

**MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
May 11, 2021**

It should be noted that, due to restrictions about public gatherings in force at the time of this meeting in response to the Coronavirus outbreak, only persons connected with the item under discussion were present in the meeting room during the discussion. The meeting was, as is customary, being recorded so that members of the public could also observe.

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

1. **[1:02:17]** 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. **[1:02:30]** **Consider the minutes of the regular meeting on April 13, 2021.** Mr. Newell moved to approve the minutes. Mr. Bate seconded the motion, which was passed unanimously. Consideration of the minutes of the site walk on May 2, 2021, was postponed to the June regular meeting.
3. **[1:03:22]** **Scott and Catherine McDowell, 6 King Fisher Cove, Tax Map 35, Lot 03, Represented by Tim Forrester, Atlantic Environmental, LLC, Woolwich – Construct seasonal, recreational 3’W x 40’L ramp and 10’W x 16’L float in the Resource Protection Zone. Application #2021-16**

Mr. Forrester explained that the site of the proposed dock is located on a 2.75-acre inter-tidal parcel. The float will sit on the flats at low tide. There is ample frontage within the Cove, and the float will be 65’ and 73’ feet from the two property lines. He reported that the plan has not yet been approved by the Army Corps of Engineers, but, when received, a copy of the approval will be sent to the Planning Board.

Ms. Varian stated that this application was considered under the Phippsburg Shoreland Zoning Ordinance, particularly Section 14, “Table of Land Uses,” Item 17, “Piers, docks . . .” and Section 17.D, “Procedure for Administering Permits.” The Harbor Master has submitted his letter of non-objection. The applicants have submitted authorization in writing for Mr. Forrester to represent them. The application is complete. Off-season haul-out of ramp and float shows storage upland on applicants’ property. Applicants are responsible for securing any and all other permits necessary to complete the project.

Mr. Hawke referred to photograph 5 in the application package. This photograph shows some erosion along the shore. He suggested that increased activity on that site would be expected to increase this erosion and asked Mr. Forrester if the plan included stabilizing the area to prevent further erosion. Mr. Forrester stated that there were no plans for “hard” stabilization, but they typically start the ramp before the erosion and also put bark mulch on the path, so that people approaching the ramp would not actually step on the soil where the erosion is.

Mr. Bate moved to approve the application with the condition that there would be a meandering 6'W wood chip path to the shore access, the last 25' of which will be lined with native vegetation. Mr. Thayer seconded the motion, which was passed unanimously.

Mr. Forrester paid the fee of \$40 by check #1664.

4. [1:36:22] Michelle Hunt and Lisa Wallace, 106 Ridley's Landing Road, Tax Map 32, Lot 03 – New business application to install saltwater tanks in existing structure and sell lobsters to the public, to be called Crabby Lobster. Application #2021-17

The business would be located in the garage located at the residence of Ms. Hunt. It was clarified that, while the business as proposed would qualify as a home business due to its size and location, the applicants are applying for a New Business Permit in the event that, in the future, the size and/or nature of the business expands. The application submitted described the business solely as the sale of lobsters, but, in the course of discussion, the applicants reported that they hope in the future to add other items for sale, such as crafts, other fresh seafood, cooked lobsters, baked goods, and tourist items.

Site walk at 6:00 pm and public hearing immediately thereafter at the Town Hall were scheduled for May 27, 2021.

Ms. Varian noted that this application was considered under Section 9, of the Town's Land Use Ordinance. The property is far enough away from the water to be out of the Shoreland Zone. Photographs show trees all around the structures. As far as buffer zones with residential property lines, the closest one is Ms. Hunt's mother-in-law.

Ms. Varian instructed the applicants to bring in the proof of notice to each abutter, a check for \$95, and a revised application to include any additional business activities beyond the sale of fresh lobsters. If the proposed business activities change, then abutters need to be re-notified.

5. [1:56:42] Popham Chapel, Represented by Kathleen Perkins, Chair, Anniversary Committee "Drive for 125" – Special Exception permit to sponsor Zerbini Family Circus on July 21 and 22 at Town-owned "Ballfield" property, Main Road, Map 42, Lot 10-1. Application 2021-18

Ms. Thayer reported to the Board that she had received a call from Bill Perkins, Ms. Perkins' husband, who stated that they did not believe Ms. Perkins needed to attend the meeting in order for their application to be considered. Ms. Varian responded that someone representing the applicant should be at the meeting, but, since the application is submitted each year, if the Board felt that they could properly consider the application in the absence of a representative, they would proceed. Ms. Varian stated that the applicant had received permission to sponsor this event in the summer of 2020, but that, because of COVID, that event was cancelled.

Mr. Newell moved to approve the application as submitted. Mr. Bate, noting that Ms. Perkins had attended the meeting in 2020 and received approval for the 2020 event that didn't occur, seconded the motion.

Ms. Varian reported that the application was being considered under the following sections of the Phippsburg Land Use Ordinance: Section 12.D, "Procedure for Administering Permits"; Section 12.E, "Special Exception Permit"; as well as Section 1, "Purpose." The applicant is responsible for securing any and all other permits that may be necessary to carry out this project.

Ms. Varian stated that the application was complete.

Motion passed unanimously.

Mr. Bate moved to waive the fee for the 2021 event and apply the fee paid in 2020 for the event that did not occur. Mr. Thayer seconded the motion, which was passed unanimously. Fee paid in 2020 will be applied to this application.

6. [2:05:11] Maine Woodland Properties, Sarasota FL, Parker Head Road, Tax Map 09, Lot 03, Represented by James A. Boyle – Submittal of Preliminary Plan application for 14-lot "Kennebec Shores" subdivision. Application #2021-06

Mr. Boyle paid \$1,700 (check #5246) for the 14-lot preliminary application fee, and \$1,400 (check #5247) to open a 14-lot escrow account.

Mr. Boyle introduced three of the professionals involved in the project and were in attendance at the meeting. Rod Kelshaw, Licensed Site Evaluator/Soils, Joe Marden, engineer, and David Brooks, Hydrologist.

Mr. Boyle provided a list of items shown in the "Overall Subdivision Plan":

- Deed reference and name of owner, showing that property is owned by the applicant
- Location map in the upper right-hand corner
- Boundary survey
- Shoreland Zone (250' from the highest annual tide [HAT]),
- Resource Protection Zone (125' from HAT),
- 100-year flood line,
- Site area of 99.45 acres
- Three streams
- Wetlands
- 48" specimen oak tree
- Large glacial boulder at the corner of Lot #4
- Proposed lot line with lot areas reported to the nearest hundredth of an acre
- Names of abutters
- Common open space on the southwestern corner of the parcel to protect one of the streams

Other document referenced: Draft "Declaration of Protective Covenants, Reservations, Restrictions, and Easements."

Sewage will be individual septic systems. Water will be wells. Erosion control, stormwater management, and surface drainage plans have been designed by Joseph Marden.

Mr. Kelshaw did the *Medium Intensity Soil Survey*, which has been included.

There will be mail delivery just off of Parker Head Road near the beginning of the subdivision road. Ms. Varian asked Mr. Boyle if he had checked with the post office. He said that he hadn't yet.

There are three significant vernal pools on the parcel.

Mr. Boyle stated that there are no federal approvals required because they are not impacting any wetlands. They will need a DEP stormwater permit for the road, and a DEP permit by rule for a little bit of activity within one of the significant vernal pools.

Mr. Boyle then informed the Board about changes that have been made to the plan since the plans were submitted. Revised plans (C3 and C4), showing these changes, were submitted to the Board.

- One of the three significant vernal pools was not identified until after the plan submitted, but has been added to the revised plan.
- A verbal agreement has been made between the owner and Eric Lundquist, an abutter to the southeast, to transfer an irregular piece of land, adjacent to Mr. Lundquist's land, to Mr. Lundquist. This strip of land contains 86,802 SF (1.99 AC). The paperwork for this transaction is currently being prepared.

In addition, the owner is proposing a change in the position of the property lines between Lot 12 and Lot 13 and between Lot 13 and Lot 14. These changes move approximately half of the original area of Lot 12 to Lot 13. The portion of Lot 12 that was moved becomes part of Lot 13, and the area formerly in Lot 13 is added to Lot 14.

Mr. Hawkes asked about whether there would be a turnaround near Lot 1. Mr. Boyle explained that, due to regulations in connection with the significant vernal pool, wetlands, and stormwater buffer in this area of the site, inclusion of a turnaround would be difficult to accomplish in keeping with the regulations regarding the acceptable percentage of impervious surface. However, Mr. Boyle stated that Andy Hart, the Town's Fire Chief, reported that a turnaround was not necessary in this southern section of the road to provide adequate accessibility for emergency vehicles. At least 75' is required for a hammerhead, and this area is about 250'. It's not an issue for an ambulance. The other problem is that you need at least 30' travel surface for a hammerhead, as opposed to the 18' feet that you need on a regular road. That would increase the impervious surface by about 40% if adding a hammerhead in this section of the road.

Ms. Varian noted that it is rare for only one fire truck to be called for a fire, as well as smaller vehicles in addition at the scene. It would not be reasonable to assume that, if the fire department were called to this area, only one truck would respond.

Mr. Marden then stated that it was not their position that a turnaround was not required; rather, that the “T” formed by the intersection with the east-west road from Parker Head (Kennebec Shores Road) and the north-south road that provided access to the 13 lots on the riverfront (Kennebec Shores North Road) could serve as a turnaround. This “T” is about 250’ from Lot 1. They believe that this is acceptable to the Fire Chief.

Mr. Boyle then presented another option, which is to widen the north-south road by about 12’ at the section of that road just south of the “T”. This would allow a fire truck to make the turn onto the north-south road and pull over to the side, giving other vehicles access and egress between Lot 1 and the east-west road. It would not actually be a hammerhead, but it would solve the safety and access concerns. This additional width would stop before reaching the 250’ limit around the significant vernal pool adjacent to Lot 1.

Ms. Varian stated that the Planning Board has 30 days after submission of the preliminary plan to review it, notify the abutters that the preliminary plan application has been received, and determine whether the application is complete.

In connection with the discussion about the turnaround in the southern portion of the site, Ms. Varian stated that, in her opinion, there appears to be plenty of room to deal with the issues of access and egress in a way that makes it as easy and safe as possible in the event of an emergency in this portion of the site. It’s a very isolated area and, if there is a serious emergency, it would be very difficult for several fire trucks and other vehicles to get in and out quickly and safely. The Town’s regulations need to be observed, but, in addition, it is prudent to address this issue in a way that anticipates problems that may occur. The more room in bad situations the better.

Mr. Boyle stated that he recognizes that the Board members who have expressed their opinions about the proposed turnarounds have concerns. He suggested that he and the engineer spend some time coming up with other options to address those concerns. He assumes that another option would include a hammerhead in the southern portion of the site.

Ms. Varian asked Mr. Boyle what he found out about the eagles’ nest indicated on the tax map for this parcel. Mr. Boyle responded that he doesn’t know if it’s an active nest, but the nest is not regulated as an essential habitat any longer.

Ms. Varian, acknowledging that her question doesn’t have anything to do with the Planning Board, asked if the fact that the parcel is in Tree Growth going to be a problem. Mr. Boyle said that it would be, but they are going to have the restriction removed and pay the penalty.

Ms. Varian referenced Section 15.A.4.a of the Shoreland Zoning Ordinance. She drew attention to the requirement that all residential lots shall have a minimum of 150’ of frontage on a public or private way. While there is a waiver for lots that do not front a public or private way, she noted that the lots in this subdivision do front a public or private way, and, therefore, do not meet the requirements for an exception. Mr. Boyle pointed out that the Subdivision Ordinance does not include this requirement. Ms. Varian noted that the Subdivision Ordinance doesn’t say anything about it one way or the other.

In the Land Use Ordinance (Section 9.A.2), it is stated that “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.” However, Ms. Varian stated, the requirements of the Shoreland Zoning Ordinance are more protective than those of the Land Use Ordinance and do not provide for any exception to the minimum 150’ frontage for a residential lot that fronts a public or private way.

Ms. Varian stated that, when the language in the two ordinances varies and the language in one is stronger than the other, the Board must go with the stronger language.

An associate of Mr. Boyle’s noted that no part of the road is in the Shoreland Zone.

Mr. Boyle stated that, if this is the Board’s position, then they have to ask for a waiver. There is no way that the deal will work if they have to increase the frontage on the lots that currently have less than 150’ of frontage.

Ms. Varian asked where the common area was going to be. Mr. Boyle pointed to the 2.97-acre area next to the entrance to the subdivision in the southwest corner of the parcel. She asked why it was so far away from the lots. Mr. Boyle explained that it was usual to place the common area away from the residences and close to the road, which is usually the preference of the property owners.

Mr. Boyle asked if he could get a reading from the Board about how they would decide if the question was whether they would give a waiver to allow the applicant to keep the layout as presented, with the minor changes discussed earlier in the evening, but without material changes to the road frontages of the lots.

Ms. Varian stated that it was difficult for her to give him a reading since the Board has not discussed the issue. She noted that Section 12.A, “Waivers,” of the Shoreland Zoning Ordinance describes the process for waiving portions of the submission requirements:

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, and provided the waivers do not have the effect of nullifying the intent and purpose of The Comprehensive Plan, The Shoreland Zoning and Land Use Ordinances, Section 1 of this Ordinance, or Maine State Law.

Mr. Boyle noted that the lot sizes in the submission are significantly bigger than the minimum lot size requirement of 40,000 SF and that the main purpose of the Shoreland Ordinance is to protect the shoreland, which their design does. In his opinion, it is clear that the design as it is currently protects “the public health, safety, and welfare,” consistent with the regulations, and it does not “have the effect of nullifying the intent and purpose of The Comprehensive Plan, The Shoreland Zoning and Land Use Ordinances, Section 1 of the Shoreland Zoning Ordinance, or Maine State Law.”

Ms. Varian stated that, in order for the Board to consider waiving this road frontage requirement in order to approve the layout as presented, it would need more information about the impact on the project if the road frontage requirement of 150' for each lot, as stated in the Shoreland Zoning Ordinance, was not waived. Mr. Boyle stated that he believed that they would have to move the road closer to the water and within the Shoreland Zone.

Mr. Newell asked Mr. Boyle if there was access into the common area from the subdivision road. Mr. Boyle said that there was. Mr. Newell also asked where mailboxes would be located. Mr. Boyle stated that they would be accessed from the subdivision road, with an area for cars to pull off from the road to get mail.

Ms. Varian reported that the Board had received a letter that day from Herb Thomson, who lives on Capt. John Parker Road and attended the site walk. His letter expressed concerns that he also expressed during the site walk, particularly the impact on Parker Head Road of the heavy equipment coming and going during the construction of the subdivision and the houses. Mr. Thomson queried whether it would be appropriate to include a condition on the permit, if issued, that, if any serious damage occurred to Parker Head Road, then the applicant might have a financial obligation to remedy it.

Mr. Boyle stated that he believed the design that they intend to submit will be very harmonious in this location and in the town of Phippsburg. They take a great deal of pride in the quality of their subdivisions, which they have done in many locations in Maine and most on the water. They believe that this subdivision will be well received and will fit it with the surroundings.

Ms. Varian said that she would put this application on the agenda for the June meeting and that she would send Mr. Boyle an acknowledgement that the Board has received the Preliminary Plan application submitted at this meeting.

Mr. Newell moved to table further discussion of this application until the regular June meeting of the Board. Mr. Hawkes seconded the motion, which was passed unanimously.

Mr. Boyle asked if the Board could conclude at this meeting that the application submitted is complete. Ms. Varian said that would be premature until they could confirm that it included all the information that was required. In order to do that, they would have to review everything and check with relevant Town departments and abutters to determine any issues or concerns. When that process has been completed, then they would be in a position to determine whether the application is complete.

Mr. Boyle reported that, in a telephone conversation with the Town's CEO last week, Section 8.A.4 was brought to his attention: "No lot in a subdivision may be sold, leased, or otherwise conveyed before an approved road is completed to that lot." He asked if the Town would accept the applicant setting up an escrow account, giving the Town signature authority, so that, upon approval of the subdivision application, they can immediately start selling the lots, while they are building the road.

Mr. Boyle referenced Section 11.C, "Performance Guarantee: Escrow Account," of the Shoreland Zoning Ordinance:

“A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the Town shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal.”

Mr. Boyle then asked the Board if they had any questions at this time for the water and soils engineers who accompanied him this evening. Would they like these men to come back to discuss at the next meeting? Do they know if they have any questions?

Ms. Varian responded that the only questions anyone will have is: “Is there really enough water?” and “Will the land really take the septic?” Mr. Hawkes reported that Mr. Thomson had a concern about the water table levels and the potential impact on others.

There was then some discussion on this issue. Mr. Brooks stated that he had a great deal of experience dealing with water issues and concerns in Phippsburg, having worked on the Popham Woods subdivision. He said that, in Phippsburg, there is adequate water coming into the ground through precipitation. This applies also in the section of Phippsburg in which the subdivision is located. The issue is whether there is a balance between the ground water supply, water quality, and demand for water. In general, individual homeowners deal with those issues on their own sites, through their own wells and septic systems, but typically do not impact the supply, demand, or quality of water elsewhere in the town. Mr. Brooks pointed out that, in this subdivision, the location of wells and septic systems is being determined for each site by the developer, so it takes into consideration the whole subdivision. This is different from situations in which the property owner decides on the location of his well and septic system without regard for what is being done or needed on nearby lots.

Ms. Varian expressed her opinion that it might be helpful to have the experts available at the public hearing to answer specific questions about the impact on the water table. However, it may not be necessary at the next meeting, which is a regular meeting of the Board, at which any interaction with the public will either not occur or be very limited.

It would be helpful, however, for the Board to learn what the property owner’s response is to the issues that have been raised at this meeting.

Mr. Kelshaw then spoke about his role as site evaluator. When evaluating a site, he follows the code, but, in addition, always assumes a three-bedroom structure at a minimum since two-bedroom structures are less common in new construction. He also looks for sites that can handle greater demand. His judgment is not based on the results of digging a single hole, but, rather, a consideration of the larger area, so that, regardless of who designs the specific system for a specific lot and what is ultimately installed, the lot will support the system satisfactorily.

Ms. Varian informed Mr. Boyle that a package of plans would be available for public review at the Town Hall. She asked which plans are being changed as a result of the issues raised at this meeting. Mr. Boyle responded that it was just C3 and C4.

7. [4:54:48] Patricia McLaughlin and Justin Valentine, 206 Popham Road, Tax Map 45, Lot 55 – Set date for Public Hearing on New Business application for Pangea Cafe. Application #2021-15

Ms. Varian reported that she spoke to Ms. McLaughlin, who told her that they are eager to proceed. However, they have not yet completed all of the things they need to do prior to a public hearing. The Board decided to not set a date for the public hearing until they receive notice from the applicants that they are ready to proceed.

8. [4:57:18] Vote to include in the warrant the following:

A. Amendments to Land Use, Shoreland Zoning, Subdivision, and Floodplain Ordinances

B. New Ordinances:

- 1. Adult Use Marijuana Home Cultivation**
- 2. “Opt-in” to State Medical Use and Storefront rules and to establish regulating process for commercial cultivating, processing, testing, and selling adult use marijuana;**
- 3. Adult Use Marijuana Commercial Cultivation, Retail Sale, Testing, Products Manufacturing, and Medical Ordinance**
- 4. Establishment of Planning Board, Town of Phippsburg (Repeal March 24, 1970, Ordinance)**

Mr. Bate moved to approve the amendments and new ordinances listed above. Mr. Newell seconded the motion, which was passed unanimously.

9. [4:58:7] Other Business. None

10. [4:58:12] Announcements. Today is Steve Thayer’s birthday. Everyone wished him a happy birthday.

11. [4:59:02] Adjourn. Mr. Newell moved to adjourn. Mr. Thayer seconded the motion, which was passed unanimously. Meeting was adjourned at 9:58 pm.

Respectfully submitted,

Channa A. Eberhart

Channa A. Eberhart
Secretary