J. Bernstein asked if the applicant has calculated the percentage of impervious surface.

Mr. Einsiedler answered that he had done so.

J. Bernstein questioned if this is being constructed in a way to be able to be maintained. There is a sizeable area that is on Town land.

Mr. Einsiedler answered that they can use asphalt for any areas in the Town Right of Way to make for easier maintenance.

J. Bernstein questioned if they have calculations for that.

Mr. Einsiedler replied that they won't need to calculate that because if it is in the Right of Way is it is not part of the property.

C. MacClinchy reiterated that Public Works has concerns about the proposed use of pavers in the Right of Way.

Mr. Einsiedler noted that he isn't sure what the issue is.

R. Metcalf answered that the concern is that on Town owned land, the use of pavers can cause damage to Public Works equipment, especially when plowing during the winters.

C. MacClinchy asked for questions from the Board.

J. Vance and R. Smith both stated that they have no questions at this time.

R. Metcalf noted that there is a hedgerow across the front of the property. He asked what is happening with that.

Mr. Einsiedler answered that it is located on Town land, and so they won't be touching it.

J. Bernstein noted that it isn't shown on the plan.

Mr. Einsiedler answered that the survey didn't show it.

R. Metcalf stated the he has concerns about the sightlines for people backing out of the driveway. He also has concerns about drainage issues. And he noted that they still don't have a definitive answer about trees. He continued that there is not enough information about the grading on the plan to know what is going to happen with the construction. He asked what the radius of the driveway is.

Mr. Einsiedler answered that he will need to recalculate that.

R. Metcalf stated that the Board will need to know if Public Works equipment will track along the planned driveway. Also, they will need to know about the sightlines and what vegetation may need to come out.

Mr. Einsiedler asked who in the Town he needs to talk to about the plants.

R. Metcalf answered that he [Einsiedler] would talk to Public Works.

D. Smith noted that he received a letter from Betsy Smith indicating that the placing of the HVAC and generator on the west side of the structure would make a big difference.

Mr. Einsiedler answered, yes. That note is already on the plan; note #3.

D. Smith clarified that DEP now indicates that any fertilizer, herbicide, and pesticide is called a pesticide as a catch-all term. That is the reasoning behind his request for the note which was removed.

C. MacClinchy noted that the ordinance does not have a requirement for certified organic treatments.

D. Smith stated that he just wanted to have that dialog.

Ellen Wolf, Conservation and Open Space Commission, spoke in regards to this application. She stated that yes, there are organic applications for ticks and all other pests. The Town of Kennebunk is using all natural ingredients in treating all Town owned land. She also cautioned the owner to be aware that all treatments only kill the adult ticks and do nothing for the eggs. So regardless of what application they use, they will need to have a rotation of applications.

C. MacClinchy reminded her that the applicant has already agreed to use certified organic fertilizers and will take into advisement the use of organic pesticides.

D. Smith noted that his concern is that if there is a way to use an organic treatment it would be of benefit to both the owners and the environment.

Mr. Einsiedler stated that the owner asked to have the note changed/ removed because he wanted to be up front that he will do his best, but that he can't promise that the pesticide will be certified organic. This is because they were unable to locate certified organic pesticides, and they didn't want to be in violation of the terms. The pesticides will be used to treat for ticks, and they will make every attempt to use organic. He continued that he has received approval for the DEP applicant and needs to send that to the Town.

C. MacClinchy asked if the applicant is planning to remove and/or replant any vegetation.

Mr. Einsiedler answered that if they do disturb any of the trees they will replant with a similar tree. He added they are also planning perimeter plantings with native species. There is a note regarding the plantings around the house.

C. MacClinchy noted that there is a lot of question regarding the driveway and the vegetation. The plan is not clear.

J. Bernstein questioned how DEP was able to review this plan.

C. MacClinchy asked for clarification about the calculation on the plan. This included the two pathways for tires, but not the strip between?

Mr. Einsiedler answered that is true. Also included in the calculations is the pathway to the door.

J. Bernstein added that Public Works was also concerned about the plan for 2 driveways and 2 cuts instead of 1. She further questioned if they will be asking for additional grades to show the drainage along Bayberry Ave.

R. Metcalf stated that he feels the Board does not have adequate information about the disturbances and the grading to make a determination tonight.

C. MacClinchy added that they will also need additional information from Public Works regarding disturbance within the Right of Way. There are just too many questions at the moment to act on this application.

R. Metcalf asked where is the location of the abutters proposed new driveway in relation to this lot.

C. MacClinchy questioned the addition of "if possible" in the note regarding HVAC and the generator. He would like to see stronger language in the note.

Mr. Einsiedler answered that they are not yet sure where the power is coming into the house. This will determine where they can connect into the house.

R. Metcalf asked how often the generator will need to be exercised.

Mr. Einsiedler answered once a week for about 10 minutes.

J. Vance stated she would like to see more information about disturbances along the bank.

C. MacClinchy answered that the note was that they don't plan to disturb the bank.

R. Metcalf asked if they were planning on planting or supplementing the plantings along the bank.

Mr. Einsiedler answered they will if they need to, but they are not planning to disturb the bank at all.

C. MacClinchy stated that the Board will see the applicant again when they are able to get the rest of the answers they need.

#### **5. Shoreland Zone Application of Jason & Heidi Gilpatric Regarding Filling of Wetland at 136 Western Avenue**

J. Bernstein provided a summary on this application. The applicants/ owners are Jason and Heidi Gilpatric. The property is 136 Wester Ave., Map 72, Lot 189. This is an after-the-fact request for a wetland crossing to install a road to the rear of the property. This project was started, and then Code Enforcement noticed during a drive-by. The applicants are trying to access the rear part of the property, which is substantially wetland. This application has not yet been forwarded to the Town Engineer as there isn't enough detail on the driveway crossing is going to take place. J. Bernstein noted that she also enclosed the timber harvesting standard, as it will likely apply to this situation.

Jason and Heidi Gilpatric presented. They showed the Board photos of what they were trying to do. They are proposing 99' of road at 12' wide. They have completed about 75' so far. The intension is to harvest dead wood to use as firewood. In constructing the road they have used 1.5" crushed rock to keep water flowing through. They have also added some pipe under the road in case of excess water. The gentleman from the DEP indicated that didn't need it, but they did it anyway.

D. Smith asked what the diameter of the pipe is.

Mr. Gilpatric answered he pipe is 8".

J. Bernstein stated she would like to get a cross-section of the culvert that was created.

Mr. Gilpatric answered that there is no moving water where this happened [the culvert has been placed]. He repeated that DEP said they didn't need to do the culvert.

J. Bernstein noted the Board would still like to see a cross section.

D. Smith asked where the stream is in the plan.

Mr. Gilpatric answered that the drive is a couple hundred feet from the stream. It's not even a stream, its dug drainage.

R. Metcalf asked if the Board reviewed this lot when the house was built.

J. Bernstein stated she will need to pull the old plan to review. She asked the applicant if they can show the Board where they were planning to access the trees for harvesting.

Mr. Gilpatric answered that there is an area that may have been a road at one time. It is very dry. This is where they were planning to bring their equipment.

J. Bernstein noted that the Board will want to do a site walk on this.

D. Smith noted that the South East corner doesn't appear to have any rods or monumentation shown on the plan.

R. Metcalf asked if the applicant knows where the irons are that are shown on the plan.

Mr. Gilpatric answered yes.

C. MacClinchy asked how much material they are using in constructing this road to cross the wetland. How deep is it?

Mr. Gilpatric answered that it varies. It is likely a foot deep in places. So far they have used about 18 yards of crushed stone; and will likely use another 18 yards to complete the project.

D. Smith asked if they have any plans to develop the upland area in the back of their property. If so, they will need to come back to the Board before doing any further development.

C. MacClinchy asked if there were any other questions from the Board.

J. Vance and R. Smith noted they will wait for the site walk.

R. Metcalf stated that he would like to see the file from when they first looked at the site.

J. Bernstein stated that she doesn't think that they proposed anything for the back portion of the lot.

R. Metcalf noted that it would be good information to have regardless.

D. Smith noted that he is aware of a catch basin on the corner of Sea Road. He would like to know if this feeds into the ditch line that runs down the property.

Mr. Gilpatric replied that he couldn't answer that. All he knows is that what was dug goes out to Fairway Dr.

C. MacClinchy noted that they need to schedule the site walk. They don't want to do this over the holiday weekend. The following Saturday is 7/9/16. C. MacClinchy and D. Smith would not be available for that day. R. Smith, R. Metcalf, J. Vance are available, and possibly M. Randall would also be able to attend.

*Site walk was scheduled for Saturday 7/9/16 at 8:00 am.* J. Bernstein will remind the Board of this as it gets closer.

C. MacClinchy asked if there is any more information that the Board will need.

J. Bernstein noted that they will need information on the specs. for how the crossing takes place.

R. Metcalf added they will also need to know the limits for what the applicants propose to do.

J. Bernstein asked if the wetlands are flagged.

Mr. Gilpatric noted that there are some blue flags out there.

Jim Logan was in attendance and stated that it is likely the flags are all still there from when the lot was first reviewed, as they are not that old.

Ellen Wolf stated that she doesn't know at what stage this would be done, but she questioned if there will be a wetlands definition prioritized. The map for this plan does not show any priority ratings.

J. Bernstein answered that the wetlands are over an acre in size, so they are Priority 3, but they don't have any other priority rating.

Jim Logan noted that the map was intended to show net residential space. The map doesn't have any additional details as it wasn't intended to be use for anything other than real estate.

#### **6. Shoreland/ Special Exception Application of Erinmore, LLC. for Installation of Proposed Seasonal Dock for the Salt Meadow Landing Subdivision**

Before beginning this application, R. Metcalf informed the Board that while he is not involved in this proposal, he is currently working for one of the applicants. He wanted to be up front in case the Board was concerned about his objectivity.

R. Smith noted that he doesn't think it will be a problem

The Board agreed that they have no issue with R. Metcalf continuing to be part of reviewing this application.

J. Bernstein summarized the application. The applicant is Erinmore LLC. The location is the rear portion of the Salt Meadow Landing subdivision. The request is to create access to a seasonal dock via a 6' wide path through the woods.

Jim Logan of Longview Partners presented. The dock location is fixed, and he is proposing a meandering path to access that location. He noted that he will want to obtain some information from the Board at the site walk. Also he noted that they have applied to Army Corp of Engineers (ACOE). DEP stated that they do not need to review this as the dock is completely temporary and they are not proposing to clear any trees in creating the path.

They are proposing a 6' wide meandering pathway. This is not intended to create a view. They are not proposing any tree clearing and are not proposing any wetland fill. They don't anticipate any vehicular track; this is intended solely as a walking path. The access to a seasonal dock, which will be in the river for 7 months or less each season. (For 7 months per season, they do not need a DEP permit as long as every piece of equipment is removed from the marsh. ACOE doesn't recognize seasonal docks and consider this permanent as it will be reinstalled every year.) The last 135' -140' will be a straight line from the edge of the woods to the dock location. The path is for canoes and kayaks only, no motorized boats. There will be no public access, this path and dock will only be available to residents of the subdivision. The top part of the path is wrong in the plan. Mr. Logan will need to relocate and reflag the site, which will be corrected prior to

the site walk. Other than the head of the trail where it connects to the cul-de-sac, this plan is accurate to what they are proposing.

R. Metcalf noted that an extensive portion of this trail is in the wetlands which it could be in the uplands and questioned why.

Mr. Logan answered that some portions of the wetland are wetter than others. He picked the path of least resistance for a kayaker, and will show more at the site walk. He noted that technically, none of the trail is officially and impact on the wetland.

R. Metcalf asked if there is going to be any storage at this location by the dock.

Mr. Logan answered that the residents could leave their kayaks on the edge of the marsh, as they do currently.

R. Metcalf noted that he didn't like the idea of any storage on the marsh.

Mr. Logan asked if the Board would prefer they have storage in the upland area.

R. Metcalf replied they can discuss this more at the site walk.

J. Bernstein asked what is the rest of the note that was cut off on the plan.

Mr. Logan replied he will need to correct that. It is intended to represent the meandering path.

R. Smith asked how long a walk is this.

Mr. Logan answered that the path is approximately 750' give or take.

R. Smith asked if this is mostly through wetlands.

Mr. Logan replied that a little more than half is in the wetlands.

J. Vance asked how much does a kayak weigh.

Mr. Logan answered that there is a huge difference between kayaks.

J. Vance asked what would prohibit the use of a wheeled conveyance for the kayaks.

Mr. Logan answered nothing. Those carts are not technically vehicular traffic. And the wheels would be less damaging than dragging a kayak along the path.

R. Smith noted that it seems to be putting a great deal of the marsh in jeopardy for a crossing.

Mr. Logan replied that he doesn't believe the path will have that great of an impact.

C. MacClinchy asked how the path would be marked.

Mr. Logan answered the less fixed the better. The path will be marked as people can see.

J. Bernstein asked if there is any material which will be put down.

Mr. Logan replied no.

D. Smith noted that with a 750' path, it almost begs for some type of rack that people can put their craft on, so they won't be passing back and forth all the time.

C. MacClinchy asked if they can be stored on the float.

Mr. Logan answered that he doesn't know how much float space they will want to take up with storage.

C. MacClinchy asked how the gangplank is held onto the bank.

Mr. Logan answered helix anchors.

R. Smith questioned if DEP would require them to remove the helix anchors each season.

Mr. Logan replied yes.

R. Metcalf stated that he will want to look at this. The more you spiral in and out the more chance to damage the bank. Also, he stated they will want more information about how the plank is attached to the bank.

D. Smith noted that helix anchors are the least intrusive and the Board supports their use. However, the concern is that by screwing them in and out, there is the risk of chunking off a section of the bank. We don't want to accelerate the rate of erosion.

R. Smith asked what the applicant will do with the float when it comes out.

Mr. Logan replied that it will be stored off site. There is an opening at the bridge abutment which is wide enough and they will float it down to Gooch's Creek. The dock system is an aluminum frame with wooden sections. This could be carried out in sections, but could also come out as 1 section by taking it by boat down to the landing and pulling it out there.

C. MacClinchy stated that the Board will need a site walk. He noted he is concerned about whether R. Smith will walk 750' through wetlands, so doesn't want to schedule this for 7/9/16.

Mr. Logan asked if they can do an evening site walk.

*Site walk was schedule for Monday, 7/18/16 at 5:30 pm.*

D. Smith asked where the applicant is planning to store the system during the off-season.

Mr. Logan answered it will go to winter storage at a marina. He then asked if they will need to amend the subdivision plan.

J. Bernstein answered that this is just a Shoreland Zone Application and Special Exception. They are not going to need to amend the subdivision plan at this time.

R. Smith asked about floating the dock away for the winter. He noted that Mr. Logan stated he thought it would fit, and asked for clarification.

Mr. Logan answered that the scale indicates that everything will fit, but that he plans to go and take measurements to be certain. He also noted that during low tide the dock will be sitting on the mud. The dock configuration has runners on the bottom to keep the dock off the mud.

R. Metcalf noted that they will need that level of detail included in the plans.

D. Smith asked if the dock would surpass 20% if the width of the river.

Mr. Logan replied that it looks like it is going to be OK, but he will double check. The dock will be located in an inlet within the abutment with the entire channel on the other side.

J. Bernstein asked if the applicant would get them a plan that shows everything on one page.

Mr. Logan replied that he would have it by the site walk.

### **7. Request for Shoreland Zoning Map Correction by Gail Arnold regarding Summer Street Lot**

J. Bernstein summarized the application. The applicant is Gail Arnold. There are no numbers along Summer Street, but the property is located on map 81, lot 21. The request is for a review of the Shoreland Zoning Map and the location of the lines for Priority 1 versus other Priority wetlands located along the Kennebunk River, especially as applicable to this site. This is Wetland #307 on the map, which is Priority 1.

Jim Logan of Longview Partners presented. There are two maps which are of interest to this request. The pre-2009 map shows that this was originally a Priority 3 forested wetland. The 2009 map changed both the rating of the emerging wetland and also reshaded the forested wetland which is connected but not associated with the river. None of which is emerging. What this does is create the Priority 1 rating and creates a non-buildable lot. He continued to explain that a few years ago, this was actually 2 lots, which have been consolidated into 1 lot. The request is not to move the boundary of the wetlands. The applicant is just questioned the change in the color coding of the 2009 map.

Mr. Logan also noted that there was an application in 2013 that is similar along Lake Brook, so there is some precedent for this request. He also noted that within the ordinance it states that "where uncertainty exists, determination will be by description rather than map boundaries" – definition of emerging.

The concept of Priority 1 is that it intuitively shouldn't be forested except for a couple exceptions. This swale is not on the same level as the river, it is not emerging vegetation, it is not water bird habitat, and is not a flood plain. There are a lot of swales that are attached to the river, and the ordinance doesn't count them as Priority 1 because it would condemn a lot of properties.

J. Bernstein asked for clarification, is Mr. Logan stating that there is no forested wetland in the resource protection?

Mr. Logan referenced Leon Blood's representation. The line of Resource Protection is based off 250' from the edge of the emerging wetland, not the forested wetland. He believes that the Priority 1 was intended to cover the brackish or the salt wetlands. He stated that he believes that with the requested correction, a house can be built on this lot in full compliance.

J. Bernstein asked if a driveway is already constructed.

Mr. Logan answered yes, but it has been there for years; prior to when the owner purchased the property.

C. MacClinchy asked for questions from the Board.

D. Smith stated that he is not understanding the road/ driveway and when it was put in. he noted that if Chris Cope looked at it, then it is less than 15 years old.

Mr. Logan replied that it looks like it's been there forever. He believes that this lot is part of an old farm property.

D. Smith asked if there is a building window proposed.

Mr. Logan answered that with the right consideration from the Board, there is a buildable window which can be proposed.

C. MacClinchy reminded the Board that this is just a map correction request. It is not a Shoreland Zone application. That would come later if this request is successful.

Mr. Logan gave his thanks. He also noted that while he has not done a septic area test, he does know of at least 2 sites as well as a state review that was done on this lot which state that suitable sites exist on this property.

D. Smith asked if this parcel is big enough to support more than 1 dwelling. '

Mr. Logan answered no, which is why the lots were combined.

R. Metcalf stated he had no questions until the site walk.

R. Smith noted he will need to look at the site to understand the request. He believes the road/ drive was installed in the early 2000s. He went on to clarify that they are talking about redefining the wetlands so that the owner of this property can perhaps build a house.

J. Bernstein asked if Mr. Logan can show where an allowable building area might be if this correction happens.

Mr. Logan stated that it would be in the cross-hatched area on his plan. He reminded the Board that the question for them at this time is what color so the lot be coded.

J. Bernstein stated that the change in the map could be because they used different GIS people for mapping in 2009.

Mr. Logan stated that makes sense in some ways, but when he reviewed the definition, it looks like the change was a color-coding mistake. He asked where in the ordinance a forested wetland is designated as Priority 1 when it is not in a flood plan.

R. Smith answered that he would need to look at it.

Mr. Logan added that he will need to cut some paths that will allow a reasonable walk to the tidal edge.

J. Vance stated that she has no questions until the site walk. She noted that it sounds like it will be fairly evident when the Board walks the property.

C. MacClinchy asked why the green area on Leon Blood's plan didn't come down further.

Mr. Logan answered that it is because the setback is 250' from the edge of the wetland, not the edge of the river. These are not completely consistent.

C. MacClinchy started discussion to schedule a site walk.

R. Metcalf asked if the Board would like to do 2 site walks on the evening of the 18<sup>th</sup>.

J. Bernstein noted that it shouldn't be an issues as the applicant is the same for both. They won't be making anyone wait.

*Site walk is scheduled for Monday, 7/18/16 at 6:45-ish pm.*

R. Smith asked what Mr. Logan is going to show the Board for this site walk.

Mr. Logan answered that there isn't much to mark. It is viewing the type of wetland.

R. Metcalf noted that it will be similar to the site they walked for the driving range.

J. Bernstein noted that they will need to schedule a Public Hearing on this one. Did the Board want to schedule it after the site walk?

C. MacClinchy state that the site walk will be on the 18<sup>th</sup>, so the Public Hearing will have to be in August.

## **8. Other Old/ New Business**

### Review of previous Meeting Minutes:

J. Bernstein noted that the Board had reviewed a copy of the 5/23/16 meeting minutes which was generated by another recording secretary. However, as there were a lot of edits to that version, and this version has become available so she provided this copy to the Board to review as well.

Also, J. Vance offered to read through the minutes prior to their distribution to the Board and correct any grammatical errors. She thought this would help to minimize the amount of time at each Planning Board meeting spent on review of minutes.

C. MacClinchy agreed that it would be nice to cut down the amount of time spent reviewing minutes.

R. Smith stated that he was concerned that having only 1 Board member review first for grammatical errors could cause some concerns when the rest of the Board is reviewing for accuracy. A small grammatical change can make a large change in the meaning of a sentence.

J. Vance suggested she could make her edits in Track Changes so the Board would know what edits she had made.

J. Bernstein also noted that minutes are often received shortly before the mailing for the next meeting, so time limitations could be a concern.

C. MacClinchy thanked J. Vance for her offer, however due to the concerns raised for time and possible change of meaning, he declined the offer at this time. However, he continued that he would direct the Board to focus on the content of the minutes rather than the grammar.

Due to the power fluctuations which caused the lights to go out in the meeting room, C. MacClinchy and the Board decided to table review of the meeting minutes for the next meeting.

Upcoming Agendas:

C. MacClinchy asked if the Town Planner would like to review any of the upcoming agendas.

J. Bernstein reviewed her notes for the upcoming agendas. There is a Public Hearing scheduled for the Keeping of Horses amendment to the ordinance.

Also, additional information was requested for a B&B. J. Bernstein noted she has not yet gathered the information, but will have it to discuss at a meeting in July.

The Howard Farm subdivision plan that was approved had some conditions which included updates to the Home Owners Association documents. The Town Planner has been going back and forth with the applicant on these documents. When the applicant has addressed everything that was conditioned, she will let the Board know. The Board can come in to sign the Mylars when that has happened, otherwise, she will bring them to the next meeting, July 11, 2016. The applicant wants to get started as soon as possible, as he already had equipment on site and ready to go.

**9. Adjournment**

D. Smith moved to adjourn the meeting at 10:16 pm.

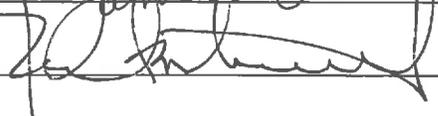
R. Smith seconded the motion.

Vote was 5/0 approval.

Meeting was adjourned at 10:16 pm.

*Respectfully submitted by Lynne Capitan.*

Signature Page

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Signature

Date