

**Town of Kennebunk
Planning Board
Meeting Minutes
Monday, September 26, 2016**

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

Not Present: Matt Randall

Also Attending: Judy Bernstein – Town Planner

1. Open Meeting

C. MacClinchy opened the meeting at 7:05 pm. Today is Monday, September 26, 2016.

2. Approval of Minutes of Previous Meetings

Meeting minutes for 8/8/16 were reviewed and edited.

D. Smith moved to approve minutes as corrected

R. Metcalf seconded this motion.

Vote was 5/0 in approval.

3. Shoreland Zone Application of Kevin and Beth Reilley regarding 127 Summer Street

J. Bernstein provided a summary of this application. The location is 127 Summer Street. The request is to relocate the house, garage, and a portion of the driveway, which is located partially in the Shoreland Overlay setbacks. As long as the applicant stays as far from the wetlands as possible and is no more non-conforming within the zone, the ordinances allow for this Board to review and make a determination on the application. She continued that the Board will likely want to do a site walk on this application. Jim Logan has delineated the wetland edge for the applicant. Included in the Board packet are the standards which apply to relocation of non-conforming Shoreland applications.

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Jim Logan presented this application along with the applicant, Kevin Reilley.

Mr. Reilley stated that while he is here presenting to the Planning Board, his wife is currently presentin to the Historic Preservation Committee meeting next door. Currently, the property is an eye sore. They are trying to move the house back from the road in anticipation of changes to Summer Street which are rumored to be coming soon. They are trying to position the barn in such a way that they can move the house back and join the two buildings without any additional non-conformity to the property. They will also need to move the driveway to accommodate this change in the buildings.

Mr. Reilley continued that they had purchased this house because it is a duplex with a 3rd apartment in the barn. They have a daughter with disabilities, who will be living in the apartment and they are trying to provide her direct access between the house and her apartment. The barn, which is the portion of the property which is non-conforming, will be rotated, but not pushed any further into the setback.

Before coming to this Board, the Reilley's met with the Town Attorney for clarification of the standards. The Reilleys had been working with Code Enforcement on this project, as mostly they are making the property less non-conforming. However, due to the area which is located within the 50' setback, they needed to come to this Board for a waiver.

J. Bernstein noted that the only thing the Planning Board can grant a waiver on is for road and access [drive] as this is a Priority 2 wetland.

C. MacClinchy asked what the nature of this wetland is.

Jim Logan answered that it is forested wetland. It is a large wetland, which makes it Priority 2. He added that because much of the area has been developed already, a lot of the buffer has been "monkeyed with" already.

D. Smith asked if they are actually going to be pulling the barn further from the setback area.

Mr. Logan replied that is the plan.

Mr. Reilley stated that currently the barn has 863 sq. ft. within the setback area. When repositioned, it will be 840 sq. ft. within the setback.

D. Smith asked if they had given any thought to restoration of the buffer.

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Mr. Logan answered no. This lawn goes back to when the house was built in 1920. There is also a less than adequate septic system which will need to be brought up to code. Because of this, they will need the lawn area that is currently there.

C. MacClinchy asked if the septic is why the driveway curves around the way it does.

Mr. Reilley answered that this is where the driveway was proposed to go back in 1990.

R. Metcalf asked what is the standard for setbacks from the wetland for the septic.

Mr. Logan responded that because this is a replacement system, with no expansion in the intended use, there is no setback required by the State. Maine State Plumbing does not consider septic to be a structure. In this case, the replacement septic will not trigger any extra permitting beyond the Maine State Plumbing code.

D. Smith asked if there were any alternative sites on the property that would allow for septic.

Mr. Logan replied that they are looking into that. The design of the septic is not part of this application, so they didn't prepare it for this Board.

J. Bernstein asked if the septic would be going into the 50' setback.

Mr. Logan answered yes. The applicants are looking to continue to use the area as lawn, but it will also have the septic system. They had to move the wastewater system to make room for the new location of the building.

R. Metcalf asked if the deck will be removed from the carriage house.

Mr. Reilley answered yes.

R. Metcalf asked that in addition to shifting things around, will they be taking stuff off of the house as well.

Mr. Reilley noted that the plan doesn't show the location of the existing house relative to the driveway and lot line.

R. Metcalf asked about the gravel driveway which is currently partially on this lot and partially on the neighbors' lot. Will that be abandoned?

Mr. Reilley answered yes. They will access both sides of the duplex from the new proposed driveway.

R. Metcalf asked where the neighboring house is since it isn't shown on the new plan.

Mr. Reilley answered that it is in the same relative position to the lot line.

R. Metcalf stated that it looked like it is within 5' of the property line on that side.

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Mr. Reilley answered there is an elevation that is higher. There is a terrace.

R. Metcalf noted that he will need to see that on the site walk.

Mr. Reilley stated there are already some bushes planted along that edge.

R. Smith stated that he has no further questions at this time. It is nice to see someone trying to take on that house and make it look better than it has for the last 50 years. He hopes that the project turns out well for the applicant.

Mr. Reilley stated that he thinks the Historic Committee felt the same way. His wife let him know that they just approved everything.

Mr. Logan added that he has looked at this property with 3 other individuals previously, and no one else was ready to do this.

J. Vance agree with R. Smith and thanked the applicant for taking this on. She went on to ask if they are going to pick up these buildings and put in new foundations.

Mr. Reilley stated yes. They are also planning to dismantle and rebuild the middle section. It will be modern construction, but using a lot of the original materials. They are trying to get the foundation in by early December.

D. Smith asked about the existing area of the driveway. This looks to be increasing by almost 600 sq. ft. Will this also be going into the wetland a little more?

Mr. Reilley stated yes, it will be going into the 50' setback [not into the wetland].

D. Smith asked to clarify, this will make the driveway more non-conforming.

Mr. Logan stated that he isn't sure that non-conforming is the appropriate term in this case. The Board is allowed to make a waiver for a driveway, but not for a non-conforming structure. There is a 2-car width approaching the house because there is a 2 car garage. They will also need a turn-around for Fire and Safety. So yes, there is more impact, but that is to increase the safety.

D. Smith stated that he was clarifying that this is an increase in the encroachment on the buffer, but he wasn't suggesting that it isn't justified. This won't necessarily prevent a waiver, but the Board will need to understand that there is a greater encroachment.

Mr. Logan noted that the Board will see quite a bit on the site walk. In addition to the flags, they will draw a spray paint line for where the buildings will sit.

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R. Metcalf noted that the Board will need to see the grading plan, as the driveway is sitting right on the edge of the wetland.

C. MacClinchy added that the biggest concern will be how far from the edge of the wetland the driveway really is. He continued that the Board will need to schedule a site walk for this application.

R. Metcalf asked how soon can the applicant get the flags and paint down.

Mr. Logan responded that they can put the spray paint down within approximately a foot of the final plan. The surveyors will ultimately lay the footprint of the buildings, but this would be a good representation.

He added they can get this down for the Board by Thursday.

The Board set the site walk for Tuesday 10/4/16 at 5:30 pm; prior to the All Committee meeting with the Board of Selectmen.

J. Bernstein will send a reminder to the Board.

R. Smith asked if this plan will need to have a Public Hearing.

J. Bernstein answered no.

R. Smith asked if they have talked with the neighbors about being snug to the line on that side.

Mr. Reilley stated that he has had some discussions with them, but will continue to talk to them about the project.

R. Smith suggested he may want to notify them of the site walk to see if they want to participate and ask questions.

Mr. Reilley stated he will talk to them.

4. Preliminary Subdivision Plan Application of LEB, LLC on Ross Road

J. Bernstein summarized this application. This is the preliminary plan of LEB, LLC on the Ross Road subdivision. They are proposing a 7 lot subdivision. The Board has previously done a site walk at this site. This application is coming back after the applicant has created an outparcel lot; breaking off a parcel which fronts on Ross Road in an effort to have the subdivision be located outside the area within 1500' from the nearest public sewer service. In previous reviews, the

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applicant was asked to extend the sewer. The applicant has now provided a letter indicating as this new application proposes a subdivision which lies entirely outside the 1500', they will not need to connect to public sewer.

J. Bernstein stated that she has forwarded this application to Natalie Burns, Town Attorney, who indicated that she felt the Board still had the ability to ask that this subdivision be connected to the sewer because the parcel was part of the original development. A copy of this email will be sent to the Board following this meeting. The applicant is requesting that the Board not make that requirement, and will give their reasons during their presentation.

Durward Parkinson, attorney representing LEB, LLC presented to address the legal issue that they have been talking about. He stated he is hoping that the Board can decide the matter at tonight's meeting.

A letter was sent to Town Planner on August 16, 2016 which laid out the timeline of what has happened with this application. Unfortunately, that letter has not yet been included in the Board packets for review prior to tonight's presentation. Mr. Parkinson stated that while Ms. Burns is a great lawyer, this is an area where he disagrees with her finding. He then provided copies of the letter to the Board.

Mr. Parkinson explained that while there was a previous application for this project, that application was withdrawn. During the time when there were no active applications, there was a purchase and sale agreement, and surveys done for the deed of a new lot. This was a legitimate lot which was created. The owner of the property is legally entitled to sell off one lot. The applicant thinks that the requirement to connect to the sewer no longer applies to this newly proposed subdivision as there is no portion of the subdivision which will fall within the 1500'. This is a completely new application, and should be treated as such.

Mr. Parkinson noted that Ms. Burns had mentioned the entire issue regarding the sewer would go away if the Planning Board wanted to grant a waiver of the standard. For this reason, they have submitted an application for a waiver request in addition to arguing that this ordinance does not apply to the new application. The waiver is based on extreme financial hardship caused by this requirement. There has been a survey completed which shows there will be no adverse impact by the subsurface systems. Mr. Parkinson added that this development will happen regardless, as if they wait 5 years the outparcel lot will no longer be able to be considered.

C. MacClinchy asked if the Board had any questions for Mr. Parkinson regarding the application of the 1500' rule. He also asked J. Bernstein if she had any additional comments to share.

J. Bernstein noted that Ms. Burns felt the Board still had the ability to look at the 1500' standard as it applied to this, even though the applicant created the outparcel. She then asked the

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applicant what is the basis of the \$600,000 cost estimate for extending the sewer system. There is no information in the waiver request which explains how that number was derived.

R. Smith stated that he would have liked to have had the Town Attorney's comments in writing. He also noted that he would like to know what Ms. Burns means by the Board has the "ability to look at the parcel as though it is part of the subdivision". Does that mean they also have the ability to not look at the parcel as part of the project?

J. Bernstein noted that she will get the Board the written comments from the Town Attorney. She also noted that the outparcel will appear to be part of or the project due to the drainage easement.

R. Metcalf shared with R. Smith's concerns about comments from the Town Attorney. He stated that he needs more than "the Board can look at it" in order to make a determination.

D. Smith agreed. The Board needs to have a very clear and definitive opinion from Ms. Burns on this matter. He stated that when he looked at the original sketch plan, that parcel was identified as something that was supporting the subdivision itself. Now with this new application, it is supposed to be something different. It seems to be obvious that the reason for the outparcel was to circumvent the requirement from this Board to hook up to public sewer. He stated that as far as he is concerned the parcel is still very much a part of the development.

Mr. Parkinson responded that "circumvent" is a very loaded word. It implied a deviousness. What was done with this outparcel was very up-front. At the end of the day, this discussion is about making sure that sewerage is adequately provided for. This can be done with a straight face through subsurface septic systems. The public will still be well served.

J. Vance asked if they could point out on the map where this 1500' line is.

Lou Chamberlain, of Atar Engineering, showed the line on the plan. In the previous application, the edge of the subdivision was at 1450'. Now, the edge of the project is at 1590'.

J. Vance noted that it looks like a lot of the soils in this area are very poorly drained, which would not be great for septic. Can Mr. Chamberlain show the Board what is planned?

Mr. Chamberlain answered that there are 2 test pits per lot. These show that the soils meet the state requirements for septic systems. There are 2 boxes drawn on each lot of the plan. The first box is 1000 sq. ft., and the second is sized for the septic systems designed to go into this development.

J. Vance asked if the grade of this land is towards the river.

Mr. Chamberlain answered that generally the grade is in a North or Northwesterly direction.

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C. MacClinchy noted that it sounds as though the Board is not comfortable taking a position on the matter of whether this projects falls outside the 1500' line until they can see the Town Attorney's comments. Would the Board be willing to entertain their waiver request at this time? Because if the waiver goes in their favor, then it won't matter if the parcel is included.

R. Metcalf asked to clarify, the Board is asking Town Attorney to clarify if the Board should include the outparcel in determining whether to apply the 1500' rule. However, the Board should discuss their position on the waiver request, even if they don't make a determination. This will give the applicant an idea of where the Board stands after they received the comments from Ms. Burns.

C. MacClinchy agreed that this is a good summary of where they are with this question.

R. Smith asked if part of the drainage system went through this outparcel.

Mr. Chamberlain answered yes. The natural grade brings the water through that lot.

R. Smith asked if the drainage is still going through that lot.

Mr. Chamberlain stated yes.

R. Smith noted that even though they made this lot an outparcel and took it out of the application, it is still an integral part of the project.

Mr. Chamberlain noted that the natural grade of the land in the subdivision is such that it goes into the wetland located in that outparcel.

R. Smith pointed out that they don't own that lot now.

Mr. Parkinson responded that it is not uncommon to have a drainage easement on a neighboring lot.

R. Smith asked if the applicant could provide any substantiation for the costs estimates presented as their reason for not connecting to Public Sewer.

Mr. Chamberlain responded that the estimates are based on estimates provided by a contractor. It is not based on a particular design. They added up the estimated cost for: 1500' of sewer pipe, pump station, and estimates for proposed work in a public right of way.

R. Metcalf asked if they will be controlling the storm water, or are they using this new lot to store all of the storm water.

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Mr. Chamberlain answered that they will be storing the water and releasing it at the previous rate of flow. That is why they have the drainage easement into the new lot.

R. Metcalf noted that there is a difference between a drainage easement and using the other property entirely for their storm water maintenance.

C. MacClinchy noted that he isn't sure what new information tonight is. They didn't have the cost estimate previously. Was the hydrological study new?

Mr. Chamberlain answered that the hydrological study had been submitted previously, but it wasn't part of the sketch plan so it wasn't reviewed by the Board.

J. Bernstein stated that what the Board has is a new preliminary plan as of September 16, 2016.

R. Metcalf asked if this hydrological survey was part of the original application.

Mr. Chamberlain responded that the survey was because when they removed the outparcel, the density was such that a hydrological study was required.

C. MacClinchy asked if the Board wants to consider the waiver request of the 1500' rule at this time. Or, would they like to talk about any concerns regarding this waiver. He continued that if, after seeing the Town Attorney's comments, they determine that the subdivision still needs to connect to the public sewer, they will need to entertain the waiver. Does the Board want to entertain the waiver now, in advance of knowing whether or not it will be needed?

R. Metcalf stated that he is willing to discuss the merits of the waiver, but not to make a decision tonight. This will let the applicant know in advance what additional information they may need in order to obtain a waiver.

Mr. Parkinson noted that the waiver request is in Mr. Chamberlain's letter to J. Bernstein dated 9/16/16. The Board already knows the basic facts of the request. The key new information is the cost estimate which has now been provided. If the Board needs more of a breakdown of this estimate, or a more official letter for the estimate, they can provide that documentation.

D. Smith stated that he would like to see an exploded estimate in order to really see how the estimate works.

R. Metcalf noted that he would need to see the cost of bringing the existing sewer to the project, but not including work required within the development.

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Mr. Parkinson agreed to work on that. He continued that he believes that there are special circumstances for this request, primarily the high level of cost. He also noted that they can meet the health and safety standards with their septic design.

R. Smith asked if the crux of the argument is the cost of extending the sewer.

Mr. Parkinson answered that there are two aspects to the argument; the cost and the fact that they have met the health, safety, and welfare standards. The applicant is meeting the burden of proof. There is nothing unsafe about what is being proposed. He continued that he would put the focus on the fact that they have met all the health standards.

R. Metcalf stated that the credibility of the surveys is with some very capable people. He would suggest doing a peer review of the hydrological study. He also suggested having the Town Engineer review the estimate for extending the sewer.

C. MacClinchy added that this sounds reasonable.

R. Smith noted that this site is within the Town's growth area. Assuming that a big part of Ross Rd. will continue to be developed, he would like to see the viability of the septic systems within a growth area. It was determined that public sewer was an important way to develop the Town in these growth areas. He doesn't understand why they would want to deviate from that, especially as this is so close to the Kennebunk River.

Mr. Parkinson said they can address that concern.

D. Smith noted that he agrees with having the Town Engineer look at the estimate for bringing public sewer to the property line of the subdivision. He wondered if it would be beneficial to get a peer review on that as well. He doesn't know what subsurface conditions exist between Glenwood and Ross Road.

J. Bernstein noted that there should be some idea about the conditions, as there is public water. The conditions would be similar.

C. MacClinchy asked if there was anything further that the Board will need in order to make a determination. He noted that he thinks the information the Board has asked for should give them the ability to make a fairly good determination.

D. Smith noted that there are some things for which the Board doesn't ask about financial cost. He asked if the Board is cost blind or should they factor cost into their decision.

C. MacClinchy replied that cost can be part of the waiver provisions the Board considers to be extraordinary hardship. Often that hardship is financial.

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R. Metcalf noted that he would like to see that they can provide a back-up location for the septic on each site.

R. Smith asked if it would be appropriate to have the Town Attorney here the next time they have this discussion.

J. Bernstein replied she can make that request.

Mr. Parkinson stated that he would like to see the waiver request not be required. But, would like to keep the waiver as an alternative.

C. MacClinchy replied that in the meantime, the Board has asked for a couple of additional items they will need in case a waiver is required.

Mr. Parkinson and Mr. Chamberlain agreed to get the additional information to the Town Planner.

5. Other Old/ New Business

C. MacClinchy asked if the Board wanted to meet on 10/10/16, which is Columbus Day. In the past they have met on that day. If the Board wants to move the meeting to 10/17/16, he won't be available to attend.

The Board agreed they are all available on the 10/10/16, and will hold the meeting as usual.

J. Bernstein asked if they wanted to schedule the Public Hearing for Cedarwood for the 10th.

C. MacClinchy answered yes.

10/10/16 agenda:

Cedarwood Farms public hearing

There is likely to be a lot of interest in this hearing, so the Board will leave it up to J. Bernstein if she wants to add any additional policy stuff to the agenda.

10/24/16 agenda

LEB LLC

Reilley Shoreland Zone application

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Possibly there will be some other applications ready for then.

J. Bernstein noted that if Natalie Burns, Town Attorney, cannot be at the meeting to discuss the LEB project, she will certainly have in writing what Ms. Burns' thoughts are.

D. Smith noted that the Board will want that anyway.

J. Vance asked if Ms. Burns would have knowledge regarding if other towns have had a situation like this and how they handled it.

J. Bernstein stated that she will ask if she has had any history with something like this.

R. Metcalf noted that it may not be relevant to the sewer issue, but she likely has run into situations where lots were carved out.

J. Bernstein stated she will also include the entire waiver section for the Board's review. She noted they can also reference the Comp Plan as well for this.

C. MacClinchy noted that there is an All Committee meeting on 10/4/16 at 6:30 pm. The hope is that at least 1 member of each committee will attend.

J. Bernstein stated that they want to make sure that all committees have bylaws and missions. The Town wants to be sure there is some consistency.

C. MacClinchy stated that he should be there. If anyone else is able to attend they are welcome.

6. Adjournment

D. Smith moved to adjourn the meeting

R. Metcalf seconded the motion.

Vote was 5/0 in approval

Meeting was adjourned at 8:55 pm.

Respectfully submitted by Lynne Capitan.

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Signature Page

Signature

Date