

## Planning and Development

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### Minutes

#### Planning Board

Tuesday, May 7, 2019

6:00 PM Regular Meeting

City Hall Auditorium

Present for the Board: Acting Chair Don Girouard; Matt Provencal; Peter Scontras; Joyce Leary Clark; Jeff Brochu

Absent for the Board: Chair Neil Shuster; Alyssa Bouthot

Also Present: Kimberly Sawyer, Program Coordinator; Joe Laverriere, City Engineer; Denise Clavette, Planning & Development Director; Tim Murphy, City Attorney; Richard Lambert, Code Enforcement Director; member of the public

*Note: Regular meeting is audio recorded. These audio records will be posted on the City's website and available for public review within one week of the meeting.*

1. Call to Order: Acting Chair Don Girouard called the meeting to order at 6:02 PM.
2. Minutes of April 30, 2019 Meeting: *The minutes were not yet ready, so they will be reviewed at a future Board meeting.*
3. New Business, Tabled Items & Public Hearings:
  - a. 60 Bay View Road (Map 9 Lot 1): Site Plan & Design Review – 8-unit residential condominium project (6 seasonal dwelling units and 2 year-round dwelling units) with associated site improvements
    - Applicant: Estates at Bay View LLC
    - Zone: R-1A

*Steve Blake of BH2M and Tim Swenson of Estates at Bay View LLC were present to discuss the application.*

Overview: Emily Cole-Prescott noted that the Department had received several pieces of correspondence for the public hearing record after meeting packet distribution, for the Board's review. She noted that the items had been sent electronically to the Board and to the applicant. She mentioned that the original documentation is in the file, and copies of all of these materials are on the table in the back of the auditorium. She noted the list of these items:

- Letter dated 05/06/19 from Robert & Kathleen Dziadzio and other property owners
- Email dated 05/06/19 from Neil Schuster
- Memo dated 05/05/19 from Neil Schuster
- Memo dated 05/06/19 from City Engineer
- Email dated 05/06/19 from WRRD Howard Carter
- Landscape Peer Review dated 05/06/19 from Regina Leonard
- Email dated 05/06/19 from Tim Murphy, City Attorney

Emily Cole-Prescott provided the following overview of the proposal and application type:

“Applicant, Estates at Bay View LLC, has presented a site plan application to redevelop 60 Bay View Road into a residential condominium comprised of six seasonal and two year-round units, for a total

of eight residential dwelling units on the site. According to City records and the existing conditions plan, the property previously housed thirteen dwelling units, two of which were year-round, and the rest of which were seasonal rental cottages. The plan is to construct structures that more conform to the R-1A zone, served by sewer and water, with a paved one-way access road with a grassed underdrain filter and detention pond for stormwater management.

The Code Enforcement Department had received legal opinion from City Attorney Tim Murphy indicating that structures could be replaced on the site, following the appropriate setbacks for the R-1A zone, provided that the number of seasonal and year-round dwelling units did not change, and provided that the square footage of total habitable structure on the overall site remained the same or was reduced. Although the proposal results in more impervious coverage because of the installation of a paved, private accessway, the structures are now planned to meet setbacks for the zone and to remain under the maximum lot coverage percentage (20%) for the R-1A zone. Subsequent legal opinions for the record, from both City Attorney Tim Murphy and the applicant's attorney, David Ordway, indicate that because of the age of the seasonal cottages and the number of years the property was used for seasonal rentals, subdivision review is not applicable. However, because the site will be redeveloped and result in greater than 10,000 square feet of impervious surface, the site is subject to Site Plan Review per Section 230 of the City's ordinances. Therefore, both Site Plan and Design Review are applicable to this project.

Landscaping – The applicant has submitted a landscaping plan, and we have just received peer review on the plan from Senior Landscape Architect Regina Leonard. Although she summarizes that some of the landscaping standards are not relevant to a residential project, she indicates concerns with the proposed grade changes to the site, indicating that the existing conditions survey should be updated to indicate trees on the site. She also notes that vegetation should be replanted to re-establish the buffer.

Lighting – The applicant has submitted cut sheets of the proposed building lighting for the property. The applicant has also requested a waiver for the lighting plan. In my memo dated May 7th, I indicate that the residential character of the neighborhood should be considered with this waiver request, and the Board should ask questions to the applicant as to the reason for the waiver request.

Condominium Declarations – In my memo, I reviewed several locations within the Condominium Declarations that should be revised. Among other concerns, one of the primary concerns is the definition of seasonal in the Declaration, which is proposed from April through the end of December. A seasonal use would be more in line with May through October, with clear restrictions and enforcement mechanisms to ensure that the use is strictly retained as seasonal. Several suggestions have been made. Without this non-conforming use, the property cannot be developed in this method, and could not be considered. The applicant has presented information for the record, and the Code Enforcement Director and City Attorney have also presented information for the record on the seasonal use of the site. The applicant should be asked to review and revise the Declaration accordingly.

Additionally, on the non-conforming use of the property, there is evidence submitted for the record indicating that the use continued from 2000 to 2016. The Board can ask the applicant to prove use of the site in 2017 and 2018.

Question of a Neighborhood Meeting Requirement per Section 230-1103(I): City Attorney Tim Murphy's opinion about this requirement is attached. This requirement is applicable to new multi-unit structures. However, the applicant can voluntarily host a neighborhood meeting about the project.

Sign for Site Plan Review: Section 230-1103(D)(3) of the Site Plan Review ordinances requires that a sign be posted on the subject property of a public hearing. This was brought to my attention, so the developer has added a sign to the property. Please note that there is no date requirement for the posting of this sign, and we have not required this of other applicants undergoing site plan review/public hearings in quite some time. However, moving forward, I will be requesting it of every site under site plan review.

The abutter notice requirement and posting in the newspaper standards have all been met.

The Code Enforcement Department has issued permits for the site to complete blasting limited to under 10,000 square feet, and demolition of existing structures.”

Applicant's Presentation: Steve Blake, of BH2M Engineering indicated that the lighting plan will be done by tomorrow. He noted some features of the site and design. Steve Blake noted that he and the applicant will also respond to the landscape peer reviewer's comments. Steve Blake noted that additional screening and possibility of vegetation along the road should be considered in the updated landscaping plan. Joyce Leary Clark asked about follow-up from Deputy Fire Chief Dave Pendleton's comments, and Steve Blake replied that the one-way access will be plowed year-round, and the applicant does not plan to install sprinklers in the proposed structures.

Application Completeness:

- Waiver Request: Lighting Plan – Steve Blake stated that the lighting will be a single-wall pack at each house with short lights at each driveway, and the rationale for the waiver request was that there would not be throw from the driveways. Emily Cole-Prescott indicated that the applicant has requested a waiver to the lighting plan submission requirement. The applicant has submitted cut sheets of the proposed building lighting, and the City's peer reviewer has offered feedback.

**Peter Scontras moved that the application is not complete, and until the lighting plan is satisfied, the Board not move forward with this application. Joyce Leary Clark seconded the motion. Jeff Brochu asked about receiving public comment at tonight's meeting. The motion carried.**

Acting Chair Don Girouard noted that this application review and public hearing will be continued to another date. There was discussion among Board members about whether to receive public comment.

Emily Cole-Prescott clarified that it has been Saco's normal process to receive public comment at meetings in the past whether or not there had been a completeness finding; however, if the Board closes the hearing, no additional information can be received for the record. If it is the Board's preference to receive public comment, the Board may continue the hearing to a future meeting to ensure the public may comment on any new information received for the record.

**Peter Scontras moved to reconsider the above motion. Joyce Leary Clark seconded the motion, and it carried unanimously.**

**Peter Scontras moved to find the application incomplete, but that the public hearing be opened but not terminated at this meeting, until further information is received. Joyce Leary Clark seconded the motion, and it carried unanimously.**

Matt Provencal requested that full elevations of all floor plans be submitted.

**Public Hearing: Jeff Brochu moved to open the public hearing for 60 Bay View Road. Peter Scontras seconded the motion, and it carried unanimously.**

Acting Chair Don Girouard asked that each member of the public who would like to speak about the application write their name on the public hearing sign-up sheet. The following members of the public chose to speak. Please note: The list here indicates those who spoke in favor of and in opposition to the application. Please refer to the meeting audio recording for full details.

- *Charles Moreno, spoke for Hector Moreno, PO Box 60, Center Stafford, NH 03815, spoke in opposition to the proposal.*
- *Bob Dżiadzi, 15 Plymouth Drive, spoke in opposition to the application.*
- *PJ Lassek, 7 Christopher, spoke in opposition to the application. She read a letter on behalf of Ron Michaud about the proposal, noting concerns about several items of the proposal.*
- *Mark Eisenhaur, 13 Plymouth Drive, spoke in opposition to the proposal.*
- *Cathy Stackpole, 7 Christopher, spoke in opposition to the application.*
- *Kathleen Dżiadzi, 15 Plymouth Drive, spoke in opposition to the proposal.*
- *Resident of 6 Driftwood Lane, spoke in opposition to the application.*
- *Michael A. Roy, 28 Plymouth Drive, spoke in opposition to the application.*

The applicant replied to the Board about several of the comments made:

- *Tim Swenson, Saco, ME, applicant, replied to several of the comments made.*
  - Asbestos Removal: Tim Swenson explained the work he had done to have asbestos properly remediated, with appropriate information sent to the Code Enforcement Director.
  - Density: Prior to tearing down the cottages, City Atty. Tim Murphy and Code Enforcement Director Dick Lambert calculated the habitable square footage of the existing structures. The zone allows for up to 20% lot coverage. He had reduced the number of units from his original plan for the site based on comments received from the Code Enforcement Director and City Attorney.
  - Blasting Square Footage: Tim Swenson was issued a blasting permit for no more than 10,000 square feet. He stated that the Code Enforcement Director had been out to the site and verified that the blasting was kept within the parameters of the blasting permit that was issued by the Code Enforcement Department.

Acting Chair Don Girouard asked Saco's Code Enforcement Director Richard Lambert to speak about the permits that have been issued to date for the site, and non-conforming standards of the ordinance:

- *Richard Lambert, Code Enforcement Director, presented evidence for the record. He walked the property today, and measured the blasting area. The permits had been issued for the demolition after the applicant had submitted the information required by the state and by the local*

regulations regarding asbestos abatement and removal. City Attorney Murphy's letter referencing removal of the buildings was provided to the applicant, and references the fact that non-conforming use has a time limit. Certain units were allowed to be removed only after asbestos abatement had been confirmed. A blasting permit had been issued – the first one under the City's new ordinance. The requirements for the application had been fulfilled, and the blasting permit had been issued for under 10,000 square feet because of the site plan review requirements. Tim Swenson has applied for a permit to construct two of the units, and the Code Enforcement Department has issued a permit for one of the units. One unit would most likely cover up to the 10,000 sq. ft. threshold of disturbed area for site plan approval. Richard Lambert noted that he has walked the property today, and most of the area toward the rear of the property – the triangular area – has not been disturbed. Richard Lambert noted that Tim Swenson has indicated that many of the trees on the property were hazard trees. Peter Scontras asked for the protocol for removing trees, and Richard Lambert replied that unless a property is in shoreland zoning overlay district, which this property is not, there are no regulations for removal of trees. However, stumps cannot be removed if triggering 10,000 square ft. of land area.

Applicant:

There was question about the proximity of the blasted area for the foundation of unit 8 near an existing fence and a lot line. *Tim Swenson, applicant*, indicated that the existing fence is on his property. The surveyor has noted the setback line within the blasted area to ensure the setback is met.

Board Comments:

Acting Chair Don Girouard asked the Board for their questions. Board members asked the following questions:

- Jeff Brochu asked about the habitable square footage of the structure as they existed before the demolition. Richard Lambert indicated that the square footage had been presented based on existing conditions presented by the applicant, which can be confirmed with the Assessing Department.
- Jeff Brochu asked about whether there were cabins that had been inhabitable, and whether the businesses had been inspected. Richard Lambert noted that his department does not do business licensing. Although there is a seasonal use ordinance, this site had been in existence before the City's zoning, and therefore pre-dated requirements for a Certificate of Occupancy, and is not regulated under the City's seasonal ordinance.
- Richard Lambert stated that there is information in the Code Enforcement Department's record about the seasonal nature of the use. In 2000 and 2005, there is clear indication of the seasonal nature of the cottages, that were not to be used on a year-round basis. The Code Enforcement Department had cited the previous owner in 2005 for attempting to use the property as a year-round use. Richard Lambert clarified that the cottages were used seasonally, but do not fall under the City's seasonal ordinance regulations as this site is also outside of the area designated by the seasonal ordinance. Joyce Leary Clark asked if there are any City records for information on what was occupied when. Richard Lambert stated that provided at least one of the units had been occupied, the use had continued on the site, based on information from the City's Attorney.
- Tim Swenson provided a State license of motel/hotel for the record.

Acting Chair Don Girouard asked for City Attorney Tim Murphy to respond to the question(s) of use:

- City Attorney Tim Murphy indicated that it is the Code Enforcement Director's job to collect the available facts, transmit to the City Attorney, and Tim Murphy applies those facts to the analysis of the ordinances. Square footage has been historically used as seasonal cottages, and continues the nonconformance. City Attorney Tim Murphy stated that the use is allowed because it has been there before zoning. One of the key concerns with nonconformance, and if the use ceases for twelve months, the use would be lost. He said that there is no evidence to suggest that the use did not continue. Atty. Murphy summarized that questions raised tonight have to do with the following: how many cottages were used and the length of time they were used. Atty. Murphy noted that if even two cottages were used for three months that is enough to satisfy the continuing use test. The use is lawful because it existed before zoning, and is allowed to continue because it has continued. The non-conforming use cannot be expanded, as the goal of zoning is to shrink non-conformity. Atty. Murphy clarified that the question of non-conformity is with the Code Enforcement Department, not with the Planning Board. Atty. Murphy noted that the time period that becomes most pertinent is from 2016 to 2018, and his suggestion is to ask the applicant to ask the previous owner for information on rentals, whether the site was rented, and the previous owner should be able to provide some factual evidence. It is incumbent upon the applicant to have information about the previous use. Atty. Murphy noted that it should be the applicant's burden to produce information for the record about the previous two years. Atty. Murphy noted that the analysis has been done based on the amount of living space based on the historic use of the site. There is no expansion of habitable space with the proposed plan. Jeff Brochu asked about the non-conforming use was for a temporary lodging facility, and he had questions of the proposed condominium association, asking questions about the difference of the uses. Atty. Murphy noted that the argument would be the proposed use is less intense to have eight individual owner-occupied units. Atty. Murphy noted that who holds the title is the question, and he does not view this as a change of use, but rather a change of ownership. Atty. Murphy noted that the City Planner has suggested multiple revisions to the proposed Condominium Declarations, which he supports. Atty. Murphy stated that the rental provisions have been flagged by the City Planner, and this matter is a policy consideration for the Board. Upon inquiry from Acting Chair Girouard, Atty. Murphy noted that the Board may impose reasonable conditions upon the developer.

Acting Chair Don Girouard opened the floor to receive additional public comment about the application, and the following members of the public chose to speak:

- *Christina Guimond (spelling?)*, 7 Royal Pine Drive, Standish, ME, spoke about her family's history and spoke in favor of the proposal.
- *Mary Lucas*, 2 Plymouth Drive, spoke in opposition to the proposal.
- *Theresa Wellborn*, no address given for the record, spoke in opposition to the application.
- *Kevin Roche*, 18 Vines Road, spoke about process concerns and concerns about non-conforming use on the site.

Acting Chair Don Girouard asked for comments from Board members:

- Peter Scontras noted that he does not agree with the City Attorney's response to his question about non-conforming use and square footage.

- Jeff Brochu noted concerns about the proposal relative to non-conforming use and change of ownership. He noted concerns about parking, lighting, and traffic issues relative to a subdivision.

Emily Cole-Prescott cautioned the Board that there is no finding of completeness on the application and there are still outstanding materials. This should be an opportunity to provide feedback to the applicant based on items received and the public comment received thus far. She noted that she will summarize some of the comments that the applicant should address moving forward.

- Joyce Leary Clark stated that the applicant has submitted a letter from Gone Coastal LLC tonight. She said there is a question of use from 2016 to 2018, and documentation of the use of the property since 2016. She would also like to see the lighting plan, updated landscaping plan, and have some more information about the stormwater. She also noted that parking matters should be considered, the seasonal use, and revisions mentioned by the City Planner to the condominium documents.
- Matt Provencal asked about the amenities in the cottages, asking if each cottage had its own bathroom facilities, kitchens, etc.
- Acting Chair Don Girouard asked the applicant for as much information as possible as to what has been going on at the property for the last several years.

E. Cole-Prescott summarized that the applicant should return with the following, based on feedback provided tonight:

- Revise Declaration of Condominium
- Lighting Plan
- Revised Landscaping Plan, and respond to Landscaping Peer Review
- Documentation for the record from 2016 to 2018 on the use of the site and how the structures were being used during that period
- Parking on the site
- Full details on the elevation plans

Acting Chair Don Girouard asked if the Board is interested in completing a site walk. Jeff Brochu noted that the details for the application should be established before a site walk is scheduled.

Upon inquiry from Acting Chair Girouard, Tim Swenson replied that he will work with the City Planner to respond to questions.

**Peter Scontras moved to table the application review and continue the public hearing to a future meeting. Joyce Leary Clark seconded the motion, and it carried unanimously.**

*Emily Cole-Prescott stated that the abutter notices will be mailed again, and the public hearing will be published again in the newspaper before the Planning Board meeting where the application will be heard.*

- b. 40 Moody Street (Map 42 Lot 1): Final Subdivision Review
  - Applicant: Sweetser
  - Zone: B-8

*Jon Mistos of Sweetser was present to discuss the application.*

Overview: Emily Cole-Prescott introduced the application, noting that the applicant has responded to the requested revisions on the plans from preliminary review, but nothing else relative to the proposal has changed since preliminary review.

Application Completeness: **Jeff Brochu moved to find the application complete, noting the waivers that have been granted for preliminary plan review. Joyce Leary Clark seconded the motion, and it carried unanimously.**

Public Hearing: **Peter Scontras moved to open the public hearing, and Matt Provencal seconded the motion. It carried unanimously.** No member of the public chose to speak about this matter. **Jeff Brochu moved to close the public hearing. Peter Scontras seconded the motion, and it carried unanimously.**

Action: **Jeff Brochu moved to approve the final subdivision plan per the enclosed findings of fact and conditions of approval dated May 7, 2019. Peter Scontras seconded the motion, and it carried unanimously.**

Updates & Other Discussion: E. Cole-Prescott explained some of the process updates on which she is working. The June 4<sup>th</sup> meeting is canceled. There is a Planning Board training scheduled on June 11<sup>th</sup>.

Adjournment: Without objection, the meeting ended at 10:01 PM.