

**ITEM 1 - ROLL CALL**

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

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

**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. Bouchard moved, second by Ms. Bennett, to approve the minutes of January 2, 2018, as written.

**VOTE**

**5-0**

**Chair concurs**

Mr. Bouchard moved, second by Ms. Bennett, to approve the minutes of January 16, 2018, as written.

**VOTE**

**5-0**

**Chair concurs**

**ITEM 6 – REVIEW “NOTICE OF DECISION” LETTERS**

**PB17-24 McMillan**

Mr. Cieleuszko moved, second by Mr. Bouchard, to approve PB17-24, as amended.

**VOTE**

**5-0**

**Chair concurs**

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

**A. Continued review of a Request for Planning Board Action to amend a previously-approved Subdivision/Site Plan (PB06-7) by constructing a 40’X140’ storage building to provide additional storage space for the residents of Cole Brown Estates Mobile Home Park. Applicant is Russell Sylvester (mailing address: 40 Caslyn Drive, Eliot, Maine 03903). Owner is B&RH Associates, Inc. (mailing**

**address: 40 Caslyn Drive, Eliot, Maine 03903). Property can be identified as Map 16/Lots 12& 13 and is located in the Suburban Zoning District. (PB17-18)**

**Received: September 27, 2017**

**1<sup>st</sup> Heard: October 17, 2017**

**Public Hearing: N/A**

**2<sup>nd</sup> Hearing: February 20, 2018**

**Site Walk: N/A**

**Approval: February 20, 2018**

Mr. (Russell) Sylvester was present for this application.

Mr. Lentz asked if the PB members had had a chance to read Mr. Feldman's memo.

The PB agreed that they had.

Mr. Sylvester said that he thinks we've supplied all the information and he would like to request approval.

Mr. Lentz said that he knows that Mr. Sylvester had a review with our planning assistant a week ago and pretty much agreed on what was still missing and what was necessary; that he asked Mr. Feldman to write that memo to kind of anchor us so that we are not going back over material that we already looked at. He added that we missed the site walk, that it's been around for several months, and he did think that we said that this could be handled as an administrative change; that we actually changed nothing, at all, with the use of the land; that he is simply adding a storage building, which he promised to do to the people that live there. He asked what the PB would like to do.

Mr. Cieleszko asked if the applicant had a firm footprint for this, now.

Mr. Sylvester said that the print he submitted shows 40'X140'; that that hasn't changed.

Mr. Cieleszko asked if the applicant knew, for sure, where it is on the property.

Mr. Sylvester said yes; that the PB should have information showing that.

Mr. Cieleszko said that the print he got in his packet was before preliminary.

Mr. Sylvester showed Mr. Cieleszko what he had.

Mr. Lentz said that that was in our original package.

Mr. Cieleszko asked if the only thing that had changed is the delineation of wetlands.

Mr. Sylvester agreed, saying that Highland Soil Service found that there was less wetland, currently, than originally.

Mr. Cieleszko suggested, if we make sure a condition is that it stays out of the wetland by the proper amount, then he has no other reservations about the application.

Mr. Sylvester said that he thinks he's correct in saying that the wetlands that are there are not delineated on Town or State maps and he doesn't believe there is any setback to them.

Mr. Cieleszko agreed, but said that you still can't encroach into them.

Mr. Sylvester agreed, saying that we are well outside those guidelines.

Mr. Lentz said that he thinks the one thing the PB is still missing, and we can make it a condition of approval, is that on one map we see the clubhouse, which we didn't see on the other sketch, and on the other sketch, we see the new proposed building, but we don't see both of them on the same plan.

Mr. Sylvester said that there was a secondary request that the clubhouse be put on that drawing (sketch plan). He added that both are shown with appropriate changes in the delineation of the wetlands.

Mr. Lentz said that we do have that. He asked if that was satisfactory to the PB.

Mr. Cieleszko said yes, as long as he meets all minimum distances between buildings, etc.

Mr. Lentz suggested a condition of approval be that he meet the setbacks between the two buildings and the corners so we know it's far enough away from the wetland.

Mr. Whalen asked the applicant if there was any discussion between the applicant and the Planning Assistant at the time he submitted this application relative to amending your existing site plan.

Mr. Sylvester said that the only discussion was that she felt it would be an administrative change and just need to be presented to the PB for that approval, which is what we've done.

Mr. Whalen said that there was no discussion about taking your existing site plan and incorporating your building on an amended site plan.

Mr. Sylvester said no; that it was asked that it be plotted on the requested scale – 8½" X 11", which he did. He did add that he put it on a locus, definite area instead of a big plan because they wanted to see the immediate, surrounding area, which is what we have.

Mr. Feldman suggested that a condition of approval be that that plan be revised to show the footprint of the new building so that it can be recorded in the Registry, as that plan already is.

Mr. Lentz said that that was where he was headed.

Mr. Whalen said that we deal with this issue on a continuing basis; that the preference has been for the PB, of recent anyway, that if there is already an existing recorded site plan, that this be the document of record moving forward with any changes to the property; that as a condition of approval, per the Chair's notation, an as-built plan be submitted after it is built.

Mr. Feldman said that that would fall in line with his proposed recommendation that the applicant do the post-construction survey to certify that they haven't impacted the wetlands and, in fact, they've met the setbacks they've shown on the larger plan.

Mr. Sylvester asked about the required scale to that amended as-built plan.

Mr. Whalen said that it would be in concert with the existing scale of the existing plan; that whatever the scale of the drawing is to the current, recorded plan would be consistent with the scale of the building you will put on the revised.

Ms. Bennett added that it should be recorded at the Registry of Deeds.

Mr. Sylvester agreed.

Ms. Bennett asked if this was just going to be an amenity for the residents that live there, only, and not a commercial venture.

Mr. Sylvester agreed that it would only be for the residents and not open to the public.

Ms. Bennett said that we don't have 'storage buildings' as a defined use in our Table of Land Uses, asking if we are considering this as a 'warehouse', which is a defined use.

Mr. Feldman said that, in relation to the answer he received on the other issue we will discuss tonight, that would probably be an appropriate place to put it; that the other way to define it is that the Table also has 'uses similar to those not listed', which is like a catch-all that allows the Planner and/or the CEO to categorize a similar use not specifically listed.

The PB agreed to use 'use similar to those listed'.

Mr. Cielezsko moved, second by Mr. Bouchard, that the Planning Board accept PB17-18, with the stipulations talked about tonight in discussion and the regular standard conditions of approval of the Planning Board, as follows:

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. The applicant will meet the dimensional distance requirements between the current and proposed buildings.
5. The applicant will submit a copy of an as-built plan, recorded at the Registry of Deeds, once the project is complete.

**VOTE**

**5-0**

**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. Public Hearing and continued review of an 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: December 15, 2017**

**1<sup>st</sup> Heard: January 16, 2018**

**Public Hearing: February 20, 2018**

**2<sup>nd</sup> Hearing: February 20, 2018**

**Site Walk: N/A**

**Approval: February 20, 2018**

The applicants were present for this application.

**7:27 PM      Public Hearing opened.**

Mr. Longtin said that he took over the property a few years back, put a new home in place, went through the permit process, and this is the last piece. He added that we will be taking out the old stuff that has decayed and is in a state of disrepair; that we are, in some cases, actually shrinking down the size of that pier structure; that the project would provide a very similar dock arrangement to what has been there; that we are looking to have kayak-type access at the house. He said that we have been through the DEP and Army Corps of Engineers (ACE) and this application to the PB is the last piece to put us in a position to get a start on this project in the near future.

Ms. (Lori) Acer?, Rogers Point Drive, said that she has a dock system, as well, and has gone through the permitting process; that it's not an easy process. She added that she is in support of this because they've followed all the rules; that some people in Town, because it's an arduous process to go through, don't do that; that she would urge the Board to approve this and consider the fact that they have gone through all the hoops in trying to get this approval. She said that she thinks it would be nice to reward a family that has gone through all the rules.

**7:29 PM      Public Hearing closed.**

Mr. Lentz said that, from their last meeting, his notes said that the PB needs a legible scale for the plan and that has now been okayed, as he understands; that we were looking for a property deed, which he has marked 'okay'. He added that we need to talk about those waivers; that there is a list of waivers and we should understand why the applicant needs those waivers. He said that most of them are not applicable but part of the ordinance, asking if the applicant had a list of those waivers.

Mr. Longtin said yes, from a previous communication with the Town; that everything he wrote up in regard to this was his explanation of what did, or did not, apply based on the recommendation from the Town Planner. He added that he certainly considers that he gave reasonable explanations on each and every one of them; that he isn't sure that they even needed to be waived but that was a separate discussion.

Mr. Lentz clarified that we asked that they be waived because they are a part of the checklist of the ordinances and, rather than mark just N/A, we like an explanation of why you don't believe that applies, also.

Mr. Longtin agreed, saying that he submitted a response to the Town in that regard; that he is assuming that there are copies up there, somewhere.

Ms. Bennett said that she thought we had already granted these waivers.

Mr. Feldman said that that was correct; that that was part of the discussion at the last meeting and, in doing that, was finding the application complete so you could hold the public hearing.

Mr. Lentz apologized, saying that he did not have it as done on his sheet.

Mr. Feldman said that the only thing that was needed was Mr. Bouchard's request for a larger plan that was more legible and you did receive that.

Mr. Lentz said that there is a notice of public hearing in the PB files, that it was posted in the paper. He asked if there was anything else the PB would like to ask.

Ms. Bennett asked if the applicant could describe the access to the dock system; that it appears from the diagram that you actually go across a little bit of salt marsh.

Mr. Longtin said that there is some approximation of that and that was reviewed with Maine DEP, at the time.

Ms. Bennett said that those soils are basically wetland soils that have been historically gone across in that area.

Mr. Longtin agreed, saying since the late 1950's.

Ms. Longtin said that it has always been maintained as a path right to the dock; that there is an existing dock that her grandparents put in in the 1950's; that all we're doing is repairing it but there is a path that has always been maintained and we still use it to walk down to the water; that nothing in that aspect will even change.

Mr. Longtin reiterated that the Maine DEP walked the site with us and there are no plans to change the path, at all.

Mr. Bouchard moved, second by Mr. Whalen, that the Planning Board approve PB17-26, 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.

**VOTE**

**5-0**

**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.

**C. Request for Planning Board Action for a change of use to establish a truck terminal and storage operation at 6 Julie Lane (Map 37/Lot3). Applicant is National Wrecker Service (mailing address: 295 West Road, Portsmouth, NH 03801. Owner is Ralph Cresta (mailing address: 295 West Road, Portsmouth, NH 03801). Property is located in the Commercial/Industrial Zoning District. (PB18-1)**

**Received: January 22, 2018**

**1<sup>st</sup> Heard: February 20, 2018**

**Public Hearing: \_\_\_\_\_, 2018**

**2<sup>nd</sup> Hearing: \_\_\_\_\_, 2018**

**Site Walk: N/A**

**Approval: \_\_\_\_\_, 2018**

Mr. Lewis Chamberlain, PE, Attar Engineering, was present for this application.

Mr. Chamberlain said that we have submitted a site plan application for a change in use for an existing site:

- 6-acre site
- Existing building of approximately 10,000 square feet
- Gravel lot/entrance on Julie Lane
- Owners want to move their business to that site
- Currently operate a towing and recovery service and roadside assistance business at Brook Lane
- Recently purchased the Julie Lane property
- Plan submitted showing existing conditions
- Prior business was boat repair/currently vacant
- No additions to the building anticipated at this time
- Minor commercial truck repair/no work on cars
- Storage of wrecked (towed) cars no longer than 60 days/from 15 to 30 vehicles
- No repair/tow in and tow out

- Accident vehicles stored for insurance purposes/uninsured vehicles take 30-45 days to clear with the State/recycling center picks up those vehicles
- Paving at front of building/gravel where towed vehicles are stored

Mr. Cieleuszko asked if there would be a system in place for oil loss, as he didn't see anything on the plan.

Mr. Chamberlain said that there was currently nothing on the plan; that we did get a comment from the Planner on that. He added that a good thing about this site is that there is a 75-foot, undisturbed, upland buffer from the toe of the slope to the edge of the wetland and is protecting that area. He added that there are things we can do, such as putting in an oil/water separator, for the area where cars are stored and do a maintenance plan to have that pumped out regularly. He said that, while it's not on the plan, if it's a concern, we can move in that direction.

Mr. Cresta added that there are no floor drains inside the building; that if there's a spill inside the building, disposal of the special clean-up cloths will be in a special location.

Mr. Chamberlain said that the brook is behind the buffer.

Mr. Bouchard asked about hazardous waste storage.

Mr. Cresta said that we only store waste oil; that everything else gets picked up in a 55-gallon drum and transported out; that any old anti-freeze or other chemicals get picked up by a recycler; that with old oils, we have an oil waste heater that burns the waste and gets rid of a lot of the waste oil in the area; that people in his other shop bring in 5-gallon buckets that they have at their houses and we dispose of them to burn the oil to keep the building heated.

Mr. Bouchard asked if the application has been sent to the Fire Chief, yet.

Mr. Chamberlain said that he emailed the Fire Chief, who said he had it and had given comments; that he hasn't seen the comments.

Mr. Lentz said that the PB hasn't seen them, either. He added that he hadn't heard anything from the Police Chief.

Mr. Bouchard asked about a dumpster and trash waste removal.

Mr. Cresta said that a dumpster and oil filter dump will be there, also.

Mr. Bouchard said that, on the site plan, we will want to see the location of the dumpster because that needs to be on a pad, he believed. He asked if we need to see location of inside hazardous waste storage cabinets.

Mr. Lentz said not inside. He asked how many employees.

Mr. Cresta said that there would be 2 to 3 that would be working there all the time; that there would be some trucks coming in and out to drop off vehicles, then going back out.

Mr. Lentz asked if the applicant intended to put up any signs.

Mr. Cresta said that he might put one on the building but was not planning to put one up on Route 236.

Mr. Lentz said that he wanted to let the applicant know that the PB doesn't have any purview over signs; that the applicant would need to talk with the CEO regarding signage.

Mr. Whalen asked if there were any restroom facilities in the building.

Mr. Cresta said that there is a restroom there, now, that he would have to look at changing and is basically temporary, as far as he is concerned; that he wanted to create some kind of office inside the building with restrooms.

Mr. Whalen asked if there was a septic field on the site.

Mr. Chamberlain said that there is; that we included the HHE-200 design as part of the PB package.

Mr. Whalen asked if they were going to locate it on the site plan.

Mr. Chamberlain said yes; that it's called out on the plan, generally.

Mr. Feldman said that, going through the original packet that was submitted, there was a memo to Jay Muzeroll from Ms. Pelletier, dated 2/5/2008.

Mr. Bouchard said that that was what he was referring to; that he remembers this application that the Chief had some question on about the fire system.

Mr. Cresta agreed, saying that one of the systems wasn't completed and the Fire Chief wasn't happy about it; that there is a knox box on the building, currently, and he has talked with Chief Muzeroll.

Mr. Whalen asked about the ability of the Fire Department to have full access around the structure; that that may be an issue.

Mr. Cresta said that that would be taken care of.

Mr. Feldman said that, in taking care of that, the applicant wanted to make sure that, if doing any clearing around the back of the building, he does have that 75-foot shoreland zoning setback.

Mr. Cresta said that he understood.

Ms. Bennett said that the applicant described paving around the building, asking how much.

Mr. Cresta said that it wouldn't be around the building; that it would be in front of the building for the entrance, straight out, from the end of the building to the other end of the building, just for parking out front so we don't have a mudhole in spring and fall; that the towed vehicles would be parked on the gravel.

Ms. Bennett said that she was looking at impervious surfaces; that it doesn't look like, at this time, that the applicant is reaching any limits but, as the interim Planner noted in his memo, this property has a sloping characteristic going down to the Great Brook and, because of the use that is being asked for, there is great concern that there will be incidental pollution to this water resource; that she would like to see the amount of pavement that the applicant wanted to add depicted on the plan, if he would be willing, as he had indicated to put in the water-oil separator on the gravel parking area; that she thinks that would go a long way toward easing any concerns about that, recognizing that that was not currently required by the code, but would go a long way to capture anything that would permeate through that gravel. She added that, with high water events, the applicant might have a sheet flow coming off the gravel; that anything the applicant can do, while doing any site work while working on that area to create a berm to slow down that water would be beneficial.

Mr. Cresta said that he understood and he could do that.

Ms. Horner, seeking clarification, asked if we are asking the applicant to provide us with pavement area on the plan and site work plans; that it kind of feels like, if you are going to do 'this', make sure you are going to do 'this' but she thinks that, because we are in the review stage, that everyone wants to see the plan of where the pavement is going to be, what ground is going to be moved, where the berm is going to go; that we need to make that clear.

Mr. Lentz asked if that was what she would like to see on the plan.

Ms. Horner said that she would but that it was up to the Board; that that was what she was thinking.

Mr. Lentz said that stormwater run-off was certainly a concern and we need to see what the applicant would be prepared to do.

Mr. Chamberlain said that we have no problem putting that on the plan.

Mr. Lentz asked that the applicant didn't intend to store trucks there; not sitting there for weeks and weeks.

Mr. Cresta said only his own registered trucks; that the longest we normally have a vehicle (towed) is 60 days.

Mr. Whalen asked if the applicant was staying at his current location, as well.

Mr. Cresta said no; that this is moving Brook Lane. He added that we outgrew the Portsmouth location.

Mr. Cieleuszko discussed his concern regarding categorizing the land use for this application.

Mr. Feldman said that, from looking at the zoning ordinance, he really struggled with the use categories and definitions; that after getting a legal opinion, prior staff discussion, etc., the 'use similar to' category is an appropriate way to deal with this. He added that, because there had already been certain conversations had with the applicant and purchases of property based on that, estoppel (a legal principle that prevents someone from asserting a fact that is contradictory to an already established truth.) could be considered. He said that he thinks his comments are still valid, but, he thinks they should be considered in the future; that he left a definition for the new Planner for the PB to consider that he thinks would help in making sure that uses like this applicant's is conforming in the zone and there is an actual definition of a towing and storage facility that has been used elsewhere in the State. He said that he would not penalize this applicant, based on that, but he thinks, in the big picture, it's certainly an issue for this PB to consider, going forward, that would actually make them clearly conforming to the ordinance at a later date.

There was some further discussion on the need for more, and clearer, definitions for words found in Town ordinances.

Mr. Feldman said that, from the Town's legal counsel, he finds that it (use) fits in the zoning ordinance, based on legal opinion; that he wouldn't call it a stretch and thinks it's a matter of interpretation; that he thinks the Town's legal counsel has given him the guidance to go ahead.

Mr. Cieleuszko said that he thinks we should have more clarity on what we are actually calling this; that calling this a 'use similar to' does not help any better than calling it...

Mr. Feldman interjected 'truck terminal and storage'.

Mr. Cieleuszko said that he didn't have any problem calling it that from the beginning...okay.

Mr. Lentz asked if there were any other concerns; next steps.

Mr. Feldman said that the PB doesn't need a site walk but does believe it is a public hearing.

The PB agreed, adding that they wanted to see the paving scope, waste oil storage, possible grading, and dumpster location on the site plan, as well as getting Fire chief comments, which the PB will do. Additionally, the Police Chief and Director of Public Works should be notified.

Mr. Whalen said that there were a couple of waivers that were in the memorandum; that, again, it was a question of the timing of granting the waivers - prior to, or simultaneously with, the public hearing. He asked for clarification from Mr. Feldman.

Mr. Feldman said that the two waivers he was suggesting the PB waive could be granted this evening; that he didn't believe these would raise a concern at public hearing - high intensity soil survey and estimated progress schedule.

Ms. Bennett said that, additionally, the applicant requested a waiver for the Soil Erosion and Sediment Control Plan.

Mr. Bouchard asked if the oil waste heater would fall under the Fire Chief and the reason he is asking is that it will be for storage of waste oil but, also, the applicant stated that he brings waste oil in, asking if that would be under a small quantity generator, or anything like that.

Mr. Feldman said that that was a great question; that he could not answer that except to say that that would not come under PB purview.

Mr. Bouchard asked that the Fire Chief get that question.

Mr. Feldman agreed.

Mr. Cresta clarified that he takes in waste oil from Town residents, in gallon jugs, and not from a company bringing in waste oil from working on a furnace, for example; that it's a courtesy that we take care of the people in the town we are in.

Mr. Bouchard said that he wasn't sure of the law in Maine but there is a cradle to grave, and we need to know where it's going or a law that prevents this. He asked that this be run by the Fire Chief. He added that the applicant may be able to do that but we just want to get clarification.

Mr. Feldman suggested holding off on the erosion control waiver until the PB knows more about any re-grading or berm work, etc. because, if you look at the plan closely

there is a slight slope that goes down to the creek and you may want to require erosion control measures for any work the applicant might do on the property.

Mr. Whalen moved, second by Mr. Cieleuszko, that the request for waiving §33-127 (12) 'high intensity soils survey' and §33-127 (17) 'estimated progress schedule' be waived.

**VOTE**

**5-0**

**Chair votes in the affirmative**

A public hearing was scheduled for this application on March 20, 2018.

**D. Application for a Shoreland Zoning Permit and a Request for Planning Board Action for review regarding two options to expand an existing non-conforming residential structure that is located within 75 feet of the Piscataqua River. Option 1: Construct an addition and deck off the north side of the existing building at its current location. Option 2: Relocate existing building further away from the river and then construct an addition and deck off the north side of the structure, shifting the structure away from the river to the greatest extent possible. Property is located at 21 Foxbrush Drive (Map 50/Lot 19) and is located in the Suburban Zoning District and Limited Residential Shoreland Zoning District. Applicant/Owner is 11 Crowley Street, LLC (mailing address: PO Box 1037, Dover, NH 03821-1037). Agent for 11 Crowley Street, LLC is Tidewater Engineering & Surveying, PLLC (mailing address: 89 Route 236, Suite 3, Kittery, Maine 03904). (PB18-2)**

**Received: January 22, 2018**

**1<sup>st</sup> Heard: February 20, 2018**

**Public Hearing: \_\_\_\_\_, 2018**

**2<sup>nd</sup> Hearing: \_\_\_\_\_, 2018**

**Site Walk: N/A**

**Approval: \_\_\_\_\_, 2018**

Mr. (Ryan) McCarthy, Tidewater Engineering, and Ms. (Elizabeth) Fisher (Crowley Street LLC) were present for this application.

Mr. Whalen asked if he could get clarification on what exactly we are being asked to do consider this evening; that there are two options on the application. He also asked if we are supposed to be considering two options or is the applicant going to pick an option for us to consider.

Mr. Lentz responded that this Board has no responsibility for choosing an option; that we will listen to what they are saying about the two options and, then, it is up to the applicant to choose the option the applicant wants to come back here with, as that is not the Board's purview to do that.

Mr. McCarthy said that he could elaborate upon that during the presentation.

Mr. Whalen said this is the first time he has ever seen an application in which the PB is given more than one scenario to consider and he thinks we need some direction in terms of the applicant's presentation, asking what we are supposed to be listening to. He asked if, in the end, is the applicant going to make a recommendation, eventually, and narrow the two down to one and based on comments that we're supposed to be reacting to or supplying the applicant with or, in the final analysis, is the applicant going to lay the two options on the table for us to consider; however, you just heard the Chair say that it was not up to the PB to consider and pick and choose but, rather, for the applicant to present to the PB an option being applied for and let us review that and make a decision on that, accordingly. He said that, for clarification, the process, and so we understand what we're supposed to be doing this evening, it would be appropriate for both the applicant and the Board to come to an understanding so we can manage our expectations.

Mr. Lentz agreed that this has never been done before; that what we won't do is choose an option for the applicant. He added that, other than that, we will listen to what they want to present and we can deliberate on all of the subjects or one of the subjects but reiterated that we won't pick an option for them, as that is the applicant's responsibility.

Mr. Feldman said that he had that very conversation with them; that they showed him three options and he made it clear that the PB was only going to approve one. He added that they have chosen to come forward with two with the understanding that only one is going to get approved; that they will need to listen to the PB's comments and questions and come back with one option.

Mr. McCarthy said that with him tonight was Jessica Fisher, who represents Crowley Street, LLC. He explained that

- the property is located at the north end of River Road,
- is a non-conforming lot of record
- no street frontage
- lot coverage exceeds the minimum lot coverage for the Shoreland Zone
- waterfront on the Piscataqua River
- non-conforming structure
- not possible to meet the 75-foot setback from the river
- almost all of the lot is within the 75 feet
- existing structure is entirely within the 75-foot setback

Mr. McCarthy said that the ordinance allows a couple of different options and that goes along with the options we are presenting.

Option 1:

Leave building in current location and expand

Expansion allowed up to 30% in area and volume, based on existing structure size

Option 2:

Relocate/reconstruct current structure further away from the resource to the greatest practical extent

Mr. McCarthy said that the reason we've come to present the two options is that the option the owner will ultimately take is kind of in question; that we are presenting these two options, we believe they both meet the ordinance, and we are looking for guidance from the PB. He added that, ultimately, what we were looking to do was to ask for approval of both options with the understanding that, when they go to construction and getting a building permit, they would then know what option they would be going forward with. He said that the PB can make that a condition of approval; that we understand that this is not the norm.

Mr. McCarthy said that the way we have this plan set up, all the existing conditions calculations are on the left-hand side; that Option 1 is next (keeping the house in its current location), showing expansion to a 310-square-foot structure with a 100-square-foot deck to the north side and compliance calculations are underneath; that Option 2 moves the structure further away from the river and, then, an addition of the north side and an addition off the east side, with compliance calculations underneath. He added that the yellow highlights are the proposed additions and the red areas represent the location of the existing structure. He explained that Option 2 looks larger because we are eliminating the full basement we would keep with Option 1 and bringing that volume up to the first floor; that there would be a crawl space for mechanical equipment in Option 2. He reiterated that, if the PB is not comfortable with two options, the owner can choose one option and move forward with that but, again, we're requesting the PB evaluate the two to give us some guidance on choosing an option.

Mr. Cieleuszko said that he feels very uncomfortable pursuing this, at all; that he thinks we should wait until the applicant decides and not having the burden of choosing for them.

Mr. McCarthy said that we are not asking the PB to make a decision; that we want to leave those options open for the future when they do decide which option to take.

Mr. Cieleuszko said that the applicant is using the PB like what you should be researching the ordinances for; that he doesn't like any part of this. He added that if you feel confident that you can meet the requirements with either proposal, then, he believes the applicant should choose a proposal and bring it back.

Mr. Bouchard asked Mr. McCarthy to re-state what they were looking for.

Mr. McCarthy said that, ultimately, we were looking is for the PB to review them and say that they would approve 'this' one or they wouldn't approve 'this' one.

Mr. Bouchard said that the applicant needs to tell us which one the applicant wants approved; that there is a plan and they submit it to the PB; that he doesn't think we should do both.

Ms. Bennett agreed; that it sounds conditional that we would approve; that we should have one before us.

Mr. Whalen agreed, saying that this is unprecedented in terms that the applicant is taking; reiterating that this is the first time he has seen an application come through asking the PB to comment on two potential scenarios. He added that he suspected that, if the PB finds itself in that position of advising or providing counsel, should there be an issue down the road, he believes we would be held accountable for pre-approving a design or an option thinking, in fact, that that represents the final approval. He said that he is not an attorney but his guess is that that should not be a road the PB should be going down; that he concurred with PB members that the applicant should choose the horse they want to ride through the application process.

Ms. Fisher, property owner, said that she wasn't looking to put the PB in a position; that what she wanted was a clarification, based on the ordinance and on a sketch basis, that we were capable of doing either/or. She added that she is in a position tonight to say that she will choose Option 2, which gives her more opportunity for a larger footprint; that the thought being, down the road, if it gets to the point that that is not viable, our responsibility is to come back. She said that, as we went through this process looking at this particular property to see what our options were, these two scenarios were raised by the planning staff; that she spent the time and money, and Mr. McCarthy did the calculations, to prove to her, as well as the PB, that this is what the scenario would look like. She added that she would like to withdraw Option 1 and go forward with Option 2, provide the PB with documentation for the next meeting and public hearing that will flush that out further; that she thinks we've crossed T's and dotted I's with this. She apologized if she made the PB upset; that we looked at the ordinances and saw the two possibilities.

Mr. Lentz thanked Ms. Fisher, adding that she hadn't upset the PB but that this was just new and something we've never seen before; that he was very convinced that we were not going to make a choice for the applicant.

Ms. Fisher said that she was not looking for the PB to make a choice but some clarification that we were reading the ordinance correctly as to what our options were.

Mr. Whalen explained that the appropriate check-and-balance for determining if your options meet the letter of the ordinance takes place with the staff side of it; that by the time it gets to us, hopefully, it's been vetted appropriately and we're not here asking the question on whether this is an approved use in the zone; that if it doesn't, then you belong at the BOA, first, before you come here.

Ms. Fisher said that there is no request for relief, here; that this is the ordinance and, so, she thought it was an interesting exercise of the two things that could happen on this property, depending on how much money one wanted to put in; that the good news is that either triggers other kinds of site improvements; that we have met those, we've been through the State, we've got septic approvals in place for either option so she is very comfortable pulling it off; that she just thought it would be an interesting exercise for the PB to understand, as people go forward, that we did vet this, we did look at what could happen if we left it where it was.

Mr. Lentz asked Mr. Feldman how he would like to proceed.

Mr. Feldman suggested the only guidance they give the applicant tonight is to table the application and tell them to come back with one option; that he thinks his memo to the PB is pretty clear on that.

Mr. Whalen said that, going forward, would the applicant submit a whole new application.

Mr. Feldman said no; that all their calculations have been done; that Tidewater has done the work to have either option meet the standards and it is their choice to decide which option to go with. He added that all the supporting documentation in the packet is relevant for either option; that it's just the plan, itself, that will need to be changed for the PB's next consideration.

After some discussion, the PB agreed to move forward with this application because the application was mostly complete and they have a verbal withdrawal of Option 1 by the applicant.

Mr. McCarthy discussed the proposed Option 2;

- Expansion to a non-conforming structure
- Relocates structure further away from the Piscataqua River
  - Evaluate if this is done to the greatest practical extent
- Very small lot
- Driveway/parking area biggest issue with how far back from river structure can move
  - Impacts ability of cars to come in, turn around, and come back out head-first
  - Long driveway to River Road
- Pulled structure back approximately 11 feet
  - Allows proposed additions to north and east of structure
- Proposed replacement septic field
- Eliminating basement/replacing with a crawl space
  - Brings area/volume up to first floor
- Proposing 66 square-foot patio

Mr. McCarthy said that we have requested a number of waivers we would be happy to discuss.

Mr. Lentz asked if that was a private driveway, all the way from River Road.

Mr. McCarthy said yes; that it is shared by this property and one other.

Ms. Bennett asked Mr. McCarthy to describe the limitation of the driveway again in relation to the structure moving to the greatest practical extent.

Mr. McCarthy said that the driveway, you are driving in, faces the existing structure; that as we're pulling that building further away from the water, we are getting closer and closer to that front line where vehicles are entering that site. He added that you will notice, if you go to the property, there is very little room for maneuverability if you are turning vehicles around; that the proposal is vehicles will pull in and park over to the side and, then, there is a turn-around area for vehicles to back into and head back out of the property. He said that, if we pull the structure back any further, that would take away that area; that there is no room to turn around.

Mr. Cieleuszko asked if there was any change in lot coverage.

Mr. McCarthy said that the existing lot coverage is currently 23.6%; that the maximum allowed in that zone is 20%; that we don't want to increase that any more. He added that, in order to have the additions and patio, we've reduced the amount of gravel area from what's out there, right now, to only confine that to where vehicles will park and maneuver to turn around.

Mr. Cieleuszko asked if the applicant was good within the 30% for the volume and area footprint.

Mr. McCarthy said that that was correct.

Ms. Horner asked, regarding waivers, if we are going to ask the applicant for a short submission as to why they are requesting the waivers.

Mr. McCarthy said that there should be a sheet regarding that in the packet.

Mr. Cieleuszko asked if the new wing met the property line requirements.

Mr. McCarthy said yes; that the building envelope we have left over, once we take away the setback from the septic field, creates that L-shaped building envelope; that we meet the side setbacks and septic setbacks for that 'L'.

Mr. Cieleuszko asked if the applicant had looked at other structures and wells in the area for meeting ordinance requirements.

Mr. McCarthy said yes.

Mr. Lentz asked if this was more or less conforming.

Mr. McCarthy said that we have made it more conforming because we've pulled it further away from the water; that in all other aspects he believes it's staying exactly the same. He added that we have improved the septic system, proposing an advanced treatment septic system that does pre-treatment so that the effluent coming out is very much improved from normal systems; that we have received a waiver from the State due to the proximity of this septic system to the river and to the existing well on the site. He added that this has also been reviewed by the CEO, who signed off on it.

Ms. Bennett said that the applicant is asking for a waiver for collecting and discharging storm drainage in the form of a drainage plan and asked if Mr. McCarthy could talk to that.

Mr. McCarthy said that because we're not increasing the amount of impervious coverage on this site and maintaining at that 23.6%, there's not going to be an increase in stormwater run-off from this property; that we felt, because of that, there was no need for a stormwater management, or drainage, plan.

Ms. Bennett asked if there will be any change to the drainage, at all, from this proposal.

Mr. McCarthy said that it was net neutral.

Mr. Bouchard asked if there was no change with the additions.

Mr. McCarthy said no because we've reduced the gravel area, the parking area, so it's an equal offset and no net increase in impervious surfaces.

Ms. Bennett said that the applicant also asked for a waiver for providing a plan with contours and asked him to speak to that.

Mr. McCarthy said that the ordinance typically requires a contour plan when you see a grade change of more than 5 feet on the property; that we aren't expecting the grades to be increased by that much. He added that the only place you will see a significant change is where the old building was but that will mesh in with the surrounding grades.

Mr. Bouchard asked if there was any grade change on the property, 5 feet or more.

Mr. McCarthy clarified that he meant on the existing site, saying that you may have 5 feet on the embankment dropping off into the river because the property extends to low tide; that there's no change from the existing to the proposed.

Mr. Bouchard disagreed and read the pertinent section, *"(6) Contour lines at intervals of not more than five feet or at such intervals as the planning board may require, based on U.S. Geological Survey topographical map datum of existing grades where change of existing ground elevation will be five feet or more."* He said that, the way he is reading the requirement, he would not approve the waiver. He added that, if there is a change in elevation of 5 feet or more, then he wants to see which way the property is running.

Ms. Bennett and Mr. Lentz agreed.

Mr. Cieleuszko asked what the slope was down to the water from the flat of the property.

Mr. McCarthy said that the property is relatively flat until you get to the edge of the embankment, then, it drops down into the river; that the embankment is probably 4 to 5 feet.

Mr. Cieleuszko said that runoff is going to change a bit from the existing structure to the new wing going out there; that maybe the water is running away from there but it looks like a catch-all heading for the river, right there, in the crotch of the house, which is now going to have a big water pit in there, if the land is running that way. He said that he doesn't know if there has been any planning for that or if he is looking at it wrong; that maybe the grades are all going down from the house. He added that it looks like there is a damn there with the new structure and he would like to see the contour lines.

Mr. McCarthy showed the PB on the plan how the water flows over the property.

The PB agreed that they would not waive §33-127 (6) or (8) tonight.

Regarding the High Intensity Soils Survey, Mr. Cieleuszko said that this isn't a new structure, it is existing, everything's there, they have approvals from everybody, and he's not worried about a soils report.

Mr. Lentz asked about 'estimated progress schedule'.

Mr. Cieleuszko said that he believed that we have limitations within our building permits that are more than adequate to cover that, in his mind.

There was general agreement by the PB.

Before further discussion on waivers, the PB set a site walk visit. The Site Walk is scheduled for 4 PM on March 20, 2018.

Ms. Horner asked the applicant if she could swing down there and take a peak from the driveway that morning.

Ms. Fisher agreed.

Mr. Lentz asked how the PB would like to handle the waivers.

Mr. Bouchard moved, second by Mr. Whalen, that the Planning Board table approving or disapproving waivers until after the Site Walk.

**VOTE**

**5-0**

**Chair votes in the affirmative**

Mr. McCarthy said they will submit a revised site plan and narrative for the next meeting.

Ms. Horner asked if we would need elevations for the house.

Mr. Feldman said that they have a block diagram showing the volume calculation; that he doesn't believe the PB has a requirement for architectural designs.

Mr. Bouchard asked, with the movement, is there a height difference from existing to proposed.

Mr. McCarthy said yes; that it's still a single-story building but we are bring it up to a higher elevation; that the existing structure is basically down at the water level.

Mr. Lentz asked if it Was over 35 feet.

Mr. McCarthy said no.

Mr. Bouchard asked if it was being raised over 5 feet.

Mr. McCarthy said that he couldn't answer that question right now.

Mr. Bouchard said that that would be a question for the next meeting.

Next meeting would be further review with a revised site plan, then a public hearing at the following second meeting if the PB deems the application complete.

Ms. Bennett suggested we provide a copy of this application to the Conservation Commission.

Mr. Lentz agreed, saying that he would send something to the Historical Society, too.

**E. Application for a Shoreland Zoning Permit to remove portions of an existing building, to add a single-story addition to existing dwelling, and the installation of septic systems to service two (2) dwellings located at 52 Wisteria Lane (Map**

**9/Lot 15). Applicants are Jennifer Scism and David Koorits (mailing address: 484 US Route 1, Kittery, Maine 03904). Owner is the Estate of Donald A. Pike and co-owner is Peter Macy, Esq. (mailing address: 1 Elm Street, Suite 1C, Andover, MA 01810). Property is located in the Village Zoning District and Limited Residential Shoreland Zoning District. (PB18-3)**

**Received: January 22, 2018**  
**1<sup>st</sup> Heard: February 20, 2018**  
**Public Hearing: \_\_\_\_\_, 2018**  
**2<sup>nd</sup> Hearing: \_\_\_\_\_, 2018**  
**Site Walk: N/A**  
**Approval: \_\_\_\_\_, 2018**

The applicants, Jennifer Scism and David Koorits, were present for this application.

Mr. Koorits said that we have a Purchase & Sales Agreement for the property; that currently there are two existing dwellings on the property, both camps that were developed back in the early 1900's; that one dwelling has a shallow well, with a pit septic system and the other has a hose running to it for water. He added that, for the larger, existing building, we are proposing to make that our primary residence; that we would take off some of the smaller additions and propose a 24X24 addition, a single-story addition, for a kitchen and bath. He said that we are also going to put in a septic system and a well, and bring power in. He said that the entire building is within the 75 feet of the shoreland so it's a non-conforming structure.

Ms. Scism said that the property volume is below the 30% allowed for the addition, as well as coverage for the property is just shy of 2 acres; that we're not encroaching near what we can use for coverage of the property. She added that there is an existing deck we are proposing to remove and, then, sort of swing around but we are not bringing any addition closer to the water; that it would stay at the same distance from the water.

Mr. Feldman said that he did meet with the applicants on several occasions and apologized that he did not have time to get a memo to the PB on this application.

Mr. Lentz asked if the second building was a garage.

Mr. Koorits said no; that it was a second camp.

Ms. Scism said that they have a make-shift kitchen and a couple of bedrooms in it, with an outhouse; that we are proposing to put a septic tank in there for the future but we are not going to be renovating that. She added that that structure does sit outside of the 75-foot shoreland setback.

Mr. Lentz said that the septic design was for two two-bedroom dwellings.

Mr. Koorits said that, while we have all the equipment there, we wanted to get it all done once.

Mr. Whalen said that there is a reference to two camps and two houses, asking if the two camps are being combined into one dwelling.

Mr. Koorits said no; that they are actually a far distance apart; that they are about 150 feet apart. He added that we aren't doing anything to the second camp other than putting a septic system out towards that camp. He said that the larger building is the one we want to use as a residence; that the septic for the second camp would have a pump container to pump it uphill towards the leech field that is as far away from the water as possible.

There are waivers being requested but they were not included in the packet.

Mr. Bouchard said that the whole building is within the setback, correct.

Mr. Koorits said yes.

Mr. Bouchard asked if the applicant was showing an expansion of 34%.

Ms. Scism said no; that it's less than 30%.

Mr. Koorits added that we are reclaiming some of the existing space.

After further discussion, it was determined that the math needed to be corrected to fit the narrative %.

The driveway is a right-of-way.

Mr. Bouchard said that it looks, on the plan, like the addition is pushing towards the river, if you look at the contour along the river, asking if that was a rock wall.

Mr. Koorits said that it is a retaining wall.

Mr. Bouchard said that he would like some measurements on the two corners; that he thinks that would happen when it's staked for a site walk. He added that it may be fine but he is just raising the question.

Ms. Bennett said that it would be helpful if the dimensions of the existing structure and the addition were on the plan.

Mr. Lentz said that the distance from the structure to the river is necessary.

A request for waivers needs to be submitted.



Mr. Lentz asked if a summary would be done.

Mr. Feldman said that he thought the Town Planner would be doing that.

Mr. Lentz asked for the checklist, as well.

Site Walk scheduled for March 20 at 3PM. Continued review on March 20, 2018.

#### **ITEM 8 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS**

There was no discussion.

#### **ITEM 9 – CORRESPONDENCE AND PLANNING ASSISTANT**

There was no correspondence.

#### **ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING**

Workshop on March 6:


- By-law review
- Policy on notification to committees
- Growth Ordinance timing
- Vice-Chair position
- Look at process for developing a budget

Mr. Lentz said that he talked with the Town Manager to create a work flow to know who is responsible for what during the whole process, not just what we do here, but the back office, as well.

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

#### **ITEM 11 – ADJOURN**

There was a motion and a second to adjourn the meeting at 9:29 PM.

  
Dennis Lentz, Chair  
Date approved: 3/27/18

Respectfully submitted,

Ellen Lemire, Recording Secretary