

MINUTES OF MEETING
PHIPPSBURG PLANNING BOARD
 March 12, 2024

MEMBERS PRESENT: Mark Hawkes, John Totman, Jr., Lori Follett (alt), and Marie Varian, Chair

1. **[3:22]** The meeting was called to order by Ms. Varian at 5:31 pm at Town Hall. She announced that there was a quorum. Mark Hawkes, Ashley Thayer, and Clifford Newell were absent. Ms. Varian appointed Alternate Lori Follett to serve for Clifford Newell.

2. **[3:50, 2:11:49]** Consider Minutes of the January 9th Regular Meeting, January 23rd Public Hearing, January 30th Special Meeting, February 6th Public Hearing, February 13th Regular Meeting, February 27th Public Hearing, and March 3rd Site Walk.

Ms. Varian explained that they are behind on minutes and would only be reviewing the minutes from the March 3rd Site Walk. Mr. Hawkes made a motion to approve the minutes as written. Mr. Totman seconded the motion, which passed unanimously.

3. **[4:06] ELIZABETH and ALEXANDER McKAY, 32 Fred Brigham Road, Tax Map 38, Lot 32, represented by Kathy Gallant, Gallant Real Estate, Brunswick – Continue review of Subdivision application to divide Lot 32 by selling a 1.77-acre section. Application #2023-16**

Ms. Varian introduced the ongoing application, explaining that it has been reviewed at two prior meetings and that there has been a site walk at the property. She gave Ms. Gallant the floor. Ms. Gallant presented a Plan Map and referenced the Town’s Subdivision Ordinance, Section 6.2.b., saying she also has an addendum for the Property Disclosure. Ms. Varian explained that this portion of the ordinance states that the applicant will guarantee in writing to the buyer that for one year from the date of purchase, there will be available quantity and quality of potable water, or the owner would return their money.

Ms. Varian stated that this meeting will be the Final Plan portion of the application process. The Board reviewed the Plan Map presented by Ms. Gallant. Mr. Hawkes asked if the map was a copy of an original survey. Ms. Gallant explained that it is a new survey as of December 2023.

Ms. Varian reviewed the Section 1 of the Town of Phippsburg Subdivision Ordinance, which directly follows State’s Title 30-A, M.R.S.A. Section 4404:

A. Pollution

Mr. Hawkes made a motion to accept that the applicants have addressed pollution in the Conclusions of Law. Mr. Totman seconded the motion, which the Board passed unanimously.

B. Sufficient water

Mr. Hawkes made a motion that the applicants have provided significant evidence of a sufficient water amount for the lot. Ms. Follett seconded the motion, which the Board passed unanimously.

C. Common water supply - Ms. Varian explained that this portion of Section 1 is not applicable.

Mr. Hawkes made a motion that this is not applicable. Mr. Totman seconded the motion, which passed unanimously.

D. Erosion

Mr. Hawkes made a motion that this is not applicable. Ms. Follett seconded the motion, which passed unanimously.

E. Traffic

Mr. Hawkes made a motion that the proposed subdivision will not add an unreasonable amount of traffic. Mr. Totman seconded the motion, which passed unanimously.

F. Sewage disposal – The Board reviewed the provided information on soil tests.

Mr. Hawkes made a motion that the applicant has provided a place for sewage disposal. Mr. Totman seconded the motion, which passed unanimously.

G. Solid waste- Ms. Varian explained that part of the subdivision review process is the contacting of all department heads in the Town to see if the subdivision will cause undue circumstances to their departments. No one responded, so there are no concerns.

Mr. Hawkes made a motion that there will be no unreasonable burden on the Town's ability to take care of any solid waste from the lot. Mr. Totman seconded the motion, which passed unanimously.

H. Aesthetic, cultural, and natural values

Mr. Hawkes made a motion that there will be no adverse effect on aesthetic, cultural, and natural values from this lot. Ms. Follett seconded the motion, which passed unanimously.

I. Conformity with local ordinances

Mr. Hawkes made a motion that the purpose of this subdivision conforms to duly adopted subdivision rules and other pertinent ordinances. Mr. Totman seconded the motion, which passed unanimously.

J Financial and technical capacity

Mr. Hawkes made a motion that the applicant has financial and technical capacity. Ms. Follett seconded the motion, which passed unanimously.

K. Surface waters; outstanding river segments

Mr. Hawkes made a motion that this is not applicable. Ms. Follett seconded the motion, which passed unanimously.

L. Ground water

Mr. Hawkes made a motion that the subdivision will not adversely affect the quality and/or quantity of groundwater. Mr. Totman seconded the motion, which passed unanimously.

M. Flood areas

Mr. Hawkes made a motion that this is not applicable. Ms. Follett seconded the motion, which passed unanimously.

N. Freshwater wetlands

Mr. Hawkes made a motion that this is not applicable. Ms. Follett seconded the motion, which passed unanimously.

Mr. Hawkes made a motion to accept the application as presented, with no conditions. Ms. Follett seconded the motion, which passed unanimously.

The applicant paid a fee of \$300 by check #1073.

4. [44:39] EASTWINDS TRUST, 192 Seal Cove Road, Tax Map 23, Lot 18 and ALIZA EDWARDS Tax Map 23, Lot 19, represented by John Chandler III and/or R. Curtis Doughty – Repair land damage from January storms, rebuild area of erosion, and create protection from future storms.

Application #2024-08

Ms. Varian introduced the applicant and gave Mr. Chandler the floor. He presented the Board with a Planning Board application as he originally applied with a Town of Phippsburg Building Permit in error.

Mr. Chandler explained that he was unsure if the Board required one or two applications (for himself and for Aliza Edwards). He stated that the lots are side by side and that the majority of the work would be on his Lot 18, with about 30 feet on her Lot 19.

Mr. Chandler reviewed the photographs from his application packet with the Board. Mr. Hawkes asked if they had applied for a DEP permit; Mr. Chandler said he had not. Mr. Hawkes pointed out that he does not have a plan listed, and Mr. Chandler said he is planning to line the sides with riprap. The Board discussed other likely required permits with the applicant. They explained to Mr. Chandler that he needs to develop a written plan proposal before the Board can make a decision on his application.

The Board tabled the application until the applicant can provide more information.

5. [1:06:24] GIRI SEBASCO SOLAR, LLC, Falmouth ME represented by Peter Whitney, Tax Map 28, Lot 71 - Continue New Business application action on building an approximate 5.4-acre commercial solar (array) system on property of GIRI Sebasco Property, Inc., bordering on Sebasco Road and West Point Road. Application #2023-20

Ms. Varian explained that the applicant needs more time before coming back to the Board. They will be moved to the April agenda.

6. [1:06:46] GREGORY GENSHEIMER, 63 Newbury Point Road, Tax Map 27, Lot 20, represented by Mark Hawkes of Mark Hawkes Forestry & Construction - Continue review of application to repair damage resulting from January 10 and 13 storms. Application #2024-07

Mr. Hawkes stepped down due to a conflict of interest. Ms. Varian said the Board will operate as a Board of 3, which is a legal quorum.

Ms. Varian introduced the application and stated that the Planning Board had a site walk at the property on March 3rd. The site walk was attended by Planning Board members, along with the Gensheimers, the Overingtons, and their attorney Roger Therriault. Ms. Varian gave Mr. Hawkes the floor.

Mr. Hawkes said he updated the Project Description portion of the Gensheimers application to describe the planned repairs for all damage from the January 10th and 13th storms. Repairs include restoring the walking trail/path to its original condition before the storm, repairs of the wooden walkway to the float, and repairs to the stone wall in front of the house. He explained that he had provided photographs at the last meeting, and presented additional photographs to the Board. Members of the audience also reviewed the photographs.

Ms. Varian asked if the wooden walkway was being repaired or replaced. Mr. Hawkes said part of the walkway is no longer there, and that the Gensheimers are not sure if they will be replacing that piece or not. Ms. Varian stated that this application would be considered under the Shoreland Zoning ordinance, Section 1. Purpose and Section 14. Table of Land Uses, Item 17. Piers, docks, etc. She asked for clarification about the walkway. Mr. Hawkes said it was a walkway out to a point where a ramp and float could later be reattached in the future. Mr. Overington clarified the location of the repair to the walkway with Mr. Hawkes. He also clarified that it was not in the project description presented at the February 13th Planning Board meeting. Mr. Hawkes said he had revised

and resubmitted the application. Mr. Overington requested a copy of that document, which the Board provided to him.

Ms. Varian said the application would also be considered under Section 14. Table of Land Uses, Item 26. Road and driveway construction, though it is not truly a road or driveway. She also referenced Item 31. Filling and earth moving of over 10 cubic yards. Mr. Hawkes referenced the Shoreland Zoning map and said the property would require a 100-foot setback for resource protection and 150-foot setback for residential. Mr. Totman asked if the application would also fall under Item 12. Emergency operations; Ms. Varian said it could. She clarified that you can use emergency operations in all of the five zones as long as the applicant meets all town, state and federal land use rules and regulations. Mr. Hawkes stated that less than 50% of the trail is being repaired so he would only need a permit by rule. Ms. Varian said that he would still need to get the permit.

Mr. Overington asked if the DEP needs to approve the movement of over 10 cubic yards. Mr. Hawkes said the DEP does not ask how much earth moving there will be when making a repair, that you just describe the repair and apply for the permit by rule. He explained that then you wait 14 days to allow them to ask questions.

Ms. Varian stated that there is not much written information on retaining walls in the ordinances. She asked the Board if the wording in the project description was acceptable. She asked Mr. Hawkes if he knew how many cubic yards he would be using for the repairs to the stone wall or the walkway. Mr. Hawkes explained the trail would take around 120-150 yards of various sizes of rocks, and that there is only one area that will need riprap. Mr. Overington asked how many truckloads 120-150 cubic yards would be, and Mr. Hawkes said approximately 15-20 loads. He explained that they will be using rock that would be covered with loam and then seeded so that grass can grow, and the area can be mowed. He stated large rocks would be placed along the edge. Ms. Overington referenced a conversation with Mr. Hawkes at the site walk where he stated that he would repair the Overington's right-of-way if there was any damage to it.

Ms. Follett asked Mr. Hawkes what he was planning to use to repair the wall in front of the house. Mr. Hawkes said he would use the same materials as the path, and that he would use rock because a culvert drain ends in that area. Ms. Overington asked if the repair of the culvert should be in the project description. Mr. Hawkes said it did not need to be and that it would be included in the permit by rule application. He described his plans for the culvert saying that he will be removing the steel and concrete ones and is hoping he can get to a depth to put in an 18 inch culvert, or two 15 inch culverts to take care of the water coming down the perennial stream.

Mr. Hawkes explained that he would need to limb trees to protect the equipment he would bring in for the repairs. He described an additional culvert that will also likely need be replaced. Ms. Varian clarified with Mr. Hawkes that he would be replacing two culverts in one general area, and another up by the house. The Board discussed seeing the culverts at the site walk. Mr. Hawkes described the damage and said that they needed to be replaced. Ms. Varian asked the Board and audience if there were any other questions; there were none.

Ms. Varian summarized the items that were being considered for approval. She and Mr. Hawkes further discussed that there would be approximately 15-20 loads of proper-sized rocks to replace the trail to its original condition, and larger rocks to stabilize it from future storm damage. Ms. Varian said 3 culverts would be replaced. She asked the Overingtons if they had any wording about the potential repairs if damage were done to their property. Mr. Hawkes said that Ms. Varian could write a condition of the approval, that he will leave the Overington's driveway in good working order. He clarified that it was the Overington's right of way, but that it was on the Gensheimer's property. Ms. Overington said yes, but that it should be left in the same condition in which he found it in. Mr. Overington clarified that part of the right of way is owned by the Gensheimers and part of it is owned by the Newbury Point Association.

Ms. Follett made a motion to approve the application with conditions. Mr. Totman seconded the motion. There was some discussion between the Board and Ms. Overington about the pier. She asked if it needed to be described, and Ms. Varian said no, not if it is just being replaced the same way. Ms. Overington said the float and ramp do not exist, and have not for 10 years. Mr. Hawkes said they are not asking for a ramp or float, just to replace the walkway to it. The Board voted on the motion, and it passed unanimously.

Ms. Varian read aloud from the Planning Board Action saying "repair work will be conducted using the existing right of way leading to the trail/walking path. Vehicles will back down the path and drive out. Any damage to the right of way will be repaired and returned to the original condition by the contractor. The repair work may require 20+/- truckloads of properly sized rocks. The 3 culverts will be replaced with proper sizes." Mr. Hawkes asked if limbing of the trees could be included. Ms. Varian added "it is expected that trees along the pathway will need to be trimmed to allow truck passing."

Ms. Overington discussed the repair area of the pathway, stating that it starts by the damaged culvert and ends at the other side of the Gensheimer's property, at the end of the half-moon. Mr. Hawkes explained that when he is backing down, he may need to place material to allow him to get his trucks to the repair area. Ms. Overington said there is a large area of grass there, and Mr. Hawkes said that it would be seeded to grow back to grass when he finished the project. Mr. Hawkes stated he does not believe anyone should be able to say what the Gensheimers can do on their own property. Mr. Overington said there was a long, sad, negative history regarding this pathway and that it has been to the State Supreme Court with the Town of Phippsburg twice, and in front of the Planning Board multiple times. He wants to make sure there is no scope above and beyond what is being defined as the repairs for storm damage only, and that there will not be any other creation or expansion. He does not want this issue to wind up in a more difficult situation than it is right now. Ms. Varian said that it is written that the trail/walking path will be brought back to its original condition. It was discussed that many people have taken photographs of the area and Ms. Gensheimer said she would also take photographs of the association road and right of way to ensure that there will be no disagreement about the road condition before work transpires.

Ms. Varian read additions to the Planning Board Action saying that “the trail/walking path will be repaired to its original condition. The stone wall in front of the house will be repaired, as will the wooden walkway to the ramp area.”

Ms. Varian called for another vote. Ms. Follett made a motion to approve the application as written with the following addendums: Considerations on the Town of Phippsburg Shoreland Zoning Ordinance, Section 1. Purpose; Section 14. Table of Land Uses, Item 17. Piers, docks, etc.; Item 12. Emergency operations; Item 31. Filling and moving of over 10 cubic yards; Section 17. Administration Permits and Procedures. Conditions- Repair work will be conducted using the existing right of way leading to the trail/walking path. Vehicles will back down the path and drive out. Any damage to the right of way will be repaired and returned to the original condition by the contractor. The repair work may require 20+/- truckloads of properly sized rocks. There will be 3 culverts replaced with the proper sizes. It is expected that trees along the pathway will need to be trimmed to allow the trucks to pass. The trail/walking path will be repaired to its original condition. The stone wall in front of the house will be repaired, as will the walkway to the ramp area. Mr. Totman seconded the motion, which the Board passed unanimously.

The applicant paid a fee of \$100 by check #5989.

[2:11:29] Mr. Hawkes returned to the Board.

7. **[2:13:00] Other Business** - Set date(s) for Ordinance amendment workshop(s).

The Board decided they would meet on Sunday, March 17th at 9:00 am to work on ordinance amendments.

8. **[2:17:08] Announcements.** None.

9. **[2:17:14] Adjourn.**

Mr. Hawkes made a motion to adjourn. Mr. Totman seconded the motion, which passed unanimously. The meeting was adjourned at 7:45 pm.

Respectfully submitted,



Rachael Newbert

Administrative Assistant to the Planning Board and Board of Appeals