

**Town of Kennebunk
Planning Board
Meeting Minutes
Monday, July 25, 2016**

Present: Chris MacClinchy – Chair; Richard Smith – Vice-Chair; David Smith – Secretary; Mathew Randall, Janice Vance - Alternate

Not Present: Robert Metcalf

Also Attending: Judy Bernstein – Town Planner

1. Open Meeting

C. MacClinchy opened the meeting at 7:00 pm. Today in Monday, July 25, 2016.

2. Approval of Minutes of Previous Meetings

Approval of Meeting Minutes were tabled until the next meeting.

3. Shoreland Zone Application of James McCarthy regarding 3 Bayberry Avenue

J. Bernstein summarized this application. This application proposes to remove the existing home that is there and relocate and reconfigure the footprint of the home, and add a new section of driveway to the site. The Town Engineer's Review is in the Board packet. There were several questions as a result of the last discussion the Board had on this application. It had been requested that the application be reviewed by the Town Engineer and Public Works; specific questions were regarding the new driveway, as well as a hedge in the Town right of way, and the proposed pavers that are shown on the plan. The questions were forwarded, and the review letter from the Town Engineer should address all these questions. There was also a request from the Board that applicant provide more detail regarding grading and landscaping plans. These have been included.

John Einseidler presented representing the applicant. At the last meeting there were some requests for more detail in the plan. Mr. Einseidler added these details onto his

plan. He did change the grading a little bit, to work better with the additional information. Also added an apron to the new turnaround driveway per request of the Town Engineer.

Mr. Einseidler met on site with Town Engineer and Public Works, who agreed that the vegetation in the right of way should go. Also discussed the pavers, and it was made clear and noted on the plan, that maintenance of the pavers would be the responsibility of the property owner.

Also had a landscape plan from Steve Doe of Sebego Technics. Mr. Doe presented this plan to the Board. Prepared a plan to show what will happen when the development happens, in terms of disturbance. There are a lot of plants coming out, especially from the front of the property. There are some very large trees, which are being retained. There are a couple of large pines which they will try to save, but because they are very close to the house, they may need to be replaced if the damage to the root system is too extensive. Have provided a plant schedule of what can go back into this location. Mr. Doe pointed out that along the shoreline there were some honeysuckle that they would like to take out.

J. Bernstein asked how the Board will know that the replacement plantings will be equal to the plants removed.

Mr. Doe asked if she was referring to the trees.

J. Bernstein clarified that for plantings of all kinds. How will they determine, in the Findings of Facts, that the plantings will be equal?

Mr. Doe answered that they can refer to the schedule of plantings.

J. Bernstein asked if all of those plants will be added.

Mr. Doe answered no, the applicant can choose from those plants.

R. Smith asked how they will know how many they are going to choose.

Mr. Doe responded that it could be all of them.

R. Smith replied that it could also be none of them, or only 1 plant put back.

J. Bernstein asked how will they know that it will be equal to what was taken out.

Mr. Doe responded [could not be heard on the video].

J. Vance asked if he could provide a drawing of what the beds will look like, and include a list of the plants that are going to be added.

C. MacClinchy added that it would be hard for the Board to act on this, as they cannot determine that the replantings will be equal to what was removed. He added that he

understands it will be hard to add this, as the applicant hasn't chosen what plants they want yet, but the Board will need to see what the replanting is going to look like.

Mr. Doe stated that he identified the areas where plants will be removed and where plants will be replanted.

C. MacClinchy asked that they understood that, but that without a real plan for what is being planted the Board doesn't know what is going into those area.

R. Smith added that the Board needs to be able to sign off on the landscaping plan, and they don't know what that plan is going to be.

Mr. Doe [couldn't be heard on the video].

Mr. Doe added that he doesn't want to hold up the application.

D. Smith responded that they need to see what is the density of what is being removed and an estimate of what is being put back onto the property. That way they can see that the existing buffer is being maintained by the replanting.

Mr. Doe asked if it would be OK to say that there will be a plant every 5'... a shrub. Or do we need to provide a more detailed plan.

J. Vance said that the more detailed the better. We all know that you need to put the right plant into the right location in order to succeed in maintaining the buffer. The question she had at the site walk is that the yard seems to slope off toward the resource. Her concern is that water is sheeting off into the resource unimpeded. Is there any plans to add plants there? We want to protect that resource.

C. MacClinchy added that the Board's expert was unfortunately not here today.

M Randall asked what has been done with other projects that are this close to the resource.

J. Bernstein answered that we make sure that something being removed is being replace by something equal.

M. Randall further asked about the hatch that crosses the boundary line, so you will need to have an agreement with the neighbor before you can remove those roses.

Mr. Doe answered that yes, he will need an agreement with the neighbor. Otherwise they will stop at the property line.

C. MacClinchy added that they will talk to the abutter soon.

J. Bernstein asked if they are taking out the shrubs will they be replanting shrubs.

Mr. Doe answered not necessarily. They can add some other plants. There are a number of plants on the schedule that will provide the appropriate buffer and be attractive for everyone. He added that when he read through the ordinance, it talks about removing and replanting trees. The other woody and herbaceous vegetation that is disturbed or removed, and what is being put back in.

J. Bernstein stated that it wasn't clear on the plan what required the plants to be replaced in a similar fashion to what was removed.

Mr. Doe said no that isn't spelled out in the plan. It was a show of good faith in the applicant that they will choose an appropriate selection of plants from the list to fall in line with the ordinance. The property owners like to garden, and would like to be able to design their own garden beds, and not just follow a plan that was created by Mr. Doe.

C. MacClinchy asked what the timeline for replanting is. Do you have an idea when those beds will be replanted?

Mr. Doe said that a timeline could be made as a condition of approval. When they are taking plants out, it would be an appropriate time to replant the new vegetation unless it is in the middle of winter.

M. Randall stated that the concern is erosion and settlement control for the run-off. We are less concerned about a visual buffer during construction.

C. MacClinchy responded that the concern is making sure that the replanting happens. He added that the Board could be amenable to having a more detailed plan come back to be signed by Town Planner rather than making the applicant come back in front of the Board.

M. Randall stated he feels the Board needs to see the plan as this lot is so close to the resource.

R. Smith asked if the issue is that the owners aren't ready to make a choice about the landscaping plan yet.

Mr. Doe responded that this is true. They want to live in the house for a little while and get a feel for the place before making choices for what will go around the foundation. He is not referring to the side areas; once those are disturbed they need to be replanted.

J. Bernstein asked about the plants along the property line.

R. Smith answered that is what Mr. Doe is referring to.

Mr. Doe added that the roses along the property line will be replaced, but as it goes on both sides of the line they need to work with the neighbor. He noted that the current plants are invasive on both sides of the property line.

M. Randall asked about the removal of the honeysuckle along the bank, will that cause any issue with destabilization of the slope. Also, are there any wildlife which are reliant on the current selection of plantings (i.e. hummingbirds and the honeysuckle)?

Mr. Doe responded that there is only one honeysuckle shrub in question. Taking out that one shrub won't be an issue for the bank. They can cut the shrub down at ground level and leave the roots to continue to assist with maintaining the bank.

D. Smith asked if they were going to replace that shrub.

Mr. Doe responded that there are a lot of roses in there, which are going to remain.

D. Smith says he understands that cutting off the honeysuckle as it is invasive, but does think that the root structure should remain to hold the bank. He does question about the vegetative buffer between this house and the neighbor. Perhaps they wait to remove that buffer until the spring when they can replant. Whatever the plan is, it needs to be clearly defined.

J. Bernstein asked about the note regarding the Recommended Planting List.

Mr. Doe answered that this refers to the Planting Schedule.

Sandra Guay of Woodman Edwards in Biddeford stepped up to the podium. She stated that as she sees it, the plan does satisfy the requirements specific to the ordinance. She would like to move this along, as this application has been out there for a while. She suggested that perhaps a more detailed plan to be submitted to Town Planner after this Board acts on the application this evening. Another option would be to have the applicant submit an As Built plan after the replanting has happened. She also noted that the area by the river is not being disturbed. There is no construction or activity that is happening down in that area. She would appreciate if there is any way to do so, would the Board move this application along and not require them to come back in front of the Board again.

C. MacClinchy asked for any further thoughts from the Board.

J. Vance had no additional comments at this time.

R. Smith stated that he doesn't have a problem with the attorney's opinion as presented, other than they should button down what the landscaping along the border

with the neighbor should look like. Other than that, since they are not working along the river, he doesn't have a problem with moving this forward.

C. MacClinchy added that he agrees. This application has been before the Board a couple of times, but to be fair the application has changed a few times during the process. This Board does try to move things along as quickly as possible.

M. Randall noted that he still has a few questions. He started by asking how many times has this application been before the Board.

C. MacClinchy answered 2 or 3.

M. Randall asked is this property located in Coastal Residential.

J. Bernstein answered that it is in Resource Protection.

M. Randall asked if they need a DEP permit.

Mr. Einseidler answered that they need a Permit by Rule, which they already have.

M. Randal asked why they need that.

Mr. Einseidler answered because there will be disturbance next to the resource.

M. Randal then asked about the settlement with the neighbor, adding that as this is a Public Hearing he assumed that the Board will hear more about that when the Hearing is opened.

He continued to ask, was there a problem about two driveways.

Mr. Einseidler responded that it is two curb cuts, but that they have talked with Public Works about this.

C. MacClinchy verified that this was a question that was brought up in a previous meeting.

J. Bernstein added that she did ask the Town Engineer and Public Works to look at this concern. They don't seem to have an issue with this.

Mr. Einseidler responded that this also helps with sightlines, as there isn't any parking between the lot and the beach. This will also help with parking so that cars are not backing out onto the road.

C. MacClinchy noted that they have a turnaround area for their parking

J. Bernstein noted that with this new loop, they have removed the turnaround that was originally located to the left of the garage.

Mr. Einseidler added that this is now where most of the water is being directed.

M. Randall asked if he could go over where the water is going on this plan.

Mr. Einseidler responded the flow of water will go toward that corner. There was some concern from the Town Engineering about possible ponding. Last week during the heavy thunderstorms they looked, and there was no ponding, though there was in other locations.

M. Randall noted that his concern is that the water flow is not such that it will cause issues at the corner of Bayberry and Beach End.

Mr. Einseidler responded that there is no change in the grading.

M. Randall stated that he understands this, but adding a driveway will move where the water flows.

Mr. Einseidler answered that right now the area is all hot top; most of which they are removing. So the new driveway won't be adding to any of this, in fact they are reducing water to that corner significantly.

J. Bernstein asked if Mr. Einseidler could go over the note he added that is not on the Board's plan.

Mr. Einseidler read that pavers located in the Town's Right of Way will be the responsibility of the owner to maintain.

M. Randal asked if Public Works would sign off on that.

Mr. Einseidler answered yes.

C. MacClinchy asked about the corner where water would tend to collect. You are removing all the roses in that area? He wondered if this would be a raised planting bed, or would it be more water tolerant vegetation. We know that the vegetation that was there is working to absorb some of that water. Want to be sure that the planting bed that is being proposed won't cause any drainage problem.

Mr. Doe responded that this won't be an issue. He added that if add a mulch bed that will increase the absorption of the water.

M. Randall asked if they added the note about protecting tree roots for the construction vehicles going around. They want to make sure they are protecting the resource to the greatest extent possible.

Mr. Doe answered yes.

M. Randall asked if they had met with DEP just to make sure that what they are doing is OK for the resource.

Mr. Einseidler answered that they have talked with DEP a couple of times, but they only need the Permit by Rule.

M. Randall asked if anyone else needed to be contacted because they are along the tidal waters.

Mr. Einseidler answered that they are ok as they aren't launching any boats.

D. Smith asked what the difference between the two plans is.

Mr. Einseidler answered that he first has the spot grades. The second has proposed grades.

D. Smith asked if he is correct in seeing only 6 grades.

Mr. Einseidler answered there are 7. There is not a lot of grading happening.

D. Smith noted that his concern is having the water drain toward the resource rather than into the street.

Mr. Einseidler answered that they are trying to do [just that].

D. Smith asked if they are going to add a gentle swale which would encourage water to go along both sides of the house.

Mr. Einseidler answered that is what they tried to do.

D. Smith asked if there will be any underdrainage on the house.

Mr. Einseidler answered that there will be footing drains. The footprint of the house will be very similar, so they don't want to change the underdrainage too much.

D. Smith wants to be sure that if there is more roof run-off, how they are going to capture that.

J. Bernstein asked why there would be more roof run-off if the house is going to be the same size.

D. Smith noted that it's a completely different roof pitch line.

C. MacClinchy agreed that it is a different roof, but the area will be the same.

M. Randall asked if the applicant has kept to the 30% increase in the non-conforming.

Mr. Einseidler answered yes.

M. Randall suggested that if the two plans submitted were drawn in the same scale to make it easier to read for the Board.

Mr. Einseidler stated that the 30% increase is mostly vertical.

R. Smith asked about a note on the original which stated that the AC unit would be on the left of the garage if possible. Is that possible?

Mr. Einseidler said he doesn't know yet. It depends on the size of the units.

R. Smith asked if they have another location, if it isn't possible.

Mr. Einseidler stated that he hasn't met with a heating professional yet to figure that out.

R. Smith stated that a location will be important to know.

C. MacClinchy agreed with R. Smith, and stated they would like the qualification "if possible" removed and would like to see the HVAC stuff stay on the west side of the lot.

C. MacClinchy invited the abutter, Betsy Smith, to the podium to talk about the border.

Ms. Smith spoke to say that she is also eager to have this project move forward. However, she noted that she was a little shocked to hear that a hedge that straddles the property line was going to be ripped out. She had a conversation with Mr. Doe one evening where she agreed that the hedge was a mess, but it never was discussed again. She asked that that it be part of the plan for the hedge to stay during construction to act as a buffer. She would also ask that she get a sign off before they rip it out, as it will be on her property as well.

D. Smith asked if she had any preference for what vegetation may replace the bittersweet and roses.

Ms. Smith answered no, as she is not a botanist. But she would like to have a sign off on whatever does get done as it will affect her side.

D. Smith asked if she does have a buffer 12 months a year, even during the winter when the leaves would have fallen.

Ms. Smith answered yes, as it is pretty dense.

D. Smith asked if he would want the same level of density in the buffer.

Ms. Smith responded yes, as it is pretty tight right there. She thinks they would all like to have a buffer between the properties.

M. Randall asked if it is correct that her lot is a little higher than this property.

Ms. Smith answered this is correct. Because of this the lower branches of the pine trees (which are located on her property) do provide some buffer.

Ms. Guay responded that absolutely nothing will be done on the abutter's property without their agreement. She also stated that she feels it could easily be a condition that the buffer of roses is left alone until it is time to replant so that it can continue to provide the buffer.

She continued that in regards to the HVAC, it will be difficult until they actually have someone who installs them to look at the plan. There is going to be the attempt to put it on the west side, but it may not be possible. She suggested a condition that if the generator, etc. can't be on the west side it be buffered with vegetation, etc.

M. Randall noted that he agrees, but as they saw that the neighbor had his equipment in that area and thought it would be best to have those next to each other.

Ms. Guay is just asking that they allow a condition that if it cannot go where the Board prefers then it can be installed with a sound buffer surrounding it.

M. Randall asked what she would suggest to allow for this Board to approve the plan, and make sure that the generator doesn't cause a sound disturbance for whichever neighbor it is located near.

Ms. Guay noted that if there is a sound violation, then it becomes a Code Enforcement issue, and isn't really part of what this Board would need to deal with.

M. Randall noted that they don't like to pass the buck on this.

Ms. Guay noted that under the ordinance there is only so much this Board can do about locating equipment.

C. MacClinchy and J. Bernstein noted that the attorney is correct in that the HVAC equipment doesn't fall under the purview of this Board.

M. Randall stated he was just trying to protect the abutters, but would back off if it was inappropriate at this time.

J. Bernstein asked how the Board would like to handle the landscape plan. Would they like to condition it on them revisiting with the Board. Would you like to recommend that a mix of the planting schedule be used? Her concern is that currently the plan is vague regarding how much planting needs to go in.

M. Randall noted that the planting must be equal what is there now, per the ordinance.

Mr. Doe suggested that they could make a condition that the planting areas identified on the plan must be fully landscaped – a plant every 3-5 feet on center. That would prohibit them from putting only 1 plant into the planting area. They could also submit a plan, but this would prevent having them come back to this Board.

M. Randall noted that it sounds good, but would like to see it on a plan so they can vote on it specifically. He added he would also like to see a note about preventing the noise coming off the property from increasing.

C. MacClinchy responded that noise isn't part of this Board's realm. He redirected the Board back to the landscape plan.

J. Bernstein stated it would be helpful if it could be worded as a condition of Board approval.

D. Smith added that he would like to see that the plantings are equal to the density of the existing vegetation.

Mr. Doe noted that this is replacing the roses, and that would be difficult to match in density.

M. Randall repeated that he would like to see it.

C. MacClinchy stated that he feels that he can vote on this without seeing it. What he would like is to add a condition that the Board can vote on tonight which would have them add a note or add a more detailed plan to be submitted to the Town Planner.

D. Smith suggested that rather than having the landscape plan detailed... *(thought was left incomplete)*

C. MacClinchy stated that his thought is to have the condition would say that he planting beds would be fully landscaped with plantings on average 3-5 feet on center.

J. Bernstein added and 18" on center for perennials.

M. Randall stated that if they vote on this now he will likely vote against it as he feels that he needs to see the more detailed plan. He added that it is not egregious to ask them to come back.

C. MacClinchy noted that the impact of these plantings on the resource, the most sensitive part, is not huge.

M. Randall stated that the resource is exactly where the drainage path runs. Which way the planting goes is going to be important.

C. MacClinchy polled the Board to see where they were on this matter. Would the Board rather see the applicant come back with a more detailed plan, or are they willing to vote on a condition of approval.

M. Randall would rather see a plan.

D. Smith is willing to vote on a condition tonight, with the provision that he would like to see a landscape plan even if it is after the construction. He's not asking for an exact map of the planting.

R. Smith is willing to vote on a condition of approval.

C. MacClinchy made J. Vance a voting member of the Board due to the absence of R. Metcalf.

J. Vance stated she is willing to vote on a condition of approval with the provision that a post-plan is provided that will be worked out with the Town Planner to her satisfaction.

C. MacClinchy summarized that the Board will work on putting together a condition.

They have the language regarding the planting beds, with the addition of an As Built landscape plan to be signed off by the Board.

M. Randall asked what does this mean.

D. Smith noted that we will make it as clear as possible about what they would like to see.

M. Randall asked if they can ask them to redo it if we don't approve the As Built.

C. MacClinchy stated that what they plant is not acceptable then the Board can ask them to redo it.

R. Smith stated that the important things are:

- We protect the resource – there is going to be little to no disturbance there so that is addressed.
- We create a workable buffer between the neighbor and property – we have addressed that with the neighbor and she is willing to work with them so that has been address
- The Town Engineer addressed the Right of Way area in the front – so that has been addressed
- The other area is the drainage – Mr. Einseidler has designed to go into the street to go into the drainage system.

R. Smith continued that this whole area is built in in a [wetland].

C. MacClinchy noted that they will also want to add a condition that the Rosa Rugosa along the Smith property be retained during construction and applicant shall work with the abutter on replanting.

D. Smith asked if there was swamp. It was filled in and houses were built in the 1950s. There are going to be drainage problems, because that is the nature of how it was built. I think that Mr. Einseidler and Mr. Doe have addressed the important things that we need to look at.

J. Bernstein added that she thinks the Board can do this as a condition of approval.

C. MacClinchy answered that this is already a note on the plan, and that is the most they can do.

D. Smith asked if there is any restriction in terms of what is planted along the road.

C. MacClinchy answered no.

J. Vance asked if need to condition the apron.

C. MacClinchy answered that this is already a note on the plan.

D. Smith asked if the Board wanted these notes on the plan.

C. MacClinchy replied that these are conditions of approval.

M. Randall suggested that all the correspondence be included in the Findings of Facts as this was all worked out with Public Works.

J. Bernstein stated that she will make sure that all the correspondence is included.

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

PROPERTY OWNER Julia McCarthy Trust	SHORELAND ZONING DISTRICT SZ <u> X </u> RP <u> X </u>
ADDRESS OF PROPERTY Tax Map <u> 92 </u> Lot <u> 50 </u>	WETLAND FILL APPROVED? <u> 0 </u> SQ. FT.

**FINDINGS OF FACT AND
 CONDITIONS OF APPROVAL**

BD. OF APPEALS

PLANNING BOARD X

INFORMATION REVIEWED BY PLANNING BOARD:

- Shoreland Application/Plan dated 6/17/16 & 7/7/16
- Shoreland Zoning Performance Standards Review (attached) Art. 5, Sec. 7 and Art. 10, Sec. 3.G & Sec. 3.P
- Staff reviews (egr., fire, planner) : Eng. – 6/22/16 & 7/20/16; Planner – 7/20/16 & previous meeting minutes
- Conservation Commission : No comments received
- State/Fed. Reviews: The notice from Jennifer Harris of the Maine Dept. of Environmental Protection , Bureau of Land Resources – was emailed to town on June 24,, 2016 –that State was ok with amending the NRPA permit issued on June 13, 2016 by state and that the revised permit (PBR 61797) would be sent to the town.

• **CONDITIONS:**

1. Planting Beds will be fully landscaped with plant materials 3-5 feet on center, and perennials 18 inches on center.
2. Applicant shall work with easterly abutter on replanting plan along the mutual property line.
3. As-Built Landscape Plan will be submitted to Town Planner.

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 _____;

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 _____;

Applicant is moving parking areas as far as possible from the Resource, and reducing the amount of pavement within the setback area as much as possible.

(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 _____;

(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 _____;

Diveway has been moved as far from the Resource as possible and does provide direct access to permitted use within the setback.

- (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 X Not Met _____ N/A _____ Met with the following conditions _____;

These driveways will be pretty flat and appropriate erosion control techniques will be use.

- (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 X Not Met _____ N/A _____ Met with the following conditions _____;

- (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 _____;

- (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> (Percent)	<u>Spacing</u> (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 X Not Met _____ N/A _____ Met with the following conditions _____;

- (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 X Not Met _____ N/A _____ Met with the following conditions _____;

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 _____;

Application falls within the guidelines, and has moved the building as far from the resource as possible with regard to other required setbacks. Applicant stated they have received Permit by Rule from DEP and will provide a copy to the Town Planner.

- (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. Planting Beds will be fully landscaped with plant materials 3-5 feet on center, and perennials 18 inches on center.
2. Applicant shall work with easterly abutter on replanting plan along the mutual property line.
3. As-Built Landscape Plan will be submitted to Town Planner.

Dated: July 25, 2016

Applicable Reviewing Board

Planning Board X Site Plan Review Board _____

D. Smith moved to approve the Findings of Fact for Shoreland Zone Application for Tax Map 92, Lot 50 as conditioned.

R. Smith seconded the motion.

Vote was 4 in favor/ 1 opposed (M. Randall).

Application was approved.

J. Bernstein requested a couple of copies of the updated plan with the added note.
Mr. Einseidler stated he would get those to her.

4. Shoreland Zone Application of Jason Gilpatric regarding 136 Western Avenue

J. Bernstein provided a summary of this application. The nature of the request is to construct a road across the wetland area in order to access the rear part of the site for tree cutting purposes. The proposed road size is 99' x 12'. Wetland impact provided as part of the application is noted to be 672 sq. ft. Attached is a copy of the most recent plan from the applicant, as well as the Town Engineer review of the submission. As the Board will notice, Town Planner had some questions regarding the calculations on the plan.

Jason Gilpatric provided an updated plan for the board. The road size has stayed the same as well as the wetland impact. The plan is very simple. When the Board walked the property, they discussed with him placing the culvert deeper and setting it more properly to keep it from coming up out of the ground. They will also do that with the 2nd culvert which has not been placed yet. He has about 128 sq. ft. of road to finish that impacts the wetland. This is still part of the overall size of 99 x 12.

D. Smith, C. MacClinchy, and M. Randall noted that they were not part of the site walk.

R. Smith stated he was there. Mr. Gilpatric summed it up pretty well. The culvert he had already installed needed to be put in deeper. There is a 2nd culvert which will be put in a little ways up, and we asked him to put that in at the same depth as the one he is going to redo. This plan that he handed out tonight is very reflective of what the Board asked him to do. He showed a bit of topography about how he is going to construct it. The Board asked him to provide better, more thorough dimensions of what he is going to do within the wetland.

Mr. Gilpatric stated that he was going to have 672 sq. ft. of impact.

J. Bernstein stated that her calculation came out different. Her calculation was at 1060 sq. ft., based on his 1" = 30 scale on his rule. If he wants to insist on his calculation for this application, that she suggested that they enforce that limit. She stated she could have Code Enforcement make sure that there is only 672' of impact.

R. Smith continued that this is a pretty good summary of their trip out to the site.

J. Vance was also attended the site walk. She added that the area that Mr. Gilpatric refers to he has already filled, and beyond that there is a streambed further up that he

would also like to fill. The day they were out there it was really “mucky” in the rain, so she stated that she knows there is a water course out there as she stepped in it.

C. MacClinchy asked who else was on the site walk.

J. Bernstein answered that she was on it as well as R. Metcalf.

J. Vance asked how Mr. Gilpatric came up with his figure as opposed to J. Bernstein’s figure.

Mr. Gilpatric answered that the original calculations were based on his map, whereas the 672 was what was measured on the ground.

J. Vance asked how they measured the width of the areas they were going to fill.

Mr. Gilpatric replied that they measured depending on where the rock falls. This is not a road, it only needs to accommodate a tractor or an ATV. It will not be any wider than 12’.

J. Bernstein added that in Town Engineer’s letter, he says that the detail is drawn at a scale of 1” = 2’. It appears that the plan may not be drawn to scale.

Mr. Gilpatric stated that is entirely possible. He is not an engineer. However, he did measure the area, and those of the figure he has listed.

J. Bernstein noted that they can require that a final inspection which determines that the 672 is the final limit.

Mr. Gilpatric responded that part of it is covered in rock right now, so it could be difficult to measure.

R. Smith asked if the Board stipulate in their vote that they are not to exceed 1060 sq. ft. of fill, is that going to be a problem for the approval. 1060 ft. isn’t going to be a restrictive measure correct?

Mr. Gilpatric noted that if the Board would want to have a limit of 1060 sq. ft., he would certainly come in under that.

D. Smith added that this is not so much that the Board wants to contest his number, and more to make sure that we avoid any measurement discrepancy.

D. Smith noted that he really has no further questions. Having not been on the site walk he didn’t see what the ground looks like. Based on what he has seen and what he has

heard from R. Smith and J. Vance he feels that he has no questions on this applications.

M. Randall stated that he had missed the first meeting on this application, as only missed the site walk. Because of this he feels uncertain in his knowledge-base for voting on this. He did have a few questions.

Could the applicant give him a better idea of the surrounding area so he knows where this is?

Mr. Gilpatric asked if he knew were Bennett's is. If you were at a Bennett's and took a left. This is the first property on the right. This road is leading to the back of the property. There is 4.3 acres roughly back there. It starts at the back of the lawn and runs into the wooded area.

M. Randall asked if they are just harvesting timber back there.

Mr. Gilpatric answered that is correct.

M. Randall asked if there is a driveway leading to this road, and is that why it is only tractor or ATV access/

Mr. Gilpatric said that's right.

M. Randall asked J. Bernstein if timber harvest is considered an accessory use.

J. Bernstein answered that it is a permitted use.

M. Randal asked J. Vance about the site walk she attended. Did he hear her say there was some wetness where they were going to put the culvert?

J. Vance answered yes. She then summarized that the house site is pretty high in relationship to this. There is quite a slope to this area, which runs between his house and the houses behind him on Fairway Dr. She wasn't sure of the topography of those houses, and had a concern that if something were to dam up this wet area, would it back up into those neighboring houses' yards.

Mr. Gilpatric noted that there is a drainage ditch which runs under their driveway on the right side of the property. The ditch runs around the property and up to the intersection. Pretty much everything drains through that.

J. Bernstein pointed out that it is labeled a stream on the plan.

Mr. Gilpatric noted that it is a drainage ditch. You can tell that it was dug with an excavator. It's mostly straight and has very intentional turns heading out to Fairway Drive.

R. Smith noted that if you look at what has been done, and what is planned, there won't be anything to dam it up. Its rocks with 2 culverts, so water should filter through without any issue.

J. Bernstein asked how will turn vehicles around once come off the road.

Mr. Gilpatric answered that will just turn around on the hardest ground.

J. Bernstein asked does this mean he will be driving on the wetland, as it doesn't look like there is much upland out that way.

Mr. Gilpatric stated that he intends to stay away from any wet land, since he doesn't want to get stuck. He will likely do most of his driving up that way when the ground is frozen.

M. Randall asked if he was planning to store the cut timber on his property.

Mr. Gilpatric answered that yes, it will stay on his property.

M. Randall noted that 8" is a pretty small culvert, so they tend to get clogged up more readily. He then asked if there is a classification on this wetland. He also wondered if this property would be exempt as they are doing timber harvesting.

J. Bernstein answered no, they are not exempt. It is a Priority 3 wetland. She added that she has not seen anything from the DEP in regards to the stream labeled on the map.

Mr. Gilpatric replied that it is labeled as a stream because that is what Frick Assoc. decided to do. When DEP came out to the property they told him that it was not a stream.

J. Bernstein noted that he would like to have a sign-off from DEP. Just something in writing as they have been out to the site.

C. MacClinchy asked if the Board if they are willing to work on the Findings of Fact for this application.

M. Randall stated that he will likely abstain, as he feels he doesn't have enough information to make an informed decision.

D. Smith stated that he feels like he can vote on this. He did ask for clarification on what is the number being used for the wetland fill. Are they using the 1060?

J. Bernstein stated that they were going to use applicant's number of 672, but set a limit of 1060.

R. Smith agreed that his understanding is that they will use Mr. Gilpatric's number of 672, but add a note not to exceed 1060. That way no matter which math is accurate the application is covered.

R. Smith added that yes, he is ready to vote.

J. Vance also stated she is ready to vote on the application.

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

PROPERTY OWNER Jason & Heidi Gilpatric	SHORELAND ZONING DISTRICT SZ <u> X </u> RP <u> </u>
ADDRESS OF PROPERTY 136 Western Ave.	WETLAND FILL APPROVED? <u> 1060 </u> SQ. FT.

**FINDINGS OF FACT AND
 CONDITIONS OF APPROVAL**

BD. OF APPEALS

PLANNING BOARD X

INFORMATION REVIEWED BY PLANNING BOARD:

- Shoreland Application/Plan dated 5/23/16 & 7/17-18/16
- Shoreland Zoning Performance Standards Review (attached)
- Staff reviews (egr., fire, planner) : Egr. – 7/20/16
- Conservation Commission : No comments Received
- State/Fed. Reviews: Not needed
- Site walk: 7/9/16

CONDITIONS:

1. Letter or email to be provided from DEP to Town Planner detailing their review of the site's unnamed stream/ drainage ditch.

_____ Code Enforcement Officer	_____ Date Approved
<p>Please note that Shoreland Zone permits require approval of the Code enforcement Officer prior to any site disturbance.</p>	

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:

- e) Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- f) Draining or otherwise dewatering;
- g) Filling, including adding sand or other material to a sand dune; or
- h) 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.

- (2) 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 _____;

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.

- (6) 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 X Not Met _____ N/A _____ Met with the following conditions _____;

(7) 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 _____;

(8) 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 _____;

(9) 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 _____;

Based on Plans submitted and approved.

(10) 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 X Not Met _____ N/A _____ Met with the following conditions _____;

There are no such segments.

(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 _____;

(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 X Not Met _____ N/A _____ Met with the following conditions _____;

- (9) 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 X Not Met _____ N/A _____ Met with the following conditions _____;

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 X Not Met _____ N/A _____ Met with the following conditions _____;

Applicant is crossing the wetland at the point of least impact to access uplands on his property.

- (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 X 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. Letter or email to be provided from DEP to Town Planner detailing their review of the site's unnamed stream/ drainage ditch.

Dated:July 25, 2016

Applicable Reviewing Board

Planning Board x Site Plan Review Board

D. Smith moved that the Board approve the Shoreland Zone Application for 136 Western Ave. as conditioned.

R. Smith seconded the motion.

Vote was 4 in favor, and 1 abstention (M. Randall).

Application has been approved.

5. Sketch Plan Application of LEB, LLC regarding Ross Road Subdivision

M. Randall is recusing himself from this application.

J. Bernstein provided a summary of this application. The location is Map 34, Lot 34. This is a proposed 7 lot subdivision on a 6.58 acre site. Enclosed in the Board packet is the proposed sketch plan. The Board has seen this before. Basically, this is very similar to a sketch plan that the Board saw several months ago on Ross Road. It is removed on the plan view, as section of the site that is located within 1500' of public sewer. I assume that the reason is so that they don't have to hook to public sewer per the standards in the Town regulations. Her question for the applicant is has this lot been broken off the site legally? Has it already been filed at the Registry of Deeds as a separate lot?

Lou Chamberlain of Attar Engineering presented on behalf of LEB, LLC. The answer to Town Planner's question is yes. The plan that was filed in June does list this out parcel, but as of the last week that lot has been legally conveyed to another party.

J. Bernstein stated that she has no evidence of that. Her understanding is that this needs to happen before you file an application, but she will get an opinion from the Town Attorney on that. And she asked that the applicant provide evidence that the transfer of ownership on that outparcel lot has been legally completed.

Mr. Chamberlain stated that a similar application was presented in March. This application is for a 7 lot subdivision on approximately 6.5 acres. They came to this Board with the last application with the argument that the subdivision was more than 1500' from Public Sewer, but the Board determined that applicant was measuring it inaccurately. With the sale of the outparcel, this property now lies outside of the 1500' requirement. During the last meeting, there were a number of comments which were received from the Board, which they were able to incorporate into this sketch plan. They also addressed comments they received from the Town Engineer regarding road design.

Mr. Chamberlain also asked the Board to note that they have submitted all the items for Preliminary Plan as well as Sketch Plan. They have included a hydro geologic assessment for the lots on this site.

R. Smith asked why they are presented Preliminary Plan information, but they have not approved the sketch plan yet. This is a completely new application, correct?

Mr. Chamberlain answered yes, this is a separate plan from what was submitted in March.

R. Smith stated he has some questions regarding sketch plan first. The outparcel, still has a dark line with a pin drawn on the map. What is being done with this pin? Or will there be a new monument where the site now takes a right angle?

Mr. Chamberlain explained that this is a pin being added for the lower corner of an abutting lot.

R. Smith asked about a note on the map stating that it is subject to a drainage easement for LEB. Does this mean that the new lot which was sold off will have a drainage easement for the project?

Mr. Chamberlain answered yes, that is correct.

J. Bernstein asked where will this be located/

Mr. Chamberlain answered within the wetland.

J. Vance asked him to point out on the map, which wetland is being referenced.

Mr. Chamberlain showed that this is the same line he had referred to previously.

J. Bernstein asked what the purpose of the drainage easement is.

Mr. Chamberlain answered that it is for the applicant to flow water onto this abutting lot.

J. Bernstein asked so that it is part of this development.

Mr. Chamberlain said no, he doesn't believe that it makes it a part of the development.

Durwood Parkinson, attorney for the applicant, took the podium. He stated that legally no, an easement is not part of the development.

C. MacClinchy asked if there would be any constructed drainage systems in this easement.

Mr. Chamberlain said no, there were be no construction within the easement.

C. MacClinchy asked if this is to get around the standard that all the water needs to stay on the applicant's property.

Mr. Chamberlain stated no, this is just to reserve the right to flow water onto the other property.

R. Smith noted that he has a lot to say, but not at this time.

J. Vance asked to refresh her memory. Where is the sidewalk planned to go. She remembered something odd about the sidewalk.

Mr. Chamberlain answered that this was submitted with the Preliminary Plan materials.

J. Bernstein noted that only the Sketch Plan materials was passed along to the Board at this time.

Mr. Chamberlain did point out the sidewalks on the plan map. There is a revision to the plan for the sidewalk which allows every lot to have access to the sidewalk along their frontage.

D. Smith asked about the drainage easement on the outparcel. This is potentially serving as part of the drainage system for the development? Is the language in the deed for the outparcel going to speak to any further development of that outparcel?

Mr. Parkinson stated that they will produce a copy of the deed with all the legal notes for the Board, but he doesn't think they will find anything that will be in contrast to the ordinances.

R. Smith noted that when they get to Preliminary Plan will get to review the drainage system plan.

D. Smith stated that during Preliminary he would like to see for the proposed septic the nitrite plumes: the extent of those and which direction they go vis-a-vis the outside boundaries of the subdivision.

C. MacClinchy voiced his concern regarding the act of separating a parcel to avoid triggering parts of the ordinance. He asked to have the Town Attorney look at this to see if that is legal to do just to skirt the standards of the ordinance.

J. Bernstein replied that when there was only the original deed in the packet, she did contact the Town Attorney. She said that if it hasn't been created prior to the filing then it is part of the plan. She will need a copy of the new deed to forward to the Attorney.

C. MacClinchy responded that he wants to check about the legality of this split just to skirt the ordinance before the Board can move forward on this application.

R. Smith asked if this has been verified that this outparcel is a legal, conforming lot?

Mr. Chamberlain answered that his understanding is that yes, this is a legally conforming lot.

J. Bernstein stated that the outparcel may not need to be conforming if they are not going to build on it. But she will ask if they can legally create a non-conforming lot.

D. Smith asked about the boundary line that now exists. Has the surveyor struck the line at exactly 1500' or has he determined that he is in excess of 1500 linear feet.

Mr. Chamberlain answered that the boundary of this property is now at 1595'.

D. Smith asked what is the net lot area that is being deducted from the subdivision plan due to this outparcel.

Mr. Chamberlain answered that he doesn't have those numbers. It is 8/10 of an acre gross.

C. MacClinchy asked about the lot lines depicted. Have they changed from the previous application due to this change?

Mr. Chamberlain stated that they had to make minor changes to Lot 2.

C. MacClinchy asked if the Board would like to walk the site again.

J. Vance asked if everyone was there last time.

C. MacClinchy stated that most everyone was there.

D. Smith asked if they would need to see the drainage easement.

C. MacClinchy asked what kind of easement this is.

Mr. Chamberlain answered that it is a generalized easement which contains all the wetland.

C. MacClinchy summarized that the Board does not feel the need to re-walk the site, as there haven't been enough changes to really need to see something new.

J. Vance asked about the proposed driveway to Lot 3.

Mr. Chamberlain stated that the total length of the driveway will likely be around 400'

J. Vance asked if the Fire Chief had a limit on length of driveways for access.

C. MacClinchy stated that the limits is mostly for roads, rather than private driveways.

Mr. Chamberlain noted that they expect the Fire Chief will review, and if there are any questions or concerns they will address them.

J. Bernstein asked if there are any shared driveways.

MR. Chamberlain answered there are none planned.

R. Smith asked if [they are] crossing the wetland for the driveway for Lot 3.

C. MacClinchy asked if the driveway is in the wetland setback.

Mr. Chamberlain noted that there is no setback as this is a very small wetland. However they did leave a setback.

J. Bernstein asked if the Board had any other questions they wanted addressed for the Preliminary Plan. Applicant's next step will be to get a complete Preliminary Plan submission to the Town Planner.

D. Smith asked if when they strike the line for Lot 2, do they still have the minimum needed area of upland.

Mr. Chamberlain stated yes, and they have the updated calculations.

C. MacClinchy confirmed that this is everything for this application today.

6. Other Old/ New Business

C. MacClinchy welcomed M. Randall back into the meeting

Upcoming Agendas

8/8/16 Meeting

Public Hearing on B&B Standards in VR. Right now allows up to 4 rented rooms and wants to bring it up to 6 rented rooms. The amendment discussion also included adding the RR and RC zones. In working on tweaking the Lodging standards, it includes having to show that meet the parking, and septic standards.

J. Bernstein noted that when she sent the draft to the Town Attorney, Natalie Burns recommended that keep all the terminology the same; Lodging Use. The amendment drafted by Town Planner now uses the term Lodging Use throughout, as it will include Hotels, Motels, Inns, B&Bs, etc.

C. MacClinchy asked if including the standard for showing adequate septic, parking, etc. is a new requirement or is this already a standard.

J. Bernstein answered that this is not a new standard, it just flags the standard for the applicant.

D. Smith clarified that by listing that must meet State Plumbing Code, does the Town have any more restrictive code?

J. Bernstein answered no, we just use the State Code.

8/22/16

J. Bernstein stated that she has received a request, but has not received the submission yet, as Jim Logan is working on the submission for the dock application for Erinmore. Would she be correct in assuming that the Board would want anything on the agenda to be submitted 2 weeks prior? That one will need a Public Hearing.

She assumes that will receive a Preliminary Plan filing for LEB, LLC.

She has received a filing for Penwood Subdivision Plan Revision. That subdivision plan revision; if it is complete it will need a Public Hearing Scheduled by the Board. Would you like to make that a Public Hearing? If the submission is complete, J. Bernstein will schedule the Public Hearing.

Also received a voicemail request today, saying that they are representing a piece of land off Ross Road, and they want to develop with a number of units which would require 2 means of entrance. They can't meet that standard, and would like to create a Boulevard Entrance. They want to come have a workshop discussion with the Board about this. They have not filed anything, just want to have the discussion with the Board.

M. Randall asked if they can have Public Safety, Fire, and Town Engineer here in order to have the discussion.

C. MacClinchy noted that this would be better at a policy meeting, rather than having all the other Town Staff sit through all the other applications. IT should follow the Public Hearing on the Zoning amendments.

J. Bernstein asked if want to bump the discussion if they can't get Town Engineer, Fire, and Police there?

The Board agreed that would be best.

D. Smith asked about the Cedarwoods second entrance. How did that work out?

J. Bernstein responded that they have opened it up. She has also seen a draft of a possible change to this, for between Phase 1 and Phase 2. She told them that they will need to come back to the Planning Board to discuss the changes.

7. Adjournment

D. Smith moved to adjourn the meeting.

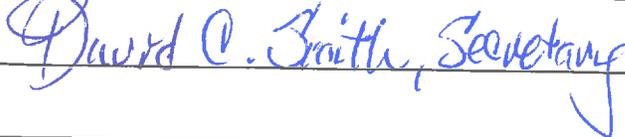
R. Smith seconded the motion.

Vote was 5/0 in approval.

Meeting was adjourned at 10:13 pm.

Respectfully submitted by Lynne Capitan.

Signature Page

	Chair	10/10/16
		
		10/10/16
	Secretary	10/10/16

Signature

Date