

**MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
July 13, 2021**

It should be noted that state government restrictions about public gatherings in response to the Coronavirus outbreak were removed on May 24, 2021, so, per the vote of the Phippsburg Select Board on May 19, 2021, were no longer in force at the time of this meeting. The meeting was, as is customary, recorded so that members of the public could also observe without attending in person.

MEMBERS PRESENT: Joshua Bate, Mark Hawkes, Clifford Newell, Alternate Ashley Thayer, and Marie Varian, Chair.

1. [1:14:00] The meeting was called to order by Ms. Varian at 5:12 pm at the Town Hall. Ms. Varian appointed Alternate Ashley Thayer to serve in place of Stephen Thayer. Ms. Varian stated that Ms. Thayer would serve throughout the meeting.

2. [1:14:30] Consider the following minutes:

- **Regular Meeting on June 15, 2021;**
- **Site Walks:**
 - **May 27, 2021 (Crabby Lobster-Map 32, Lot 3), and**
 - **June 27, 2021 (Xenox Works & Paper Tides-Map 5, Lot 5)**
- **New Business Public Hearings:**
 - **June 27, 2021 (Xenox Works & Paper Tides-Map 5, Lot 5)**
 - **June 27, 2021 (The Lobster House-Map 24, Lot 15)**
- **Subdivision Public Hearing**
 - **July 6, 2021 (Maine Woodland Properties-Map 9, Lot 3)**

Mr. Newell moved to approve the minutes of the regular meeting as written. Ms. Thayer seconded the motion, which was passed unanimously.

Mr. Newell moved to approve the minutes of the site walks on May 27 and June 27, 2021, as written. Ms. Thayer seconded the motion, which was passed unanimously.

Ms. Varian stated that the minutes of the subdivision public hearing would not be heard, as the minutes have not been completed.

Mr. Newell moved to approve the minutes of the new business public hearings on June 27, 2021, as written. Mr. Bate seconded the motion, which was passed unanimously.

3. [1:16:50] Hazel Herrick and Jim Koehling, 17 Moses Lane, Tax Map 31, Lot 73 – Discuss 10/9/18 permit for wharf construction. DEP declares wharf not built in DEP-permitted location.

The situation is that the applicants obtained a DEP permit to build a 12’W x 130’L commercial pier, a 4’W x 40’L ramp, and a 20’W x 20’L float in the Village District of the Shoreland Zone. The applicants applied for a permit from the Planning Board. During the site walk conducted by the Planning Board, members viewed the area staked by the applicants to show where the DEP permit allowed the wharf construction to be done. The Planning Board issued a permit on October 9, 2018, and the wharf was subsequently constructed. The DEP recently inspected the wharf and informed Ms. Herrick and Mr. Koehling that it had to be moved because it was in a significantly different location than the location identified in the DEP permit. Reportedly, the DEP is planning to take the applicants to court to resolve this issue.

Ms. Herrick and Mr. Koehling assert that the project was built exactly as permitted by the DEP, except that the pier is 128’ long, rather than 130’, and a 20’W x 20’L rope locker that was included in the permit was not built.

Ms. Varian asked Ms. Herrick and Mr. Koehling what they think the Planning Board would be able to do. Mr. Koehling responded that they would like the Planning Board to go over the paperwork and see if they were missing anything.

The advice of the Board was that Ms. Herrick and Mr. Koehling should obtain certification from a professional that the project was constructed in exactly the location permitted. This certification should be presented to the court by their attorney, with a request that the case be dismissed.

Ms. Varian described the information and documentation available in the Town’s files. These would be available, if requested, to assist them. No action was taken by the Board.

4. [1:40:18] Glen S. Theall, 960 Popham Road, Tax Map 14, Lot 18 – Move and elevate existing structure: new foundation, enlarge, add deck; construct block wall to retain landfill. Application #2021-23

Ms. Varian reported the measurements provided by the CEO related to this project:

	<u>SQ. FT.</u>	<u>CU. FT.</u>
Existing	2,598.69	16,576.00
Allowed expansion ¹	779.61	5,729.06
Permit will use	814.70	4,780.53
Remaining for future use	-35.09	948.53

¹ Note: As reported in this table, the calculation for the allowed expansion of the cubic area is incorrect. 30% of 16,576 cubic feet is 4,972.80. The amount report in this table—5,726.06 cubic feet—is, fact, 30% of 19,096.86 cubic feet.

Mr. Theall stated that he needs to get his house out of the flood plain. As it is now, it is 0.9' in the 10-year flood plain. The reason for the request is to fix that. Build a new foundation and move the building back to set it on the foundation, while conforming as much as feasible to the setback requirements of the Town's ordinances. At the same time, install a leach field, which the site does not now have, and make other improvements to the visual and functional appeal of the structure. He reported that he has received a DEP permit by rule, dated June 18, 2021, for the elevation, new foundation, and installation of retaining wall and raised bed leach field.

Part of the expansion plan is to construct a cupola on the roof, which would increase the building height to 35' above the elevated ground level. There was some discussion about whether the Shoreland Zoning Ordinance ("SZO") requires building height to be measured from the ground level before it is elevated with fill or after in order to comply with the requirement in Section 16.B.3.h: "No building shall exceed 35 feet in height, measured from the mean *original* grade at the downhill side of the building." [Emphasis added.]

Ms. Varian referenced Section 12.C.1.b of the SZO, which states, in part, "Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, . . . if the completed foundation . . . does not cause the structure to be elevated by more than three (3) additional feet as measured from the uphill side of the structure (from *original* ground level to the bottom of the first floor sill), it shall not be considered an expansion of the structure." [Emphasis added.]

There was also a question about whether the proposed retaining wall can be built in compliance with the SZO.

The Board decided that a site walk would be required. The site walk was scheduled for Sunday, August 1, 2021, at 9:00 am. Ms. Varian stated that the primary goals of the site walk are to nail down the total building height, including the proposed cupola, and view the location of the proposed retaining wall. Mr. Theall was asked to provide a sketch at that time showing the building elevation.

Ms. Varian stated, that it is advisable, whenever a resident of the Town is thinking about doing something to his property, to come in and talk to the Planning Board early in the process. In this way, issues that may arise are identified before the project goes too far. It is not wise to assume that informal conversations with Town or State officials can be expected to reveal all relevant issues in the proposal, or that State officials would be knowledgeable about Town regulations that could conflict with those of whatever State agency that person represents. This is advice pertinent to any resident of the Town.

5. [2:42:47] Xenos Works & Paper Tides, 516 Main Road, Tax Map 05, Lot 05 – Review State DOT right-of-way footage as it relates to 6/27/21 New Business Permit.

Application #2021-21

Ms. Varian reported that, the day after the Board issued the new business permit for Xenos Works and Paper Tides, she received information from the State that she had requested previously—the width of the State's Right of Way in front of the applicants' property is 31' from the center line of Route 209 (Main Road). This is 2' narrower than reported earlier.

Ms. Varian gave the information from the State to Mr. Xenos and asked him to attach it to his permit in the event that any ROW questions come up in the future. She noted that copies of these documents will be added to the Planning Board's file as well.

6. [2:44:51] Joanne Thompson, 28 Cold Spring Farm Road, Tax Map 04, Lot 17, Represented by David Matero of David Matero Architecture, Bath – Revise 2/9/2021 permit #2021-08 to use remaining 15 cubic feet of allowed 30% expansion in the Resource Protection district of the Shoreland Zone. Application #2021-24

Mr. Matero stated that they have made very minor changes to the design for which they received a permit on February 9, 2021. These changes mean that they are going to use all of the remaining square footage and volume that was available in February *outside* of the 125' setback: 11 square feet and 15 cubic feet. The table below shows the new calculations for this area:

	<u>SQ. FT.</u>	<u>CU. FT.</u>
Outside Setback		
Existing	2,838	25,375
Allowed expansion (30%)	851	7,613
Permit will use	851	7,613
Remaining for future use	0	0

Since this information needs to be recorded in the Registry of Deeds, Mr. Matero is requesting the Board's approval and a new permit.

This application was considered under the Town of Phippsburg Shoreland Zoning Ordinance Section 12.C.1.a, "Non-conforming Structures," and Section 17.D, "Procedure" and "Findings." This permit will not increase non-conformity. Ms. Varian declared that the application was complete. She noted that there would be no change in footages in the area *within* the restricted zone as shown of the February 9, 2021, permit for expansion.

Mr. Bate moved to accept the application with the modifications, restrictions, and comments by the Chair, as well as the measurements, leaving a zero balance in the square footage and cubic footage in the area *outside* the restricted zone. Mr. Newell seconded the motion, which was passed unanimously.

Mr. Matero paid the \$100 fee by check #1369.

7. [3:01:02] Maine Woodland Properties, Parker Head Road, Tax Map 09, Lot 03, Represented by James A. Boyle – Review information received at 7/6/21 public hearing and continue discussion of Kennebec Shores Subdivision proposal.

Application #2021-06

Mr. Boyle distributed revised plans “C3” and “C4” showing the changes made as a result of the issues and questions raised in the public hearing. Joe Marden, Project Engineer with Sitelines, went over the changes:

- The area of the land in the southeastern section of the parcel, adjacent to subdivision Lot #1, to be conveyed to Eric Lundquist, an abutter, has increased from just under 2 acres to 3.3 acres.
- The access road to the subdivision from Parker Head Road was shifted south more than the 25’ mentioned at the public hearing.
- Common space was increased from 3.31 acres to 3.32 acres.
- Two tables were added to Sheet C4 to clarify measurements relating to road frontage for each subdivision lot.
- Added notes 19 and 20 to Sheet C4.
- The road on which subdivision lots #12 and #13 are located has been named “Misty Cove Road,” and that name is included on the revised sheet C4.

Mr. Marden also had more information regarding how the DEP determines whether a vernal pool is significant and how that was done for this project. He distributed this to members of the Board.

Mr. Marden has been able to talk to someone at the Post Office, but not yet the Postmaster.

Ms. Varian reported that she has informed all of the department heads in the town, but has received a response only from RSU #1, the regional school unit that serves the town of Phippsburg.

Ms. Varian asked if there are any items for which they expect to ask for a waiver. Mr. Boyle said that there were not.

Ms. Varian requested 12 copies of the final documents so there is a copy for each Board member, Alternate, and the various files in the Town’s records.

Ms. Varian asked if there are any other outstanding items, aside from contacting the Postmaster to settle issues about mail delivery. She stated that, as far as the Preliminary Plan is concerned, everything is done. Eventually, they would get into performance guarantees, etc. Mr. Boyle said that they don’t have anything in writing with them, but it would be in the form of cash. Ms. Varian said that, whatever the expected cost for completion is, it might say “times 2” but it should say “times 4.”

Ms. Varian stated that the Board will need a letter of guarantee that cash is going into an escrow account – if that’s the way the developer wants to guarantee performance – and what the amount will be, with an itemization of how that amount was determined. If the amount of cash is satisfactory to the Board and to the Selectmen, then it will be accepted. If not, the Board will need someone to look at it and advise them.

Ms. Varian confirmed that any sheets in the plans that have already been submitted, but have not subsequently changed at all, do not need to be resubmitted.

Ms. Varian said that the Board will attempt to have whatever is needed for final approval of the Preliminary Plan in time for the next regular Board meeting on August 10.

Mr. Hawkes moved to approve the Preliminary Plan as complete, noting that the revisions have been submitted showing that every subdivision lot has a minimum 150' of road frontage. Ms. Thayer seconded the motion, which was passed unanimously.

Mr. Marden asked whether, if the performance guarantee is not finalized at the time that everything else is finalized, it is possible for the application to be approved, subject to approval of the performance guarantee.

Ms. Varian confirmed that this application would be put on the agenda for the regular August meeting. If it turns out that either the Board, or the applicant, is not ready, a special meeting would be scheduled for this purpose.

8. [3:59:34] Tanya Rosenberg & Shawn Mains, 31 Main Road, Tax Map 01, Lot 05 – Correct error on 6/15/21 permit #2021-20. Change Lot number from 4 to 5.

Application #2021-20

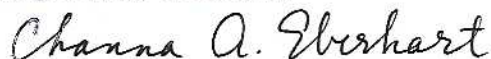
Ms. Varian informed the members that this application had the wrong lot number for the location of the business and the wrong lot numbers for the abutters. The application stated that the lot number at 31 Main Road is Lot 4, and the correct number is 5. It stated that the abutters were on Lots 3 and 5, but they are actually on Lots 4 and 6. Ms. Varian corrected the permit, and sent a letter to the applicants informing them of the errors, the correct numbers, and asked them to attach a copy of the letter to the permit for future reference.

9. [4:00:36] Other Business. Mr. Bate is stepping down today from the Planning Board. Ms. Varian thanked him for everything and told him they would miss him.

10. [4:01:00] Announcements. None.

11. [4:01:07] Adjourn. Mr. Bate moved to adjourn. Ms. Thayer seconded the motion, which was passed unanimously. Meeting was adjourned at 8:00 pm.

Respectfully submitted,



Channa A. Eberhart
Secretary