

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Larry Bouchard, Greg Whalen, Ed Cieleuszko, Melissa Horner – Alternate, and Christine Bennett – Alternate.

Voting members: Dennis Lentz, Larry Bouchard, Greg Whalen, and Ed Cieleuszko.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Cieleuszko moved, second by Mr. Whalen, to approve the minutes of October 17, 2017, as amended.

DISCUSSION

It was determined that Mr. Whalen, Mr. Bouchard, and Mr. Cieleuszko were not present for this meeting. Mr. Lentz appointed Ms. Horner and Ms. Bennett as voting members for this motion.

DISCUSSION ENDED

VOTE

**3-0-3 (Whalen, Bouchard,
Cieleuszko)
Chair votes in the affirmative**

Mr. Bouchard moved, second by Mr. Cieleuszko, to approve the minutes of December 5, 2017, as written.

VOTE

**4-0
Chair votes in the affirmative**

ITEM 6 – REVIEW “NOTICE OF DECISION” LETTERS

a) PB17-8 Paul

Mr. Cieleuszko moved, second by Mr. Bouchard, that PB17-8 is approved, as amended.

VOTE

**3-0-1 (Whalen)
Chair votes in the affirmative**

b) PB17-10 Spellacy

Mr. Cieleuszko moved, second by Mr. Bouchard, that PB17-8 is approved, as written.

VOTE

4-0

Chair votes in the affirmative

c) PB17-14 Green Acre

Mr. Bouchard moved, second by Mr. Whalen, that PB17-14 is approved, as written.

VOTE

4-0

Chair votes in the affirmative

d) PB17-5

original (6/20/2017 - Pier)

Mr. Bouchard moved, second by Mr. Whalen, that PB17-5 is approved, as amended.

VOTE

4-0

Chair votes in the affirmative

amended (9/19/2017 – Slope Stabilization)

Mr. Bouchard moved, second by Mr. Whalen, that PB17-5 (9/19/2017) is approved, as written.

VOTE

4-0

Chair votes in the affirmative

ITEM 7– PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. PUBLIC HEARING and continued review of an application for Shoreland Zoning Permit to construct a 6’X40” fixed pier, a 3’X40’ gangway, and an 8’X50’ float located by moorings on property located at 252 Pleasant Street. Applicant is Riverside & Pickering Marine Contractors (mailing address: 195 West Road, Portsmouth, NH 03801). Owner is Douglas McMillan (mailing address: 252 Pleasant Street, Eliot, Maine 03903). Property is located in the Village District and Limited Residential Shoreland Zoning District and can be identified as Map 3, Lot 39. (PB17-24)

Received: _____, 2017

1st Heard: December 19, 2017

Public Hearing: January 16, 2018

2nd Hearing: January 16, 2018

Site Walk: N/A

Approval: January 16, 2018

Mr. (Zach) Taylor, Riverside & Pickering, was present for this application.

7:29 PM Public Hearing opened.

Mr. Taylor said that this is a standard docking structure that we've been building for years; that it is heavy timber construction, a 6'X80' fixed pier extending from the shore, with a 3'X40' ramp and 8'X50' float; that there will be a small accessway coming off the northern side of the dock that will lead down to the shore and, then, the access way heading from the top of the embankment leading to the pier, itself. He added that the project has received Army Corps and DEP approval.

There was no public comment.

7:31 PM Public Hearing closed.

Mr. Lentz said that abutters were notified, we have a copy of the Public Hearing that was published, and that at the previous meeting we had talked about a note from Mr. Moulton regarding coordination between this pier project and the DPW slope stabilization project. He asked if, as a condition of approval, Mr. Taylor would get a document to the PB saying he has coordinated with Mr. Moulton.

Mr. Taylor said yes.

Ms. Bennett said that she was re-reading the memo from Public Works and the request was that "any sections should be able to be removed (at owner's expense) when the stabilization work is performed."

Mr. Taylor said that there's an old, ratty staircase, that he wouldn't recommend using, there, now, that will be removed; that as far as coordinating, he thinks it would be the goal of the property owner to probably, ideally, have them (DPW) do their work and then put in the new dock. He added that if you go down Pleasant there are three or four new accessways that had to be done because stabilization had to be done.

Ms. Bennett said that she just wanted to make sure that the owner was aware that he would have to pay for any sections needing to be removed to accommodate the DPW stabilization project.

Mr. Bouchard asked if the PB had the authority to apply that to an applicant, to make that statement regarding payment.

Mr. Feldman suggested that, instead of making a statement, the PB make it a condition of approval.

Mr. Bouchard said that he thought this application was up-to-speed; that the applicant needed to address the riparian line issue and he thinks there is a letter addressing that in the packet.

Ms. Bennett said that we had discussed the applicant recording that riparian agreement at the Registry of Deeds.

Mr. Taylor said yes.

Mr. Bouchard moved, second by Mr. Cieleszko, that the Planning Board approve PB17-24, as presented, with the following conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. Applicant will record the riparian line agreement at the York County Registry of Deeds and submit to the Planning Board.
5. Applicant will submit a copy of an agreement with the Department of Public Works coordinating the Pier Project with the DPW Stormwater Stabilization Project.

VOTE

4-0

Chair votes in the affirmative

Mr. Lentz said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

B. Application for a Shoreland Zoning Permit to construct a residential pier system for seasonal use. The new pier system will consist of a 4'X21' seasonal access way, a 6'X30' pile-supported pier, one (1) seasonal 3'X20' ramp, one (1) 8'X12' seasonal float, and supported by six (6) 10"- diameter pilings at 25 Rogers Point Drive (Map 32, Lot 1). Applicants/Owners are Robert and Melinda Longtin (mailing address: 25 Rogers Point Drive, Eliot, Maine 03903). Property is located in the Suburban Zoning District and Resource Protection Shoreland Zoning District. (PB17-26)

Received: _____, 2017

1st Heard: January 16, 2018
Public Hearing: _____, 2018
2nd Hearing: _____, 2018
Site Walk: N/A
Approval: _____, 2018

The applicants were present for this application.

Mr. Longtin said that the property has been in the family since the mid-1950's and we are updating what has been there; that it has gone through a state of non-use. He said that there will be a standard seasonal floating ramp going out to the permanent section of docking and a down-ramp on the other side that will also be seasonal. He added that, over the last twelve months they have gotten Maine DEP and Army Corps of Engineers approval and this is the last stage for us as to getting approval for the actual construction.

Mr. Cieleuszko said that he didn't see an abutter's list.

Mr. Longtin said that the abutters were notified with the Maine DEP process and he has receipts for all of those.

Mr. Cieleuszko said that we will also have a public hearing and will need that abutter list.

Mr. Lentz said that they had that.

Mr. Cieleuszko asked if the applicant supplied a larger drawing of the area than the 7"X11".

Mr. Lentz said that that would definitely be a requirement.

Mr. Longtin said that what he submitted was on the 8½" by 11" sheets that were the same thing that was submitted to the State. He added that he would submit whatever was required.

It was stated that the drawing (site plan) size required was 11" by 17".

Mr. Lentz asked if the applicant was requesting waivers.

Mr. Longtin said that there was a letter provided to him within the last week, or so, and he responded in writing to that letter; that he thought the PB should have copies of that. He added that he received a letter from Mr. Feldman; he knew of no waivers but responded to what was included in Mr. Feldman's list.

Mr. Feldman said that there is a list of various permits or applications that the applicant needs to provide; that, in this case, none of those permits are required (plumbing,

electric, etc.) and he suggested that a waiver of those ought to be granted as part of the application rather than just ignore it and not addressing that on the application. Mr. Lentz asked what the PB wanted to do regarding the waivers.

Mr. Cieleuszko said that he wanted to grant the waivers for the unnecessary requirements.

Mr. Cieleuszko moved, second by Mr. Whalen, that the Planning Board waive the following requirements of 44-35:

- % of lot coverage by non-vegetated surfaces
- Height of structure
- Setbacks from high water line
- Elevation setbacks from side and rear lot lines
- % increase of expansion of portion of structure which is less than required setback
- Copy of interior and exterior plumbing permits

DISCUSSION

Mr. Whalen asked, from a protocol standpoint, does this get waived at this juncture or do we defer to the public hearing, assuming we schedule a public hearing.

Mr. Feldman said that you can waive them now since they are requesting...that part of what he is trying to lead the PB into doing ought to be a request for waiver, at some point, with justification or reasons why an applicant is requesting the waiver; that the PB should be able to grant the waiver at this point simply because that information is not applicable; that because that is listed as a submission option on the application you want to acknowledge that that is not part of this application, so granting the waiver now is perfectly fine.

Mr. Whalen asked if we were considering the January 11th memorandum from the applicant to be his request for a waiver on these items.

Mr. Feldman said yes.

Mr. Bouchard said that he is trying to understand this, as is Mr. Whalen; that the applicant has requested these waivers.

Mr. Feldman said that that was correct.

Mr. Bouchard asked with explanation.

Mr. Feldman said that he has not been provided what he submitted to Ms. Lower so he doesn't know exactly what it says.

Mr. Longtin said that there's language included in there that he might have added but he is sure that everybody that needs to has looked at it.

Ms. Horner said that in the application that Mr. Feldman is referencing is on the last page of the application and it says, "additional permits, approvals, and/or reviews required. Check if required.", and nothing is checked off. She added that she understood what Mr. Feldman was saying but none of these things have been required, in the first place, so it seems like we're doing a lot of extra work, here, for....like we are chasing our tails; that if none of these things are required, anyway, why is he having to ask for a waiver if they aren't required and, if they aren't required, why are we waiving. She added that the problem is either our application, which alludes to a larger problem because who fills out this application, who checks that off, and who had the authority to check those things off; that she doesn't think we need to waive the waivers that are non-existent...

Mr. Feldman said that he is here to protect the PB and to suggest to the PB process and, if the PB chooses not to do that, then that's the PB's choice.

Ms. Horner said that approving these waivers, because we're already halfway down this road, makes sense and because the applicant is looking for due process; that she thinks that, if we're talking about changes, then this is something that needs to come up, because it seems we are creating a lot of work for ourselves that we don't even need to be doing.

Mr. Cieleuszko said that he doesn't think this process is a finished product; that it's not what we are going to end up using as a checklist in the future.

Mr. Lentz agreed that we are still in flux with old and new documentation.

Mr. Cieleuszko agreed, saying that we are kind if looking at the new stuff and he's filling out the old stuff; that the block diagram checklist that's envisioned might have to be waived and that conversation is probably down the road; that he thinks that was were Mr. Feldman was heading and that's what he is waiving these.

Mr. Lentz said that this is not the first time we've gone around in a circle on waivers, suggesting that he could put that on the workshop list.

The PB agreed.

Ms. Horner said that it sounded as if we were talking as though it was a requirement but it just says 'that'.

Ms. Bennett said that it is a requirement of the code.

Ms. Horner said only if it's required; that the easiest one is the indoor plumbing, asking why that would be required.

Ms. Bennett said that it's great to acknowledge where the code is actually not applicable.

Mr. Feldman said, so, not to prolong the pain on this issue, one of the things he thinks you have in your packet is a proposed change to what would be the site plan review checklist and this application is a site plan review; that the wording that comes as part of that, which is lifted from your current process, is that “the developer shall submit two originals of the site plan”, and this gets to the size of the site plan issue, as well, “drawn at a scale not smaller than 1” equals 20’, 10 copies reduced to 11”X17”, and “show the following information unless the Planning Board waives these requirements upon the written request of the applicant.”; that that’s lifted straight from the current process.

Mr. Lentz said that there is a motion on the floor and asked if there was any further discussion.

Mr. Bouchard read one of the waiver requests, “% increase of expansion of portion of structure which is less than required setback” and said that that means we’d be waiving the requirement for the setbacks from the riparian lines, if we wave that specific item; that in the proposal, Mr. Feldman says, “Based on the review of this plan, the proposed dock system will be well within the established riparian area.”, but with the map sizing that he has, he cannot verify that because the plans he has he cannot read; that they’re too small and he can’t tell. He added that he would have trouble approving a waiver on that because, if it was not at the 25-foot line, then we would have waived it for no reason.

Mr. Lentz said he might be mistaking the question but he doesn’t see anything in these setbacks about riparian lines in these proposed waivers.

There was discussion regarding whether this applied to docks or building structures.

Mr. Bouchard asked that someone explain to him why we are approving waivers that don’t apply to the application.

Mr. Lentz said that he thinks part of this is that we are trying to go without the checklist, again, and we’re halfway between the old and the new process.

Mr. Feldman said that his application is still under the old process; that if the PB doesn’t feel that there’s a waiver that’s required for that, then he would pull that from any waiver request; that, personally, from the statement he made, he doesn’t see an issue, here, but maybe he sees things differently from the PB.

Mr. Bouchard, for clarification, said that Mr. Feldman brought up waivers that the applicant didn’t apply for, to begin with, but when Mr. Feldman brought up the question of the waivers, the applicant then did respond to waivers that he did not apply for.

Mr. Feldman said yes; that there was no response brought through the application, at all.

Mr. Bouchard said that there doesn't need to be; that we've never done that before. He added that, maybe, we're doing it wrong but he is just trying to understand what we're doing.

Mr. Longtin said that he was of a similar understanding at the time that we wrote and presented that letter to the Town.

Ms. Horner said that, if we had the checklist in front of us, in one of the boxes it would say N/A and we wouldn't be going back and saying that, since this isn't applicable we should waive it.

Mr. Feldman said that, if he is sitting there as a staff, presenting to the PB and going through that, he would certainly not make that determination and then have the PB say that it is applicable; that the checklist has a series of checks across it and the PB can make that determination as to whether the PB thinks it's applicable, or not.

Mr. Bouchard asked if that was our determination or the applicant's determination because there could be a waiver that would apply to an application that, if the applicant doesn't apply for it, it sits.

Mr. Feldman said that it's the PB's determination because it's the PB that has to vote on the application, it's not the applicant; that if the applicant was making the determination then they might say they wouldn't submit any information because they didn't need to. He reiterated that it is the PB that has to go through that and say that they need to vote on this and waive it or that it is applicable and the applicant needs to provide that information, otherwise an adequate decision, or determination, on the application can't be made.

Mr. Bouchard asked, if an applicant doesn't apply or ask for a waiver that would apply to their application, is it the PB's job to let them know that that waiver would work to get past the decision or to make the application pass or is it the Planner's job to inform the applicant that they need to apply for a waiver.

Mr. Lentz said that that's the way he sees it.

Mr. Feldman agreed, saying that that's what he has done.

Mr. Bouchard said, but, that these don't apply; that they have nothing to do with the application.

Mr. Feldman said that it's a catch-22; that Ms. Horner is right in that it goes around in circles because...

Mr. Bouchard said that he's just trying to understand.

Mr. Cieleuszko said that the code requires that the applicant ask for the waiver; that he thinks that Mr. Feldman is trying to keep the office work out of our hands; that Mr. Feldman recognizes that 'the' application doesn't need 'this', 'this', and 'this', sends the applicant a letter saying the applicant must ask for a waiver so he doesn't have to supply all that stuff; that when we get it, we just waive it and it's done.

Mr. Feldman said that, if the PB finds that they need more information and it's not something the PB wants to waive, then the PB can take it off the waiver list and ask for that additional information.

Mr. Lentz said that he can see where Mr. Feldman is going with this and it's different than what we've been accustomed to; that we need to understand it and follow through.

Mr. Cieleuszko said that all these waivers have to do with a house on a lot; that they're not applicable, in his mind, for this dock.

Mr. Feldman suggested that the ordinance, or the checklist, needs to be changed to explicitly say that because it doesn't; that there is nothing there that says that these pertain to a residential structure.

Mr. Lentz suggested that the solution is that we waive what we don't think applies.

Mr. Feldman agreed, saying that this checklist exactly follows the submission requirement information in your ordinance; that this goes down the list, in order, and cites every section.

Mr. Lentz said that we have been cited as giving out too many waivers so we are waiver-conscious on this Board; that maybe we need to adjust our thinking a little.

Mr. Whalen said that the controlling document that we are dealing with outlines the requirements that the applicant is charged with meeting; that, likewise, it's the responsibility of the applicant to determine whether that set of criteria applies to his or her application; that if, in fact, that the applicant determines that, in the applicant's sole judgement, one or a number of requirements do not apply to his or her application then, again, the burden of proof falls to the applicant to request a waiver to the PB. He added that, at that particular point in time, it becomes the responsibility of the PB to determine whether or not those items do apply and, if they don't, vote on a motion accordingly. He said that his preference this evening would be to work our way through this motion and bring it to a vote.

DISCUSSION ENDED

VOTE

4-0

Chair votes in the affirmative

The public hearing was scheduled for February 20, 2018.

The PB determined that a site walk was not necessary.

The applicant will need to provide two copies of an 11"X17" site plan.

ITEM 8 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Mr. Lentz said that, regarding minutes, we are pretty much caught up; that the Town Manager has posted for an additional PB member.

Newest revision to by-laws and the sign ordinance issue will be on the next agenda.

New template checklists are coming:

- Responsibility of applicant to fill out
- Applicants will get a checklist with their applications
- Checklist should be complete, with applicable waiver requests
- PB will use checklists to determine if submission is sufficient

Ms. Bennet's application activity spreadsheet will be continued

- Updated once a month

Growth permit surveys should go out soon.

Growth permit fees ordinance should be revisited.

Status of issued 2017 growth permits.

Send all PB applications to the Conservation Commission and Eliot Historical Society for their review and comment.

ITEM 9 – CORRESPONDENCE AND PLANNING ASSISTANT

There was no discussion.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for February 6, 2018 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:23 PM.

Town of Eliot
REGULAR PLANNING BOARD MEETING MINUTES

January 16, 2018
7:00 PM

Dennis Lentz, Chair

Date approved: 2/26/18

Respectfully submitted,

Ellen Lemire, Recording Secretary