

**MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
June 15, 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outbreak were removed on May 24, 2021, so, per the vote of the Phippsburg Select Board on May 19, 2021, were no longer in force at the time of this meeting.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, Stephen Thayer, and Marie Varian, Chair.

1. [5:48] The meeting was called to order by Ms. Varian at 6:03 pm at the Town Hall. Ms. Varian announced that there was a full board and, therefore, a quorum.

2. [6:09] **Consider the minutes of the regular meeting on May 11, 2021; site walk on May 2, 2021—Valentine/McLaughlin, Tax Map 45, Lot 55; site walk on May 27, 2021—Crabby Lobster—Hunt/Wallace, Tax Map 32, Lot 03; and public hearing on May 27, 2021—Crabby Lobster.** Mr. Newell moved to approve the minutes of the regular meeting as amended, the May 2, 2021, site walk, and the public hearing on May 27, 2021. Mr. Hawkes seconded the motion, which was passed unanimously. Consideration of the minutes of the site walk on May 27, 2021, was postponed to the July regular meeting.

3. [10:40] **Christine Mardoian, 67 Dromore View, Tax Map 11, Lots 5 and 6 – Home Business determination of hand-painted furniture and home décor, and hand-made journals, to be called C. Victorias Cottage. Application #2021-19**

Ms. Varian asked the applicant if, since the property was located in a subdivision, she had checked the subdivision documents pertaining to her property to see if there were any restrictions or regulations related to home businesses. The applicant's husband responded that he reviewed the documents and he saw no references at all to home businesses.

Ms. Varian asked if the applicant planned to have employees. She responded that she did not; she does the work herself. She finds existing furniture, repurposes it, and paints it. She does very little staining, primarily painting. Typically, her pieces are small, but on occasion, it is possible that she would do a large piece that would require a truck to be used for pickup. That would not occur very often, but would be the only reason for the business to cause traffic at the site.

Mr. Newell moved that the proposed business is a home business. Mr. Hawkes seconded the motion.

Ms. Varian stated that the application was considered under the Town's Land Use Ordinance, Section 9.L.2, "Home Business," and Section 12.D.3, "Procedure for Administering Permits." She further stated that the application was complete.

Motion was passed unanimously. Ms. Varian included in the permit the following statements: (1) parking is adequate, (2) the applicant declared there are no prohibitions in the subdivision covenants against home businesses, and (3) the applicant is responsible for obtaining any and all other permits from any and all other persons or agencies required for completion of this project.

Applicant reported that the fee of \$50 will be delivered to the Town's Treasurer on the following day.

4. [23:08] Tanya Rosenberg & Shawn Mains, 31 Main Road, Tax Map 01, Lot 05 – Home Business determination of 10'x 12' farm store selling produce, berries, flowers, seedlings from own gardens and baked goods, preserves, crafts, and wreaths, to be called Deep Roots.

Application #2021-20

Ms. Varian stated that this application was being considered under the Town of Phippsburg Shoreland Zoning Ordinance, Section 15.2, "Home Business," and Section 17.D, "Procedure for Administering Permits." She reported that this a non-conforming lot with an existing non-conforming structure (house) and is considered under sections of Section 12, "Non-conformance."

Ms. Varian asked Ms. Rosenberg about the plan for parking. Ms. Rosenberg responded that there is plenty of room for parking, as well as room for turning into the site and then backing away from the street in order to park. However, they haven't yet decided the best way to handle parking and access and egress. She also reported that they have decided to change the dimensions of the new structure from 10'x 12' to 10'x 10'. The business would be conducted seasonally and, during the winter the structure would be used for storage.

Mr. Hawkes asked the applicant how they would mark out where to enter the site and park—would there be gravel, or would it remain grass? He also noted how little distance there was between the parcel's property line with the parcel to the south, 39 Main Road (Map 1, Lot 6) and the structure on that parcel, containing the "Rock Shop." Ms. Rosenberg responded that the Rock Shop is 20' from the property line, and the structure on Lot 5 is set back 40' from the property line. Consensus of the Board was that any permit would prohibit parking on Main Road and backing onto Main Road from the parcel and require appropriate signage indicating those prohibitions.

Consensus of the Board was that a site walk was not needed. Ms. Varian declared that the application was complete.

Mr. Newell moved to approve this proposal as a home business, with the restrictions and requirements as described above. Mr. Thayer seconded the motion, which was passed unanimously.

Ms. Varian reminded the applicant that she would be responsible for obtaining any and all other permits from any and all other persons and agencies for completion of this project.

Fee of \$50 was paid by cash.

(Note: Application reported that the parcel is located on Lot 4, which is incorrect. It is actually Lot 5. The permit issued also identified the lot number incorrectly as Lot 4.)

5. [43:37] Patricia McLaughlin and Justin Valentine, 206 Popham Road, Tax Map 45, Lot 55 – Continue the discussion at the April 13, 2021, regular meeting on the New Business application for Pangea Café and set date for public hearing.

Application #2021-15

Ms. McLaughlin submitted to the Board a copy of the Driveway/Entrance permit dated May 5, 2021, received from the state Department of Transportation.

Ms. Varian declared that the application was now complete.

Ms. Varian asked the applicant if she intended to break off the part of the parcel on which the café would be located. Ms. McLaughlin responded that they had decided not to do that, but, instead, the LLC that owns the company would lease a portion of the parcel from the applicants.

Mr. Newell noted that, on page 2 (under paragraph C) of the memorandum of March 20, 2021, submitted in connection with this application, the applicants stated: “The café/mercantile shall have a minimum rear and side yard distance of at least one hundred and fifty (150) feet from the nearest residential lot line.” On page 5 (last sentence), the applicants stated: “The structure will be setback seventy-five (75) feet from the center of the traveled way along route 209 and a minimum of twenty (20) from a property line.” Ms. McLaughlin explained that parking would be 100’, but part of the turnaround would be 20’ from the Pope property line.

A public hearing was scheduled to be held immediately before the July regular Board meeting—July 13, at 4:00 pm.

Ms. Varian explained to Ms. McLaughlin the procedure for a public hearing.

6. [55:18] Andrew Xenos & Julia ‘Emma’ Sampson, 516 Main Road, Tax Map 05, Lot 05 – New Business application for Paper Tides (fine art services, graphic design, and more) and Xenos Works (handmade jewelry, silversmithing, and more), including workshops and consultations.

Application #2021-21

Ms. Varian asked the applicants to tell the Board about their business plan. Mr. Xenos reported that the former Grange Hall would house the operations of Xenos Works. Mr. Xenos creates coastal jewelry and has been doing it for about 13 years. This space would include his making the jewelry, conducting workshops for 2-3 students at a time, and also house the operations of Paper Tides, which is Ms. Sampson’s business. Ms. Sampson, Mr. Xenos’ wife, then explained that she is a photographer and would operate a fine arts print shop. She does a lot of order

fulfillment and shipping throughout the country. She also does one-on-one work with artists, helping them with their work and reproductions. The applicants also plan to use the space to showcase their work—and their clients' work. Finally, they plan to have retail space in the front room to sell their work and other handmade goods.

There was discussion about access, egress, and parking. The applicants were informed that visitors to the property would not be allowed to back out onto Main Road, nor park on the road. Mr. Xenos responded that they intended that visitors would back into the site from the road and exit without having to turn around. He was informed that this, too, was not safe and would not be permitted. Cars must be able to turn into the site from the road and also have room to turn around before exiting the property. Determining a feasible plan to accomplish that would be a requirement before a permit could be issued for the business.

Ms. Varian proposed that the Board could, at this meeting, schedule a public hearing to occur prior to the next regular meeting, if the applicants were confident that they could come up with a feasible plan for access, egress, and parking by the time of the public hearing.

Mr. Bate asked whether a site walk should occur immediately before the public hearing so that the Board would be able to observe at the site the proposal that the applicants come up with.

Ms. Varian stated that the application was complete and that they had a copy of the deed.

Mr. Hawkes moved to conduct a site walk at 9:00 am on Sunday, June 27th, followed immediately by a public hearing at the Town Hall. Mr. Newell seconded the motion, which was passed unanimously.

7. [1:16:50] Eric & Dawn Davis, 395 Small Point Road, Tax Map 24, Lot 15 – New Business application for The Ster, LLC, dba The Lobster House, (re-open) of a seasonal full-service and take-out seafood restaurant. Application #2021-22

Ms. Varian offered to recuse herself because her daughter is the owner of another restaurant in town. Mr. Bate stated that he had no objection to her doing that, and appreciated her candor. Other Board members accepted her recusal.

Ms. Varian stepped down for consideration of this application.

Mr. Newell asked the applicants to explain their plan. Mr. Davis stated that the restaurant was normally open approximately between Memorial Day and Labor Day weekends. The last summer they were open was in 2017. Over the winter and spring of 2018, they were essentially evicted from their lease of their leech field, which is located on a separate parcel. The owner of this separate parcel had decided to sell it and informed the applicants that they were no longer permitted to use the land. Rather than fight that action, the applicants decided to figure out their options with a new septic design on the parcel on which the restaurant is situated.

This application is for the same business that was formerly in operation and now with a new septic system. The only change is a reduction in the number of seats and the amount of parking:

the former business was an 85-seat restaurant, and the new business, currently, is anticipated to have 50 seats, although that can be increased once the actual capacity of water and septic is determined by experience.

Mr. Newell declared the application complete.

Mr. Hawkes asked about the septic and was informed that the house on the same parcel also had an old septic system, so, it, too, was being replaced by the new system to be installed for the restaurant.

There was discussion about parking and Board consensus was that there was ample space for adequate parking, especially if the cars were parked at an angle. Hours will be 5–9 pm.

Mr. Hawkes moved that a site walk was not needed, that the parking area would be set up so that cars were parked at an angle, and that a public hearing would be held immediately following the public hearing for Paper Tides, June 27, 2021, estimated to be approximately 10:00 am. Motion was passed unanimously.

[1:35:49] *Ms. Varian returned to the Board.*

8. [1:36:52] Maine Woodland Properties (Sarasota FL), Parker Head Road, Tax Map 09, Lot 03, Represented by James A. Boyle – Continuation of consideration discussion of Preliminary Plan for 14-lot “Kennebec Shores” subdivision. Application #2021-06

Mr. Boyle introduced Michael Emmons, owner of Maine Woodland Properties, and Kevin Clark, Land Surveyor, who were in attendance with him.

Mr. Hawkes asked Mr. Boyle to identify which of the revised plans submitted to the Planning Board on June 4, 2021, show the applicant’s “preferred design,” as referenced in the transmittal letter for that submission. Mr. Boyle explained that sheets C3 and C4 for each concept are identical, except for differences in scale. The scale of C3 is 150’ per inch, and shows the entire parcel. The scale of C4 is 100’ per inch, and shows only Lots 1 through 13. “Concept A” is the applicant’s response to the Planning Board’s request to see a revised site plan with a minimum of 150’ frontages for all lots. “Concept B” is also a revision from the plans previously submitted and increases the frontage on most lots, but not necessarily to 150’. Mr. Boyle characterized the “Concept B” design as their preferred design.

Mr. Boyle pointed out some of the things they did in order to achieve the goal of at least 150’ of frontage for all lots in Concept A: (1) wrap Lot 1 around the hammerhead; (2) slightly reconfigure Lots 6 and 7; (3) add a jog between 7 and 8 in order to capture the test pit for Lot 8; and (4) wrap Lot 12 around the hammerhead.

Mr. Bate noted that the reported total impervious area of 1.65 AC is the same in the original plans and the revised plans. He asked if it was correct that the impervious area did not change. Mr. Clark confirmed that was correct. Mr. Clark stated that the “disturbed area” for DEP is 3.72 acres. They have to treat 80% of that in order to obtain a DEP Stormwater Permit.

Mr. Boyle told the Board that they have submitted the application to the DEP for the Stormwater Permit. Mr. Clark gave the Town's CEO a copy of that application. Mr. Boyle also reported that they have submitted a permit by rule notification for the buffer impact for the vernal pool in the southeast corner of the parcel. Mr. Clark reported that the other vernal pool indicated on the survey has been determined not to be a vernal pool, and, in any case, this development is not impacting it.

Ms. Varian reported that the Board has received an opinion from the Maine Municipal Association regarding hammerheads in meeting the 150' road frontage requirement. It is their opinion that the frontage distance is required to be measured in a straight line between the side lot lines, i.e., the frontage requirement would not allow counting all the twists and turns of a hammerhead along the edge of the lot.

Mr. Bate gave his opinion that the Board was interpreting the ordinance too stringently. He referred to the frontage requirement in Section 9.A.2 of the Town's Land Use Ordinance, which states, "This section shall not prohibit construction on, or creation of, lots that do not have one hundred and fifty (150) feet of frontage on a public or private way, providing the minimum lot size is maintained and providing that a square of one hundred and fifty (150) feet on each side can be located within the boundaries of the lot."

Ms. Varian stated that she disagreed, noting that Section 15.A.3.a, regarding road frontage for residential lots in the Shoreland Zone states that, "Residential lots shall have a minimum of one and fifty (150) feet of frontage on a public or private way." No exemption is provided. She stated that when the regulations are inconsistent, the more restrictive regulation prevails.

Mr. Boyle noted that, while he was unaware of the MMA's opinion until this evening, Concept A, in which all of the lots do have 150' of frontage, is nearly identical to Concept B, which, as a land developer, he believes is a better design, with straighter lot lines and all the soils fitting on each appropriate lot. But, in both concepts, the lots start at the same place and end at the same place; they've extended the road so there aren't private driveways; same number of lots; size of lots is almost exactly the same; and the ratio of lot length to width does not exceed three to one in any lot. They're doing all the same protective things in both concepts in how they're handling stormwater, buffers, wetlands, pools, etc. In his opinion, these facts demonstrate that the design that they have come up with in Concept B, while the road frontages are not strictly consistent with the letter of the regulations in the Shoreland Zoning Ordinance, the overall design is fully consistent with the purposes stated in the all of the Town's ordinances. He stated that they did the best they could to come up with a design that is meets the purposes of the Town's ordinances and the regulations as much as is feasible, but is also consistent with the best possible design.

Mr. Emmons stated that he believes the 150' square within the lot is a better requirement than 150' of frontage, because the former requirement produces a better shaped lot than the latter. For example, if the only requirement is 150' of frontage, the lot can meet that requirement and be triangular, which makes it less desirable and attractive. The building site is what really matters.

Mr. Boyle pointed out their priority is to have a design that allows for the best water frontage and the best building sites on each lot. In most of the lots in their Concept B, the water frontage is greater than the road frontage, and the best building envelopes are in the middle of the lots.

There was discussion then about whether the language in the Shoreland Zoning Ordinance about the 150' road frontage must determine whether the site plan can be approved, or whether it is appropriate to entertain the possibility that a waiver to this requirement could properly be issued.

Ms. Varian directed attention to Section 12, "Waivers," of the Subdivision Ordinance. The first sentence in ¶ A states: "With respect to submission requirements or standards, when the Board makes written findings of fact that there are special circumstances relating to a proposed subdivision, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical development, provided the public health, safety, and welfare are protected"

She explained that she believes this option is appropriately considered when there is an issue that cannot be resolved and is not material in the consideration of the plan. She does not believe that it is appropriate in an instance like the one being considered here in which the applicant prefers to do something that he believes is better than what he can do if he follows the ordinance more strictly.

Mr. Boyle responded by saying that both Concepts A and B are practical and protect the public health, safety, and welfare. He believes it is appropriate to consider issuing a waiver in connection with the 150' of road frontage.

Ms. Varian noted that all of the design issues that Mr. Boyle is concerned about could be included in a site design that simply has one less lot in the same land area. Mr. Boyle's response to that was that the design that they were proposing already significantly exceeds the lot size requirements. In fact, they could squeeze even more lots in the land area on which Lots 1-13 are located, and they would still be within the density requirements. They're not doing that because those are not the lots that they want to sell.

Mr. Hawkes pointed out that reducing the sizes of Lots 1-13 is not the only way to keep the number of lots that they are proposing and to observe the road frontage requirement. He did not believe that this was a situation that met Ms. Varian's description of when a waiver is appropriate. The nearly 70 acres of land available in Lot 14 gives the developer other options for ensuring that all of the other 13 lots meet the 150' road frontage requirement.

Mr. Boyle responded that the current Lots 1-13 use all of the river frontage on the site, so using land from Lot 14 would not make it more feasible to increase the road frontages for Lots 1-13, nor would it positively impact the value or desirability of these of the lots.

Ms. Varian then introduced Gary and Michelle Morong, who own the house on 257 Parker Head Road, near the proposed entrance to the subdivision on Parker Head Road. Ms. Morong stated that they were concerned about where the entrance road would be built. She asked if it would be where the old road is now. Mr. Emmons said that it was. Ms. Morong stated that, if you were standing at the end of that road and looking across the street, "you'd be looking into their living

room.” Ms. Morong asked if there was any possibility of swinging the road in a different direction. Mr. Emmons stated that they would definitely ask the engineers to look into it. Ms. Morong also asked about the location of the common area and the mailboxes, also concerned about which direction headlights of parked cars in that area would be facing. Mr. Boyle said that they would talk to the postmaster about that, but it may be that the cars going to the mailboxes would be parked in a north/south direction, parallel to Parker Head Road, and therefore not facing the street.

Mr. Hawkes asked about the plan for the common open space. Mr. Emmons responded that it was put where it is adjacent to the entrance to the subdivision so that there would be no development visible from Parker Head Road. He stated that, when he sold Lot 14, he would require that the purchaser also create a protected area on the other side of the subdivision road for the same reason—that there be no development visible from Parker Head Road—and keep the appearance of the subdivision from the entrance to be as natural as possible.

Mr. Hawkes then asked about the plan for the big rock (glacial erratic). The response was that there would be a buffer around it, as well as around the big tree (48” oak) and the two cellar holes.

Ms. Varian stated that she has a difficulty believing that it is okay not to go by the ordinance as much as they possibly can. Mr. Newell stated that it is as clear as the nose on your face that the ordinance means what it says: “All lots must have 150’ of frontage.”

Mr. Boyle spoke about his conviction that, while it is likely that they will come up with a plan in which all of the 13 lots have 150’ of road frontage, it will take another month, it will take a lot of effort, and it will not be better than what they have now to fulfill the Shoreland Zoning Ordinance purpose of being “practical” and protecting “health, safety, and welfare.”

Mr. Hawkes asked if they have spoken to the postmaster yet. Mr. Boyle responded that Joe Marden, project engineer, was going to speak to him, but Mr. Boyle doesn’t know if he has yet.

Mr. Hawkes asked about the question that was raised at the May meeting, whether they will be permitted to sell lots before the road was completed. Mr. Emmons said they wanted clarification on that, too.

Ms. Varian said that, if the applicants reduced the number of lots by one, there probably wouldn’t be any other problems. There would presumably be about 100’ of frontage to divvy up among the remaining 12 lots. She doesn’t believe that a waiver was intended to make it possible to develop more lots.

Mr. Emmons stated that, based on his experience, he believes that requiring a 150’ x 150’ square in lieu of 150’ of road frontage, as required in the Land Use Ordinance, is actually more restrictive than simply requiring 150’ of road frontage, as in the Shoreland Zoning Ordinance. They could achieve that 150’ road frontage by moving the road closer to the water, which would reduce the size of the lots and have the road design be less appropriate to the topography.

Mr. Emmons mentioned the plan to sell a portion of the parcel—1.99 acres abutting the south property line of Lot 1 and the north property line of Map 9, Lot 6, owned by Eric Lundquist—to Mr. Lundquist. Mr. Emmons wanted to be certain that the Board does not consider this sale to count as a lot of the subdivision. Ms. Varian confirmed that it was correct that it would not be considered as a subdivision sale.

Discussion then returned to the question of whether they will be able to sell lots before the road was completed, which is specifically prohibited in Section 8.A.4 of the Subdivision Ordinance. It is the applicant's understanding that Section 11.C, "Performance Guarantees: Escrow Account," provides the required protection to the Town and the purchasers to ensure that the road will be completed in a timely fashion.

Mr. Newell moved that lots may be sold prior to the completion of the road so long as the applicant provides a performance guarantee in accordance with the provisions contained in Section 11 as a substitute for the requirement in Section 8.A.4. Mr. Thayer seconded the motion, which was passed unanimously.

Mr. Boyle asked if there was anything that would prohibit a sign at the site or elsewhere in town announcing the project. There is no such prohibition, but there are sign ordinances that need to be adhered to. Applicant was referred to Section 9.H.5.a in the Town's Land Use Ordinance.

Mr. Boyle asked two sequential procedural questions. One is to request that the Board formally accept the Preliminary Plan Application as complete. Ms. Varian noted that accepting the Preliminary Plan still gives them room to work toward the Final Plan, in particular, meeting the requirement that all of the lots have a minimum of 150' of road frontage. The second request is, once the Preliminary Plan Application as complete has been accepted, to schedule a public hearing.

Mr. Newell moved to accept the Preliminary Plan Application as complete, except for the requirement for 150' of road frontage for all the lots shown on the Plan. Mr. Bate seconded the motion, which was passed unanimously. Ms. Varian told the applicant that she would "get a piece of paper out to him about all this."

Ms. Varian asked the applicant if they had checked with the Town's 911 officer about the name of the subdivision road. He believed that they had, but will check.

Ms. Varian said that she will notify all the relevant Town departments and abutters, as required by Ordinance. Ms. Varian informed the applicants that the abutter to the north is not "Donald" Dillman, as indicated on the survey, but "Donna" Dillman. This should be corrected.

Mr. Boyle asked if it was possible that the Board would make a decision immediately after the public hearing. Ms. Varian responded that they will plan to do that at the regular meeting the following Tuesday, in case something comes up during the public hearing and the Board needs time deliberate about it.

The Board scheduled, by consensus, a public hearing on this application at 5:00 pm on Tuesday, July 6th.

9. **[3:40:25] Other Business.** Ms. Varian asked the members whether they believe the Board should increase the number of meetings per month, or start the regular monthly meeting earlier, in order to deal in a timely manner with the large numbers of applications currently under consideration.

Mr. Bate notified the members that he was “about a month behind Steve,” and then announced his decision to resign also. The July meeting would be his last meeting. He stated that he was just too busy. Ms. Varian noted that the Board meetings were taking a lot of time and she didn’t see any letup in the near term.

By consensus, the Board decided to meet next month at 4:00 pm, rather than 6:00 pm and see how it works. If it’s not satisfactory, they can decide to do something else.

Mr. Bate agreed with the 4:00 starting time for the July meeting, but stated that attendance at the July meeting would be his last act as a Board member, so he won’t be available for site walks, additional public hearings, or other Planning Board activities after July 13.

10. **[3:44:58] Announcements.** Ms. Varian reported that the proposed Commercial Marijuana Ordinance failed at Town Meeting. Everything else passed.

11. **[3:46:10] Adjourn.** Mr. Newell moved to adjourn. Mr. Bate seconded the motion, which was passed unanimously. Meeting was adjourned at 9:45 pm.

Respectfully submitted,



Channa A. Eberhart
Secretary