

**MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
January 11, 2022**

MEMBERS PRESENT: Mark Hawkes, Ashley Thayer, and Marie Varian, Chair.

1. [0:2:57] The meeting was called to order by Ms. Varian at 5:00 pm at the Town Hall. Ms. Varian reported that there was a quorum, which is three members. Ms. Varian announced that Ashley Thayer, who has been an Alternate for a long time, is now a full Board member and was appointed on November 17, 2021.

2. [0:3:11] **Consider the minutes of:**

- **11/09/2021 Public Hearing, Business Expansion, Santosha on the Kennebec, Tax Map 10, Lot 8;**
- **11/09/2021 regular meeting; and**
- **11/21/2021 site walk, Elizabeth McNair, Tax Map 29, Lot 11-16**

Ms. Thayer moved to accept all of the minutes as written. Mr. Hawkes seconded the motion, which was passed unanimously.

3. [0:4:23] **Elizabeth McNair, 37 Long Cove Road, Tax Map 29, Lot 11-16, Represented by Chris Almy of R.W. Stevens, Inc., Phippsburg – Continue discussion to expand existing porch of “Captain’s Cottage” by 8’ x 11.5’ and enclose both sections. Located in the Village District of the Shoreland Zone. Application #2021-31**

Ms. Varian reported they took pictures at the site walk on November 21st. The problem was that on the southeast corner the ledge heaved toward the east and the Board was worried that it was getting too close to the shore there. After looking it over, the Board thought that she could angle it a bit to the landward side.

There was no one at the meeting to represent the applicant, so continued discussion on this application was tabled until Ms. Varian heard from the applicant.

4. [0:9:21] **Adam Kernan-Schloss, 66 Morrison Pasture Road, Tax Map 31, Lot 81, Represented by Kevin Bachman of Bachman Construction, Arrowsic – Demolish garage, replace and expand by 47± SF with art studio, office, and associated. Located in the Village District of the Shoreland Zone. Application #2022-01**

Mr. Bachman described the project in more detail. He reported that the building that is there is currently is being used as an art studio, but it is falling down, so they want to take it down and replace it with a new building in the same spot. New building would include a utility bathroom, in addition to the art studio and the office. He reported that everything worked out with the septic system. They talked to the person who originally put the septic system, and he said that it can definitely handle the additional bathroom.

Ms. Varian reported that this was considered under the Town of Phippsburg Shoreland Zoning Ordinance, Section 12, “Non-conformance”; Section 12.C.1 and 3, “Non-conforming structures”; Section 14, “Table of Land Uses,” Item 15; Section 17.C, “Permit Application and Procedures.” Non-conformance is due to the structure being too close to the property lines, and replacement structure will be located in same footprint due to measurement necessity. There was no way to move it back to make it more conforming, which is to be done if possible. In this case, it’s too close on either side.

Expansion footages as certified by the Codes Enforcement Officer are:

	<u>SQ. FT.</u>	<u>CU. FT.</u>
Existing	510.9583	5,086.234
Allowed expansion (30%)	153.2875	1,525.870
Permit will use	98.0417	971.932
Remaining for future use	55.2458	553.938

Ms. Varian stated that the point that she would like to emphasize is that the existing structure is an outbuilding, to be replaced by a studio, workspace with bathroom, but there is not enough land for the new structure ever to be a dwelling unit unless the law changes. Therefore, this fact would be included as a restriction on the permit. Otherwise, she could find no problem with the proposal in regard to the Town’s ordinance. The new structure would have no increase adverse impact on the water—it’s not near the water—or the adjacent properties. The new structure will not infringe upon them on either side.

Ms. Varian mentioned that the application had stated that the land area was 1.17 acres. This is not correct. The land area is actually 0.17. With the applicant’s permission, Ms. Varian, as Chair of the Planning Board, corrected the application and initialed and dated the change. She also filled in the fact that the structure was in the Village District and that the legal setback was 50’. It is a non-conforming structure and a non-conforming lot.

Ms. Thayer moved to approve the application with the restriction that this replacement structure is an outbuilding and shall not be converted at any time for use as a dwelling. Mr. Hawkes seconded the motion, which was passed unanimously.

In preparing the permit, Ms. Varian described the condition of approval as follows: “This replacement structure is an outbuilding and shall not be converted at any time for use as a dwelling as defined by the Shoreland Zoning Ordinance. As permitted, the reconstruction will have no greater adverse impact on the water body or adjacent properties than existing building.”

Ms. Varian reported that she had already received the fee of \$100 (check #8117).

5. [0:25:13] **Foxy CEOs, LLC, 126 Parker Head Road, Tax Map 08, Lot 18 – Remove covenants from the Cooley Estate Kennebec River Minor Subdivision, which also includes Lot 16, owned by the Donna D. Dillman Living Trust. Application #2022-02**

Chris Fox introduced himself and stated that he was representing Foxy CEOs for his children, Steven and Caroline. He stated that he didn't know whether Ms. Dillman was coming. Ms. Varian stated that her presence would be needed for the Board to make a decision, but they could talk about the application and see if she showed up.

Mr. Fox reported that they were requesting that the covenants be removed from the Cooley Estate Kennebec River Minor Subdivision, dated July 24, 1977. He noted that copies of these covenants were attached to his application form. He stated that when he filed this application, both owners of the subdivision, the Fox Family and Donna Dillman, were in agreement. He hasn't heard since then of any change of minds. He reported that Lot #1 of the subdivision contains Ms. Dillman's house, formerly owned by Mr. Hedges. Ms. Dillman also owns Lot #2, which she purchased from Eleanor Cooley. Mr. Fox purchased Lot #3 from Eleanor Cooley in 1990. Mr. Fox had earlier (early 1980s) purchased the house on the lot adjacent to the northern property line of Lot #3 from Richard Hill in the early 1980s. This lot was referred to as Lot #4 in the discussion, although, having been sold to Mr. Hill in 1972 by Mr. Cooley, it was not technically part of the subdivision nor controlled by the covenants.

Ms. Varian asked Mr. Fox why, if the covenants are protective, he wishes to remove them. Mr. Fox responded that he has two reasons:

- First, some of them are antiquated and actually if someone really wanted to take him to task, they could. For example, he has a cedar shake roof. Covenant number 9 requires that roofs must be covered with non-combustible material.
- Second, because this land is owned by his children, he is trying to look into the future when he is long gone, and he would like them to have as much flexibility in the use of the land as they might need. He said that he has seen too many cases where families break up because of disputes in the use of the land. For example, covenant number 3 states that only one single-family private residential buildings can be constructed on each lot. Lot #3 is 5.6± acres, which, in his opinion, is large enough to allow for two houses without adversely affecting the rural nature of the subdivision. He sees this as a way of forestalling disputes for several decades.

Mr. Fox stated that he agreed with Ms. Varian that many of the covenants are protective. In fact, when he and Ms. Dillman started these conversations in July, there were four restrictions that he recommended keeping, but, as the conversations went on, it became too complicated. At one point, they were talking about adding language to allow Ms. Dillman to put an equipment locker on the property. He reported that he finally suggested that they just get rid of all the covenants and use the Town ordinance to determine what they would be allowed to do. Ms. Dillman agreed with him.

Mr. Hawkes asked whether Ms. Dillman put anything in writing regarding Mr. Fox's application. Both Mr. Fox and Ms. Varian stated that they do not have anything in writing, although Mr. Fox does have emails from her that indicate her support for the application.

Ms. Varian stated that everything will need to be documented in writing before the Board's response to the application can be decided.

Ms. Varian then referred to the list of covenants and pointed out particular ones that she thought have merit, and they should be sure that they really don't want them, and others that are no longer necessary because town and state rules would apply and accomplish the same objectives.

Ms. Dillman joined the meeting during this portion of the discussion.

Ms. Varian asked Ms. Dillman whether she was in agreement with doing away with the covenants, or would she prefer that the covenants be revised. Ms. Dillman asked how one would properly go about revising covenants. Ms. Varian responded that the first thing to do would be to check with Maine Municipal Association (MMA) and find out what they advise and be sure it was being done in a legal manner. She also stated that other changes in the subdivision would require the applicant(s) to state the proposed changes in the application and then the Planning Board would make findings of facts based on the changes proposed. Ms. Varian said that, even though the regulations regarding changes in the subdivision plan do not explicitly refer to covenants, it was her opinion that changes in covenants are changes in the subdivision plan.

Ms. Varian stated that the Planning Board needs to know what they can do to assist Mr. Fox and Ms. Dillman in proceeding. First, they need to know whether their real preference is to just remove all the covenants, or to remove some and revise others. She said that, as things currently are, the Town would look at it that the property is protected fairly well. Once rules and regulations are gone, then no one knows what might happen.

Mr. Fox stated that when they started talking, they actually thought they should keep four of the covenants, but, as they explored those particular covenants, it got so complicated that they decided to keep it simple and just require that lot owners abide by local, state, and federal regulations.

Mr. Hawkes stated that his opinion was that the Planning Board should allow Mr. Fox and Ms. Dillman to do whatever they want, so long as it's legal.

The decision was made that the Board would find out from MMA what was permissible and how it should be done, and then meet again with Mr. Fox and Ms. Dillman to report that information to them and decide how to proceed.

This application will be on the agenda for the February regular meeting of the Planning Board.

6. [1:17:46] Foxy CEOs, LLC, 126 Parker Head Road, Tax Map 08, Lot 18 – Restate and amend the June 13, 1990, Certificate of Easement/Driveway Location as regards Cooley Estate Kennebec Minor Subdivision Lots #2 (Tax Map 08, Lot 16) and #3 (Tax Map 08, Lot 18). Application #2022-03

Mr. Fox reported that he was told by his attorney that subdivision Lot #3 is actually Tax Map 08, Lot 17-1, not Lot 18, as indicated above.

Ms. Varian stated that this application is a true change to the subdivision plan, unlike the application for the change in covenants, which is not so clear, because, in this case, they're actually requesting permission to change the plan.

Mr. Fox summarized the background that resulted in the existing right-of-way on the subdivision plan providing access to subdivision Lot #3 via Lot #2. Mr. Fox was cautioned by his attorney that the language in the deed concerning the right-of-way needed to be clarified so as to avoid future disputes. His attorney advised him to have a surveyor come in, survey the site, and fix the language. The plan submitted to the Planning Board, "Plan of a Proposed Right-of-Way over land on Parker Head Road, Phippsburg, Maine," dated November 18, 2021, prepared by John Bradley Wood, is the result.

Mr. Fox reported that he then went to the Town's Road Commissioner, showed him the proposed location of the entrance to the subdivision from Parker Head Road, and asked him what he thought about the location. The Road Commissioner said that his only concern was the site line. He measured the site lines and said it was fine.

Ms. Varian asked whether this right-of-way was intended to be permanent. Mr. Fox said that it was. It was intended to be the permanent access to Lot #3.

Mr. Hawkes noted that the 12' width of the traveled way was somewhat narrow for large trucks turning onto it from Parker Head Road. Once the turn was made, the width should be adequate. Mr. Fox stated that he didn't think the right-of-way should be less than 20', based on John Woods's experience. The proposed right-of-way in the plan submitted is 20' wide—a 12' wide traveled way, with 3' shoulders on each side.

Mr. Hawkes stated that, during construction, it might be difficult for some of the larger construction trucks to make the turn from Parker Head Road without occasionally going outside the right-of-way. He recommended that Mr. Fox and Ms. Dillman recognize that and tolerate it during the construction period. There might be some damage that would need to be repaired when the construction period was over, but, after that, the 12' wide traveled way should be adequate in this situation.

Ms. Varian asked if there was any disagreement between Mr. Fox and Ms. Dillman on the proposed change to the right-of-way. They said there was not. Mr. Hawkes said he thought it was a good plan.

Ms. Varian asked if they need to do a site walk. Mr. Hawkes said that he didn't think so: there's been a surveyor; the two parties agree to it; and the Road Commissioner has looked at it and doesn't have a problem with it. Decision was made not to have a site walk.

Ms. Varian stated that they have to make Findings of Fact according to State Statute §4404.

Ms. Varian asked if they knew what the cost would be. Mr. Fox said they do not. He has asked for an estimate, but has not received it yet. He explained that the plan is to scrape it, put down barrier cloth, and some gravel on top.

Mr. Hawkes noted that the total distance of the right-of-way is not indicated on the plan. It can, however, be determined by adding the individual distances provided on the plan. Ms. Varian confirmed that there was no way to get access directly to Lot #3 from Parker Head Road. That

was confirmed, due to the ledge and the limited site lines. Since the right-of-way would just go to the house site for Lot #3, it would be considered a driveway for Lot #3, not a subdivision road.

Ms. Varian stated that it appears that Mr. Fox and Ms. Dillman can make the changes they want, so long as they do it properly. She suggested that they table the discussion until the next regular meeting in February. During that time, Ms. Varian can work on the language for the “Findings” and do any necessary research on legal and regulatory issues.

Discussion on this application was tabled to the February meeting.

Mr. Fox was informed that it was necessary for him to get a letter from his children authorizing him to work as their agent.

7. [2:10:18] Sebasco Harbor Resort, 29 Kenyon Road, Tax Map 29, Lot 11. Represented by Robert Smith. Discussion only—ideas regarding marinas, building relocation, and store for water traffic.

Ms. Varian reported that Mr. Smith decided to wait till February to appear before the Board for this discussion, so it will be put on the February agenda.

8. [2:10:54] Small Point Club, 64 Club Road, Tax Map 21, Lot 23. Represented by Richard Lee—Expansion of non-conforming structure for additional deck/dining area – located in the Resource Protection/Residential Districts of the Shoreland Zone. Application 2022-04

Mr. Lee stated that he was on the Board of the club, and that this proposed expansion is to facilitate making the club more sustainable and help meet the needs of its growing population. The structure is non-conforming and is 125 years old. They not only have a southern boundary issue, but they have a Shoreland Zoning issue.

He reported that both he and the Town’s CEO had made estimates to determine where the 125’ setback for the Shoreland Zone is in relation to the proposed expansion. They couldn’t do exact calculations because they don’t know exactly where the 125’ setback falls in its diagonal cut of the existing building. So, it’s difficult to figure the 30% that’s inside and the 30% that’s outside. They don’t know how much of the proposed expansion they can do legally in accordance with the Town’s ordinance.

They realize that the first step is to do more accurate measurements on the face of the earth. The estimates of both Mr. Lee and the Town’s CEO indicate that the expansion can be 600 SF. The proposal right now is for 624 SF (24’ x 26’), plus the steps—another 60 SF—which totals 684 SF. Since this exceeds their estimate, they need to come up with a more accurate measurement.

Mr. Lee also reported that there is a drainage swale between the club property and the property owned by the Hoffman family, abutters to the south. He suggested to the Hoffmans that they tackle that at the same time that they undertake this project.

Mr. Lee asked what were the next steps they should take, in addition to coming up with more accurate measurements. Ms. Varian responded that they would need something in writing from the Hoffmans.

Mr. Lee asked if the addition stayed off the property line the same distance that the existing structure is now off the property line—which is approximately a foot—would be enough. Mr. Hawkes said the rule was to ensure that there was room for maintenance to be done on that portion of the improvements, and one foot does not seem to meet that requirement.

Ms. Varian reviewed the Town's Shoreland Zoning Ordinance map and text, which shows that the lot actually has a 100' setback.

Mr. Lee noted that this smaller setback allows for a larger expansion because of the additional existing square feet outside of the setback. This would allow for the 684 SF expansion of the proposal. However, there is still the issue of the proximity to the southern property line and the fact that about 30 SF of the stairs exceeds the building's proximity to the water. Mr. Lee asked if there was any way that this can be permitted.

Mr. Hawkes asked if it was possible that the fire department would consider the stairs providing a necessary egress, or that they would provide for handicap accessibility to comply with the American Disabilities Act. Mr. Lee stated that the only reason for the stairs was for quick evacuation if there was a problem.

Ms. Varian stated that Mr. Lee would go to the Board of Appeals to determine whether a variance could be issued for this reason. She suggested that Mr. Lee call Everett Perkins, the Chair.

Question came up about moving the proposed stairs to go under the porch. Mr. Lee did not feel that it would be practical, but he said they would look into it.

Ms. Varian told Mr. Lee that he could come back to the Board when he had resolved the outstanding issues, and that, because the club was a business, this would be considered a Business Expansion and would require a public hearing, rather than a decision being made at regular meeting. The public hearing would consist of providing all the facts about the proposal, receiving comments and questions from members of the attending public, follow-up questions by the Board, deliberation by the Board, and then, approve, approve with restrictions, or deny the application.

Ms. Varian asked Mr. Lee to tell her when he was ready to have the public hearing, and give her enough lead time so that she can advertise it 7-14 days before the hearing as required. She also said that it did not have to occur on the Board's regular meeting night.

Mr. Lee said that they are doing this ahead of time. They do not plan to start construction until 2023. Ms. Varian then explained that, once the permit was issued, they had to make a substantial start on construction within a year of the date of the permit, or the permit would be void. If they have started construction, but it is not substantial, they would run the risk that the permit would become void. Mr. Lee will keep that stipulation under consideration as plans are finalized.

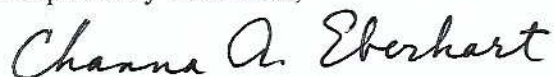
Ms. Varian said she would put him on the February agenda, and, if he wasn't ready, he could just tell her and postpone the continuation of the discussion.

9. [2:59:47] **Other Business.** Date for next ordinance amendment discussion was set for January 17th at 5:00 pm.

10. [3:13:42] **Announcements.** Ms. Varian informed the Board that Mr. Newell will draft the 2021 Planning Board report for the Town's *Annual Report*.

11. [3:14:45] **Adjourn.** Ms. Thayer moved to adjourn. Mr. Hawkes seconded the motion, which was passed unanimously. Meeting was adjourned at 8:13 pm.

Respectfully submitted,



Channa A. Eberhart
Secretary