

ITEM 1 - ROLL CALL

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

Also Present: Emily Cole-Prescott, Town Planner.

Absent: Larry Bouchard (excused).

Voting members: Dennis Lentz, Greg Whalen, Ed Cieleuszko, Christine Bennett, and Melissa Horner – Alternate.

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 March 20, 2018, as amended.

VOTE

5-0

Motion approved

ITEM 6 – PUBLIC HEARINGS

A. Application for a Shoreland Zoning Permit and a Request for Planning Board Action – Resubmission of Site Plan Application – Expansion to Non-Conforming Structure. 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

1st Heard: February 20, 2018

Public Hearing: April 17, 2018

2nd Hearing: March 20, 2018

Site Walk: March 20, 2018

Approval: _____, 2018

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

7:06 PM Public Hearing opened.

Mr. McCarthy said that this is a proposal for an expansion of a non-conforming structure located within 75 feet of the Piscataqua River, with the expansion restricted to 30% in area and volume. He added that we have provided a site plan showing where we want to relocate the building; that when we relocate the structure, we have to make sure it is relocated to the maximum extent practical, based on lot size, septic system, setbacks, and all other zoning regulations that come in the picture when relocating. He said that we also provided supporting documentation with regard to the 30% expansion in area and volume, along with the calculations that are shown on the site plan. He added that he would answer any questions.

Mr. (Tom) McCarron, abutter, asked what the baseline structure was that we are talking about. He explained that he was the former owner of that property; that, at first, he guessed it was from the federal government back in 1994, it was a shack on the ground, roughly 630 square feet and that is his understanding of the baseline of what we're talking about for the 30% addition. He added that there was no foundation under the building and a foundation was put in in 1995, which exists today. He asked if the 630 square feet is the basis on which we start in looking at the application or are we looking at the baseline being what was constructed later.

Mr. McCarthy said that the baseline for these calculations are based on what is there right now; that currently the first floor is 600+ square feet and the full basement was added, based on the Town record, around 1995 but, when u add a new basement to an existing building, there is a section in the ordinance that specifically governs that; that that section allows an exemption to the expansion calculation, like if you add a basement underneath the structure, if you do not expand it beyond the horizontal limits of that structure and it does not raise the structure by more than 3 feet, it's exempt from the 30% expansion calculations. He added that, once you add that basement in there, it becomes part of your gross floor area; so, the baseline calculation today is the first-floor level and the basement level.

Mr. McCarron asked even if the basement wasn't there to begin with.

Mr. McCarthy said that was correct because of the exemption in the ordinance.

Mr. McCarron said that he went over this same thing with Mr. Marchese (former CEO) in he thinks 2012 when he owned the property and he was instructed that it was...at that point the basement was being occupied because the former owner was actually using it as part of the residence; that they built a full headroom basement and used it as living area...and he was advised that the only addition he could possibly do there was 30 feet from the original 630 and that had to be a structure away from the building, as far away from the water as possible, and that was it. He clarified that his intention, at that point,

was to try to build a structure to be on adjacent land and we could complete a lot line revision for the structure adjacent to the property, which he was willing to do but the structure had to be 75 feet from the water. He added that he was also advised that you can't build anything within 75 feet of the water; that that was kind of cast in stone; that based on that representation, it was very expensive for him to do what he was trying to do, so we sold the property. He said that he was curious about what happened between the time he was given that advice and this application, asking if that had been the proper advice.

Mr. McCarthy said that he reviewed the letter from Mr. Marchese and he doesn't see anything there saying that you specifically cannot do something; that, as he pointed out in his memo, the letter recommended professional assistance and that he (Mr. Marchese) cannot definitively tell you what you can and cannot do until you submit an application and you know exactly what you're looking at; that you have a survey done to calculate those baseline calculations.

Mr. McCarron said that he was seeking the CEO's advice at the outset because he wanted to try to build it from the code of the Town; that he wanted to start somewhere so he went to the CEO and got his advice; that he thought that was the reasonable thing to do. He added that, if this application goes forward, he supposes, having the adjacent property, that we could put a foundation underneath it, come to the Town and say we don't have an 1,800 square-foot-house, we have a 3,600 square-foot-house, and then we want to expand it by 30%; that that, somehow, doesn't seem right; that he doesn't understand how you get to where you are.

Mr. McCarthy said that we are following the ordinance to a 'T' and he doesn't think they've changed since you spoke with Mr. Marchese back in 2012; that maybe some information got misconstrued but, again, he can't speak to that; that you can expand your building within 75 feet of the river and there are specific ordinances that allow you to do that; that you are limited in that expansion to 30%; that if you move the structure you are then required to meet it to the greatest extent practical, in which case, it sounded like you were looking to do a lot line adjustment and that would allow you to then build beyond the 75 feet. He added that if it is practicable or, if you feasibly can build beyond that 75 feet, the PB would require you to do that, or the ordinance would require you to do so. He said that, without these lot line adjustments being done, we're only guided by where the property lines are now, and there's no place on this property to be able to build outside of 75 feet; so, therefore, we fall back to that 30% expansion calculation.

Mr. McCarron said that he just doesn't get it; that you're opening up a sandwich; that you've got a foundation, you're opening it up, and saying now we're going to expand that by 30% when the sandwich wasn't there to begin with.

The Town Planner said that, just for the purposes of point of order, it may be best if questions come through the Chair, if possible. She added that, for clarification, the memo referenced is in the packet and dated September 28, 2012, and the section being referenced is 44-32 in our ordinances.

Ms. (Mary) Smith said that she lives in the neighborhood; that having been faced with the 30% on a lake, if that basement was put in after the zoning and that building is within the Shoreland limitation, and that basement could be used now to get more from the 30%, wouldn't that have used up that one-time 30% on that property. She clarified that you get one shot at 30% and that basement, if it's a living space, wouldn't that be considered that 30%.

Mr. Lentz said that he could only go by the...

Ms. Smith said that she questioned that because, if it's living space, then it would come under the 30%.

Mr. McCarthy said that, again, there's a specific section in the ordinance that exempts the foundation from the 30% expansion; that that doesn't trigger the 30% nor is it part of it because, technically, if you build a foundation under it, you are increasing the area by 100%. He added that that exemption is there and it's been there.

Ms. Smith asked if it didn't have to be included, that 305, when that basement was put in.

Mr. McCarthy said that when that basement was put in, it's basically saying that you aren't expanding the structure at all; that it's excluded, it's exempt from that. He added that, as far as living area is concerned, Shoreland regulations do not care whether this is habitable space, living space, storage in an attic, it's all done from the exterior faces of the structure, itself; that that doesn't even come into the picture.

Mr. McCarron said that it seemed to him that you can't have it both ways; that if you put a foundation under a building, it doesn't mean the building expands by 100%; that it's a foundation; so, you start with a 630-square-foot building and put a foundation under it, it's still a 630-square-foot building. He added that, when it was there before, it was a foundation with a 630-square-foot building; granted you add 30% to it and you come up with whatever you come up with but you're counting the basement as habitable space for the calculation of this project; that it seems to him that you can't have it both ways – either it's foundation or it's living space; that if it's not living space and it's just a foundation, it doesn't add to the footprint.

Mr. McCarthy said that, whether it's used as living space or not used as living space, that does not come into the picture; that by putting a foundation under it, that area and that volume becomes part of your gross floor area; that if it's converted to living space, that's gross floor area through the definition in the ordinance; that there's nothing to say otherwise and that's what we fall back on.

Mr. (Chuck) Tewell asked if the ordinance was a Maine State ordinance.

Mr. Lentz said that it was a local ordinance.

Mr. McCarthy said that the State has state-wide Shoreland Zoning ordinances and regulations that everyone has to follow; that towns in the area can choose whether to adopt that identical version from the State or force more restrictive versions of it; that you can't go any less restrictive than the Town and the Town has adopted the State version.

Mr. McCarron said that he wanted to be clear. He said that we own the structure next door that's within 40 feet of the river, and is about 1,800 square feet; that if you go ahead with this, then you're telling him that you can raise that property, put a foundation underneath it, and could come back with an application like this asking to add 30% to the foundation level and existing level and build a structure well within 75 feet of the river, and it would be approved because the ordinance says that he can do that.

Mr. Lentz said that it is exactly as Mr. McCarthy said; that the PB would have to see exactly what he would plan to be doing. He added that it's a hypothetical question and he doesn't think we're in a position to discuss a hypothetical question.

The Town Planner said that there are copies of the after-the-fact correspondence received relative to this application that were not posted online.

7:21 PM Public Hearing closed.

Mr. Lentz said that we did receive what we asked for the last time from Mr. McCarthy – revised Shoreland Zoning Permit Application revision of square footage in section 8 with revised Sheet 1 C1, the boundary retracement, and a document with vehicle turning maneuver sketches.

Ms. Bennett asked if Mr. McCarthy had discovered when the patio was created; that she thought she had read in our materials that there had been a dock that had been attached directly to the building.

Mr. McCarthy said that it wasn't attached from his understanding; that there's a photo in the file that shows the porch, or the deck, that was on the river side that extended out over the marsh; that in the photo you can see a dock that appears to be laying flat on the ground and extends out but that is not attached to the building.

Ms. Bennet said that there was a deck out over the river that didn't have a permit.

Mr. McCarthy said that that front deck was ordered to be removed by CEO Mabey, at the time; that that was clearly removed and was not part of our calculations.

Ms. Bennet asked about the existing patio on the river side.

Mr. McCarthy said that he doesn't know exactly when that was built but from the look of it he assumes it's been there a while because of the joints and timbers that were used; that there's no record in the file.

Ms. Bennett said that it would seem logical that the deck was added at the same time as the foundation.

Mr. McCarthy agreed that what's out there now probably was put in at the time the foundation was done; that from the look of the photo, it looks like there is storage underneath it so there's probably some access to get around to the front, regardless, but as far as the total area of that, we really don't have any information to go off of other than what's out there now. He added that the deck on the front of the building and away from the water has been discussed extensively two years ago with a DEP representative, Ms. Pelletier, Ms. Ross and we determined that that probably was done after 1989, when the Shoreland regulations went into effect; that the group all agreed that we should just exclude that area from the calculations so that we aren't adding 30% onto that deck. He added that that was discussed with Mr. Feldman, too, prior to the Town Planner coming.

Ms. Bennett asked if there was a rationale for not actually applying that same logic to the patio that was possibly added in conjunction with the foundation.

Mr. McCarthy suggested that that was a question that the PB should probably discuss; that, again, he thinks there was some sort of access to get around it, beforehand.

Mr. Cieleuszko said that he is very comfortable with the current calculations. He added that the only issue that arises, as Ms. Bennett has brought up, is the patio – some semblance of a patio, he would assume, as they have, did exist. He said that he thought we could safely err on the side of giving them that much; that he would be in favor of keeping that in the area calculations.

Mr. Whalen asked Mr. McCarthy to review, once again, for the PB the defendability issue regarding the movement of the structure within that 75-foot setback as being as practicable as possible.

Mr. McCarthy said that that was one of the reasons he provided the PB with vehicle turning templates showing the maneuvers; that the biggest factor that governs how far back or away from the water that we oriented this building was the vehicle maneuverability. He added that the PB has been to the site and seen how long that driveway is from River Road; that the last thing we want to do is have vehicles backing up from that property all the way to River Road and backing into the road to drive away. He said that we need to provide a way for vehicles to turn around on the property and then drive head-first down the driveway to River Road. He added that one template is using a full-size pickup truck and the other one is with an SUV; that if we pull that building back any further than it's shown now, that just further restricts the vehicles being able to turn around and head back up to the road. He said that we have looked at other ways to try to configure that driveway but most result in having more impervious surface to the property; that it has to take up a larger area for the vehicles to, say, come in to the property, swerve off to the left versus straight in, and then back up and pull back out. He added that when we try to include that configuration, we end up exceeding lot coverage calculations; that the areas are very tight, here, and there's not much room

for play; that the driveway is one of the factors on where the building sits right now; that, if anything, it's 5 feet off of that front setback line. He said that the second thing that comes into play is the septic system; that we are proposing a replacement septic system for a 3-bedroom residence; that we've reduced the size of the leach field as much as we possible can by proposing a pre-treatment device; that it treats the water instead of just going into a septic tank and into the leach field; that we are aerating it, which creates an atmosphere that actually treats the affluent, allowing it to then cut the leach filed size in half. He added that you still have setbacks from that leach field; that it's a 20-foot setback that cuts into the building envelope even more. He said that the other thing to take into consideration is the size of the lot; that it's a very small lot and we have side and front setbacks to comply with; that based on all those challenges, we feel like we are pulling it as far back as we possibly can.

Mr. Whalen said that, regarding that proposed front addition, does the elimination of that or the reduction in that improve the situation in terms of being able to move the main structure further forward.

Mr. McCarthy said that that was a good question. He said that we've set that front addition up to be able to use that as a garage, if the owner decides to do so; that if we end up removing that, they'll need to provide two parking spaces for two vehicles based on your ordinance of two parking spaces per dwelling unit. He added that that area where the garage sits now is basically over the area where we would end up have the parking spaces.

Mr. Whalen said that the front of the building, if the garage was not there, could be moved forward to the edge of the gravel; not that that would be ideal but you physically have the maneuverability to be able to do that.

Mr. McCarthy agreed you could probably move it forward a little bit.

Mr. Whalen asked if Mr. McCarthy explained has or have we discussed what's happening to the area the house is being...and do we know, in fact, that the house is being moved.

Mr. McCarthy said that, from his understanding, the goal is to relocate the building to a new foundation; that if that's not feasible by the contractor – if he comes forward and says that, based on its age or whatever reason, we can't relocate this, or maybe it's not cost-effective to do so, the applicant will end up reconstructing the building; that it will end up matching the same dimensions and configuration that is there now.

Mr. Whalen asked how that affected the application, if at all; that we are being asked to approve, as he understands it, the plan that identifies the relocation of the house to its new foundation. He asked if that doesn't happen within the timeframe that the application remains active and/or a decision is made not to move it forward how does that affect the approval of this application. He asked if the applicant would have to come

back and re-apply to keep the existing structure on the existing foundation in order to move forward with the expansion, or does this plan apply.

The Town Planner said that if there were any changes where it was determined that the structure could not be moved from its current location, the applicant would be required to come back to the PB for approval of just an expansion of the existing structure, as it stands; that she would also assume he would have to go back to file the NRPA Permit-by-Rule paperwork because the structure would be closer to the water body. She added that if there were not to be a relocation of the structure it wouldn't conform with the plan you are reviewing.

Mr. Whalen asked, based on the existing plan in terms of its relocation, if there has been any discussion about the re-vegetation of that area that would be exposed as a result.

Mr. McCarthy said that we've added proposed grading to the plan that shows what we want to do for the area that the building will no longer be part of; that that will be re-graded, as it is shown, so it will come back up in elevation to the crawl space we are proposing, pointing that out the grading lines on the plan. He clarified that what we have shown here, if the PB approves it, is the only thing the applicant can do; that that includes either relocating or reconstructing the structure; that reconstruction would be done to the same configuration and dimensions of the existing structure. He added that, as far as how that applies to your ordinance, relocation or reconstruction follows the exact same regulations; that if they decide they don't want to relocate the building and they want to keep it on the same foundation where they are at, he would 100% agree that that applicant needs to come back to the PB because that's not what is approved.

Mr. Cielezsko said that your relocated existing house has an area of 637 square feet on the proposed site plan, asking if there was not going to be a basement under the main structure.

Mr. McCarthy said that there would be a crawl space for mechanicals; that the volume and area of that is not included. He explained that the crawl space will have concrete walls and a concrete floor but the actual height of that is going to be sufficient for mechanicals, only; that it's not considered a floor so it wouldn't be part of the gross floor calculations by your definition; that that area and volume is not part of the 30% calculations. He explained that our calculations go from, say the volume, the first floor level, up; that a full foundation gives you sufficient height, so, if it's above 6-foot something, by a building code it is either able to be used as habitable space or ___?___ space; that it becomes part of your definition of 'floor area', per your ordinance. He used an attic as an example, saying that an attic that doesn't have enough head room is not part of your area calculations because it's not considered a floor.

The Town Planner read the definition from §1-2 within Chapter 44 (Shoreland Zoning), which means "*the sum of the horizontal areas of the floors of a structure enclosed by exterior walls plus the horizontal area of any unenclosed portions of the structure, such as porches and decks.*"

Mr. Cieleuszko said that there is no height in that definition; that that definition did not fit what Mr. McCarthy presented.

The Planner said that there is a memo from Attorney Saucier regarding floor area structure expansion and volume.

Ms. Bennett said that the proposal is to move the building to a new location and you don't build a foundation but put in a crawl space for mechanicals, asking what is preventing the applicant from coming forward again and putting in a full basement at a future date, given that we have this exemption in our code that, if it doesn't elevate more than 3 feet, then that is not expanding the footprint of the actual building.

Ms. Horner said that she feels like that is playing a hypothetical game that we just talked about; that she doesn't think that's fair because we're supposed to be judging this application based on what is presented to us and not what might come down the road in the future; that she thought that the applicant could see that question as a biased question because, depending on how Mr. McCarthy answers, it may or may not influence how you view this application as it's presented to us right now.

Ms. Bennett said that she put forward the question as a means for us to be able to explore the code just a little bit deeper; that in reading §44-32 (C) Non-conforming structures within the Shoreland Zone, our attorney was very quick about alerting us to about (B) about the enlargement or replacement of a foundation; that the §(A) that precedes it, in her mind, could be open for interpretation; that in that it states that "if any portion of the structure is less than the required setbacks to the normal high water line that it shall not be expanded as measured in floor area or volume by 30% or more during the lifetime of the structure." She added that the structure in 1989 was 630 square feet; that it got a basement but she isn't sure we should be including that basement in that 30% expansion because that ordinance is stating that that structure in 1989, when the Shoreland Ordinance went into effect, is what we are allowed to expand by 30%, not necessarily the foundation.

Mr. Lentz said that he thinks Ms. Bennett is getting into the ultimate question, and that is whether the new foundation that was constructed in 1995 is still within the existing footprint and it elevated the structure no more than 3 feet from the uphill side of the structure. He explained that that's the question we are facing, as a Board, when it comes to the space.

Ms. Bennett said that she thinks there's a third question, here; that even if that is satisfied, it conforms and did not create a 30% expansion or the basement can't be considered part of the previous expansion, then that's fine; but, should it now be part of the calculation for this future expansion; that that is something she is proposing we discuss.

Mr. Lentz agreed.

Ms. Bennett said that, as she reads the ordinance, she would contend that a straight reading of the ordinance would mean that the structure, as it existed and was measured in 1989 when the Shoreland Zone went into effect, that volume is what is allowed to be expanded by 30%, not the volume that was then created in 1995 by the legal and allowed enlargement or replacement with a full foundation that has, in essence, doubled the volume of the structure. She added that, while what happened in 1995 was fully conforming with our Shoreland Ordinance, what we have before us today is a question of that 30% and how you calculate it; that she thinks it should be calculated on the volume of the structure that existed in January 1, 1989, when it went into effect.

Mr. Whalen said that Attorney Saucier's memorandum to us states "in that expansion of a structure that the floor area volume structure, including all extensions..."; that he guessed the issue is no reference to timing on that so what are we left with in terms of attempting to decide this question. He added 'all extensions', for sure but in terms of the benchmark as to where it starts and where it technically jumps off, relative to the life of that property, has left us to try to ascertain whether or not we impose a time limit on that or, in fact, if 'adding all extensions' is ad infinitum.

Mr. Lentz said that, unfortunately, the records don't show it or could prove much; that it is a dilemma and it is a question of which lawyer do you want to listen to almost.

Attorney Orso said that he guessed what he would follow is Attorney Saucier's memo; that he thinks one of the problems the abutters have is with the ordinance, itself, but we're stuck with the ordinance, itself; that at different times he'll be up here arguing that it's a great ordinance or it's a horrible ordinance; that he knows that and understands that, as he has been in front of this Board a number of times. He added that what this ordinance does say is that, if the construction meets those standards, which are the standards that the Chairman is specifically referencing, the new foundation should not be counted toward the 30% expansion; that he understands the question and he thinks that is a third question, but, he thinks the only way to read that is to give it its natural meaning, which basically says that, when that basement was created, when that foundation was created, there was no expansion.

Ms. Bennett said that she agreed with Attorney Orso but she doesn't think that basement is eligible for expansion; that she doesn't believe the volume of that basement is actually eligible because it was not in existence on January 1, 1989.

Attorney Orso said that herein lies the issue – that if it wasn't an expansion then it didn't add anything to it so he thinks you have to allow for...the ordinance tells us that, if there was no expansion, then you use the current square footage, and that includes that basement; that there was no expansion and he doesn't think anyone can argue under this ordinance whether or not it meets those three criteria with regard to what Attorney Saucier says here, "it was built within the existing footprint and has elevated the structure no more than 3 feet", then nothing has been added as far as the 30% rule. He added that it would be inconsistent with that recitation of what that ordinance says to now say that, then, you can't include that because that was somehow part, that's eating

into your 30%; that that is essentially doing what exactly the ordinance says we're not supposed to do.

Ms. Bennett disagreed, saying that she thinks the ordinance is stating that you have a structure, it is the structure that existed in January 1, 1989 that is eligible for a 30% maximum expansion; that we're not suggesting that we not do that, that we're not allowed to do that, what she's suggesting is that you're not allowed to use the volume of a legal conforming addition of a basement.

Attorney Orso said that he understands what she is saying but, then, under that circumstance, though, you are only allowed 27%.

Ms. Bennett said no; that you are allowed 30% of what existed in 1989.

Attorney Orso said but you're not and he guessed the problem you run into with these ordinances is, if the ordinance meant that, it should say it.

Ms. Bennett said that it does.

Attorney Orso said no, that it says just the opposite; that it says that, if the construction met those standards, the new foundation should not be counted towards the 30%.

Ms. Bennett said that it's not counted toward the 30% but you're using it to create 30%.

Attorney Orso said that it is being counted toward the 30% because, when you put the foundation on there and it's 2 feet it raises it, he's eaten up some of his percentage, then, because he has a building now that is 637 square feet and he can't do 30% anymore, because Ms. Bennett is saying that you can't use anything underneath, you can't use any part of the foundation; that's the problem. He added that, again, there is a way to read this ordinance more than one way; that he thinks that the only way that's consistent with what the ordinance in plain language says and what Attorney Saucier says is, when you did that foundation underneath, it did not add anything, it did not expand anything; so, now, you have a building...

Ms. Bennett said but it did; that it expanded what is eligible for expansion.

Attorney Orso said that it doesn't say that here.

Ms. Bennett said that Attorney Orso is saying that here.

Attorney Orso said that he is just reading the ordinance; that he isn't saying that the ordinance is perfect but what he is saying is that, if you are going to say that you're technically taking away part of the 30% of the building today based upon an expansion that did not happen based on your own definition of the ordinance. He added that, if that's going to be the case and it's going to be somewhat convoluted like that, the ordinance should put it in there.

Ms. Bennett said that she feared if we followed Attorney Orso's logic we are going to be doing more than a 30% expansion of the building that was there January 1, 1989 during the lifetime of it; that we will be violating that.

Attorney Orso said that he understood the argument; that his only point is that there has never been an expansion up to this point, according to your ordinance.

Ms. Bennett agreed.

Attorney Orso said that the only thing we're doing is that we're starting right now and doing an expansion and the ordinance says we can do 30%.

Ms. Bennett said yes, of what existed on January 1, 1989.

Mr. McCarthy said that, earlier, Ms. Bennett said that the ordinance says that the structure can only be expanded by 30% in area and volume based upon the area and volume in 1989; that it doesn't say that here, suggesting that they look at the section word-for-word. He added that the first sentence is saying "after January 1st, 1989, if any portion of the structure is less than the required setback from the normal high water line (that's the entire structure in this case) that portion of the structure shall not be expanded as measured in floor area or volume by 30% or more during the lifetime of the structure."; that it doesn't say 30% area and volume based on the area and volume in 1989, it just says we cannot expand the structure by more than 30% in area and volume. He said that the second sentence says, "If the replacement structure conforms with the requirements of the subsection and is less than the required setback from the waterbody, the replacement structure may not be expanded if the original structure existing on January 1st, 1989 had been expanded by 30% in floor area and volume since that date; that this structure has not been expanded by 30% in area and volume since that date.

Ms. Bennett said that except that, now, we are using double the volume to use for an expansion calculation.

Mr. McCarthy said that he understood what she was saying and he understands that that is her interpretation; that when she said that the 30% is based on the area and volume as of that specific date, it doesn't say that.

Attorney Orso said that that is a legislative thing; that if you have enough voters that agree with that, or the members of the Board, he thinks that is certainly something that could be looked at; that he just doesn't think that the ordinance, as it currently sits, says that.

Mr. Cieleuszko said that he agrees with Ms. Bennett that the basement structure added in 1995 is not an expansion but then to use it...that structure was not there on January 1, 1989; that that was the date of the existing structure that is used for the 30%. He added that they give you the option to add a basement but he cannot see anywhere where they envisioned that people would add a basement and then double their expansion rates on

the house that now exists. He said that this is very clear and it is a stretch to say that the basement should be added in the gross volume and square footage for a 30% expansion; that the 30% expansion, upon reading this, should be on the structure that existed in January 1, 1989, and he has not heard anything to sway him from that.

Mr. Lentz asked Mr. Cieleuszko if he believed the expansion on the drawing was too great, is it incorrect.

Mr. Cieleuszko said that it was too great, it was not correct, and should be based on the 1989 structure; that he can see the patio and the main house, no other aspects. He added that he believes the basement should not be counted as a part of the gross numbers to give a volume and area of expansion; that it should be just the main floor.

Mr. Lentz said that if you look at Attorney Saucier's letter and if you look at the second to last paragraph, when we asked what the ultimate question is, that's what needs to be answered.

Mr. Cieleuszko said that the question, ultimately, for us, and what he (Saucier) was trying to answer was whether the 30% was used up when the put the foundation in; that it clearly wasn't, putting a basement under it was not an expansion but, then, using that basement, which the attorney doesn't address at all, is using that basement for a new set of formulas for a new expansion; that is not addressed in his letter.

Ms. Bennett agreed; that she thinks that Attorney Saucier's memo is very clear with regard to the foundation and she takes no exception to that; but, she would be interested to know what his opinion is about how they calculate the expansion, what volume is used in the calculations. She added that her proposal is that the basement is not to be included.

Mr. Lentz asked for the Town Planner's input.

The Town Planner said that the PB has to consider the facts, as presented, and through the application/public hearing process. She added that she could find out if we could add something in, as a Board; that after the public hearing is closed, you usually don't really add information from the applicant. She said that, basically, it's what the facts that are presented within the process the applicant has gone through; that with regard to the process, the PB does not have to come to a decision tonight; that you have the option to deliberate at the next meeting.

Mr. Lentz said that he didn't think the question was whether we did or didn't have all the facts; that he thinks the question is what do we believe the interpretation of that ordinance is and how to apply what we learned. He added that it is his opinion that we need to be certain before we make this decision and, if that means we need to move our discussion to the next meeting and look for some help in the meantime, he believes that's required, and he thinks it's necessary. He asked for the PB's opinion.

Mr. Cieleuszko asked if he meant an attorney's opinion on the subject of using the basement for the calculations.

Mr. Lentz said yes. He asked if Ms. Horner was prepared to vote.

Ms. Horner said yes.

Mr. Cieleuszko said that it was his and Ms. Bennett's opinion; that if everybody else is clearly in the other camp, let's vote on it and let these people go, one way or the other; that if there's questions, then...because he is sure he is right.

Ms. Horner said that, from that paragraph in Attorney Saucier's memo, she feels like there is a double negative in there, asking if there was a way to untangle those sentences, because that last sentence is pretty cut-and-dry – "if the construction met those standards, then a new foundation shouldn't be counted" is what we are talking about. She added that we all know it's not an expansion; that we all agree on that because of the way the ordinance is written, but we are flip-flopping on whether they can use it or not.

Mr. Cieleuszko said that he thinks the question is is using the foundation that they put in, which is not considered as part of the 30% expansion and using that to literally double their availability of 30% - use the whole foundation, use the whole first floor, and add those two together; that that is not answered in that paragraph. He added that the original question all the attorneys and everybody here is discussing is that the foundation used up the 30%, and more, and the attorney says no; that our ordinance clearly states it's not used, it's not an expansion but, to just turn that around and say that we can use it as floor area and volume to a new expansion is not addressed in that letter.

Ms. Horner said that she feels like that is what she just said; that she will stay with her original question of is there a way to untangle that couple of sentences. She added that she was hoping, by asking her question, it would sort of clear up either side of the isle; that she will retract her question.

Ms. Bennett said that, regarding Ms. Horner's question, she would appreciate more direction from our attorney on that question and have him expound a little further on that paragraph. She added that she would also pose the question we have been deliberating about – what features of the building do we use for the calculations of expansion.

Mr. Whalen said that he would support referencing it back to the Town attorney.

It was the **consensus of the PB** to seek further attorney guidance.

Attorney Orso said that, whichever way the Town attorney comes back, you are still a deliberative Board; so, if we have five members saying "I know I'm right. I'm not changing my opinion.", the issue becomes what is the purpose of sending it to Town counsel. He added that he agrees that it should be because he thinks it says it in here but,

if Attorney Saucier comes back with an opinion saying that's what he meant, he just wants to make sure we're doing something that's going to be fruitful.

Mr. Lentz said that certainly he thinks that's the answer to our question, then, and he thinks we'll abide by his direction.

Mr. McCarthy asked, if we can get the letter back in sufficient time so that, if we have to revise the calculation, we can do so and still be at this next meeting.

B. Shoreland Zoning Permit Application – Existing 2-story dwelling to be moved 27' away from the HAT line of the Piscataqua River; single-story addition and dormer to be added to existing dwelling; various portions of existing dwelling to be removed; installation of septic system to serve 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
1st Heard: February 20, 2018
Public Hearing: April 17, 2018
2nd Hearing: March 20, 2018
Site Walk: March 20, 2018
Approval: April 17, 2018**

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

8:11 PM Public Hearing opened.

Mr. Koorits said that we recently purchased this building; that the building currently sits 21 feet from the water and we are proposing to move that back to 48 feet from the water; that the reason we are not moving the structure all the way back beyond the 75 feet is to allow access so that it doesn't interfere with the drive or the drive coming in and would also allow us to put in a garage; that it will eliminate how close we are to the septic system, or the leach field, add a stone walkway, and cut down the least amount of trees. He added that we are planning to put on a 24'X24' addition on the back of the structure that will contain the kitchen. He said that, for full disclosure, they added in the garage that wasn't on the plan at the last meeting, as well as the small gravel driveway from the end of the structure. He added that they spoke with the CEO and she said that this doesn't need to be added but we wanted to have full disclosure so we added that on the plans. He said that, as far as the structure, both volume and square footage is less than the 30% allowed; that right now all the structures cover 4% and, even with the addition, gravel driveway, and garage, it only increases the total coverage to 8%, so, well within the 20% of coverage allowed.

There was no public input.

8:13 PM Public Hearing closed.

Mr. Whalen asked if the revised plan, with the addition of the garage, come in on time.

The Town Planner said yes. She explained that the applicants met with the CEO and with her, and it did come in before the April 3rd deadline; that we had asked them to put that on the plan because road and driveway construction requires a site plan review in this zone; that she asked them to put the driveway on and, while they were doing that, because they are coming in under site plan review, just put everything on that they want to do so that they don't have to come back under the site plan review process. She added that the CEO could approve the garage location down the road but, if it's coming under site plan review process, the PB would have authority over the site after that.

Mr. Whalen asked if a survey company add this on and are these their calculation or yours.

Ms. Scism said that we added it on and the calculations are ours; that we amended the plan.

Ms. Bennett asked, with the new driveway and garage, it appears to her that the applicants could move the structure back to beyond that 75-foot line; that it actually could be feasible.

Ms. Scism said that it was mostly just cost; that they basically build a foundation right next to it and then roll it right onto it; that to do the other is really expensive.

Mr. Lentz said that we talked about the trees when we were on the site walk, asking if they are going to be taking down trees.

Mr. Koorits said that a few trees would be taken down and we will be replanting.

Ms. Scism agreed, saying that they would be happy to replant; that there are some pretty serious hazards with some trees.

The Town Planner said that, under 44-32 (C)(2)(a), trees removed in order to relocate a structure is in the ordinance and says that they would need to do at least one native tree 3-feet in height for each tree removed.

Ms. Scism said that they talked with the CEO about that and they are actually very happy about it; that there are 75-foot half dead trees there; that we are also working with Mr. Mike Lee.

Mr. Koorits said that, in the bigger picture, we want to leave as much intact as possible.

Mr. Cieleuszko said that, if you ever wanted to develop that second structure, you are going to have a road going between your house and garage.

Mr. Koorits said that we don't really see developing the second structure.

Mr. Cieleuszko asked what the ramifications were if the applicants decided against doing the garage or changing the location, would they have to come back for full review or just the garage.

The Town Planner said that the approval, if approved as is, would be for a 26'X36' pad for a garage; that they haven't presented plans for the look of the garage, etc. but it would have to be on that pad that you see in that location. She added that, if the location was to be moved, it is under site plan review and she believes it would be required to get PB approval if it was to be moved. She said that we had also discussed in the office that, if the applicants don't construct this garage in the timeline, that they could ask for an extension from the PB.

Mr. Whalen said that it has been standard operating procedure for sometime now that the applicant present to the PB as 'as built' post construction; so that, at some point, if this garage is to be built, then a plan by your survey folks that conforms to the specifications as the original site plan was conformed please submit it back to the PB via the Planning Department.

The applicants agreed.

Mr. Cieleuszko moved, second by Mr. Whalen, that the Planning Board accept the application of 52 Wisteria Lane, Map 9/Lot 15, PB18-3, 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. The applicants will submit a copy of an as-built plan, recorded at the Registry of Deeds, once the project is complete

VOTE

5-0

Motion approved

The PB informed the applicants that Shoreland requirements say that they must substantially start their project within one year or the permit expires.

Ms. Bennett read section of 44-45, Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

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.

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

A. 66 Indian Rivers Drive (Map 100/Lot 3): PB18-4 Sketch Plan Review for Shoreland Zoning Permit Application to Replace Existing Structure.

Received: February 16, 2018

1st Heard: April 17, 2018

Public Hearing: _____, 2018

2nd Hearing: _____, 2018

Site Walk: _____, 2018

Approval: _____, 2018

The applicants, Barry and Gail Phillips, were present for this application.

Mr. Cieleuszko recused himself from this application, as he is an abutter to this property.

Mr. Phillips said that they purchased the property approximately three years ago and we have recently done some renovations:

- Power lines right-of-way moved from middle of property to side
- Will eliminate the campground, discussed when first dwelling was built
- Replace ‘this’ dwelling (very run down) and, perhaps, something else in the future
- One single property, with several dwellings
- Plan to have it a family compound
- On the river
- Pertinent dwelling currently a three-family unit
- Last addition/upgrade to property was in 1980
- Attached swimming pool

- Originally a cottage back in 1850 that's had innumerable additions/improvements
- Plan to shrink impervious roof and extending unlivable space today (smaller footprint)

Mr. Phillips said that he had worked on the Conservation Commission in Kingston, NH for 17 years; that we've had waterfront properties before and we plan on protecting it; that there is need for replanting and there has already been some removal of trees; that the winter was harsh but we are making progress.

Mr. Whalen said that he understood that they will be razing and replacing the structure.

Mr. Phillips said that he thinks so; that that is the most cost-efficient means.

Ms. Bennett said that the current structure is multi-family.

Ms. Phillips said that it is three-family.

Mr. Whalen asked if the outlined perimeter on the plan was the new home or the existing home.

Mr. Phillips said that that was existing; that there is a print included that shows an overlay of the new home, which is a little bit smaller; that that is based on the current foundation/crawl space. He explained the changes made to the property, to-date, using the site plan – a new home was built and original location moved back 150' and a cottage removed.

The Town Planner said that Mr. Phillips put forward this application February 16th before she started; that they had discussed the multi-family use; that the reason she asked Mr. Phillips to do a sketch plan review was to ask the PB to give him information on what the PB would want to see to prove that pre-existing non-conforming use; that suggestions could be utility bills showing three separate dwelling units or some other substantial information like that on the existing structure, which we went over in the office. She added that she didn't want it just sitting in her office, as some time had gone by, and she didn't want to hold Mr. Phillips up because he had put forward that application during the transition period; that that's why she recommended a sketch plan review now; that the reason why the use is important from her preliminary review is that the multi-family dwelling use is listed as "No" in the Rural District for general zoning and, in Shoreland Zoning, it's not prohibited; that it requires site plan review in Limited Residential Shoreland. She said that we have discussed this a number of times and she felt it was best for the applicant to discuss this with the PB before he makes any changes.

Mr. Lentz said that the application says 'multi-family residential' and the ordinance says 'multi-family dwelling' is a permissible use or 'multi-unit residential'; that one says 'no' if you are in the Rural Zone and the 'multi-unit residential' is a PB decision if you are in

the Shoreland protected area, which is where you want to be. He added that he was wondering why there is a difference or why is the applicant choosing the words differently.

Mr. Phillips said that he copied that application from Ms. Amy Dutton? so he can't answer that question. He added that it is a large dwelling; that it's also a continuous use; that it was a boarding house when we bought it and there have always been at least two apartments; that the tenants have been there for 12-14 years.

Mr. Lentz said that the definition says a multi-unit residential with three or more people in it is permitted in that zone.

Ms. Phillips suggested that the wording wasn't put in right.

Mr. Phillips said that he would certainly like to see that letter that comes back from the lawyer of what is allowed for expansion space. He added that he's gone through the Town records and people have proposed quite a few uses on the property; that he thinks we've got it figured out.

Mr. Lentz asked if they wanted to continue it as multi-family.

The applicants said yes.

Ms. Bennett asked if they would be renting out the other two units in the structure.

Ms. Phillips said most likely at some point.

Mr. Whalen said that, according to this plan, the applicant has a stamped drawing from a land surveyor – Mr. Landry; that the subset of this sheet shows an overall plot plan.

Mr. Phillips said yes; that the property is 12+ acres.

Mr. Whalen said that, for PB purposes and moving forward, it's important to make sure we have the correct template, as far as drawings are concerned and we know exactly what's on this plan is being approved. He discussed the change already made regarding a cabin that was demolished and a new replacement home built within the last three years, asking if that required them to come before the PB.

Mr. Phillips said no, because we moved it back 150 feet; that Ms. Pelletier was here at the time when we started that plan and the CEO confirmed and did all the work on that.

Mr. Whalen suggested that, moving forward, the PB require that your survey be the template to immortalize anything that moves forward; that an up-to-date existing conditions plan would be a place to start for documentation purposes.

Mr. Phillips said that the only purpose of that plan was to do the setbacks from the high-water table.

Mr. Whalen suggested that, moving forward, we have an existing plan in front of us based on a survey showing existing conditions and, then, a second plan showing proposed changes to that so that we have a roadmap from beginning to end; that it will be used likewise for future consideration should the applicant want to do anything else with the property; that he will have a base to work from.

The Town Planner said that Mr. Whalen is talking about portions of §33-127 so we can go into more detail in the office; that we have a checklist, too, that the applicant can work off of when they revise the plans for submission.

Mr. Lentz said that, if the Town Planner will create the checklist, that would satisfy the PB as well as Mr. Phillips application process. He added that he thought the next thing is that we need a site walk.

There was discussion on when it would be appropriate to schedule the site walk.

Mr. Phillips said that he is planning to keep the existing well and septic as they are fairly new.

The Town Planner said that, just for clarification, when the applicant submits information showing the non-conforming use continuing, he should submit something that shows the non-conforming use that's been continued since before the ordinance and showing the three separate units.

Mr. Lentz said yes.

The Town Planner said that that would be something in addition to the checklist.

Mr. Phillips said that utility bills would qualify.

The Town Planner said that it should show three separate units, something that shows there are three units out there.

B. 18 Cole Street (Map 1/Lot143) PB18-5 Application to amend Shoreland Zoning Permit PB07-21 to install a 10'X20' Landing Float Extension attached to the existing pier, gangway, and float.

Received: March 27, 2018
1st Heard: April 17, 2018
Public Hearing: _____, 2018
2nd Hearing: _____, 2018
Site Walk: _____, 2018
Approval: _____, 2018

Mr. (Doug) Anderson, Riverside & Pickering Marine Contractors, was present for this application.

Mr. Anderson said that he is here representing the Scarpetti's on their pier expansion; that they currently have an existing pier with a 30' ramp and a 10'X20' float. He added that they are looking to get out to a little deeper water with it so we proposed to add another 10'X20' landing float that would kick them out 20 additional feet, giving them deeper water. He said that everything else would remain the same.

Abutters were notified.

Ms. Bennett asked what the maximum length of a dock was.

The Town Planner said that 44-35 (C) said, All piers or continuous connected lengths of temporary floats in the limited commercial (LC) and general development (GD) zones shall be restricted to an overall length (including appurtenant temporary ramps and floats and their positioning pilings) of 200 feet, measured from the normal high water line, or a length that will provide six feet of water (12 feet for GD) depth at the outermost float at mean low water, whichever is shorter. In no case shall the structure extend more than halfway to the mean low water deep channel centerline.

Mr. Anderson said that there would not be 6 feet 'here'; that he's thinking that he's going to have four feet.

Ms. Bennett said that you are going to reposition one of the existing floats.

Mr. Anderson said that, right now, the applicant is perpendicular to the river; that he gets beat up pretty bad so we are going to turn it so he's facing out; that that actually moves his outboard closer to the shallow water. He added that we also have to stay a certain distance from the federal navigable channel.

Ms. Bennett moved, second by Mr. Whalen, that the Planning Board accept this application as complete.

VOTE
5-0
Motion approved

A public hearing was scheduled for May 15, 2018.

ITEM 8 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

There was no discussion.

ITEM 9 – CORRESPONDENCE

There was no correspondence.

ITEM 10 – UPDATES FROM TOWN PLANNER

A. Growth Permits: Update/Discussion

The Town Planner said that she had spoken with the CEO and she doesn't feel that, in addition to the other fees, the \$100 application fee is really necessary; that people know the process well now and she doesn't seem to be having the concern regarding what was proposed previously. She said that the PB could still pursue the fee, if they chose to, or they could pursue the revision to the language in the ordinance, itself, to see if that is a necessity. She also said that she will have the number of growth permits issued at the next meeting.

B. Comment/Reviewers Procedure

The Town Planner discussed Town groups she has been meeting with; that she knows there have been concerns about receiving site plan review applications before the PB makes their decision so that our Eliot staff reviewers and commissions and boards can make comment. She added that, moving forward, her proposal, as part of their process, is to send 'these' items listed on 'this' table to the different reviewers via email, with the exception of the CEO as she needs a hard copy of the information. She also discussed that the PB packet will be available online, as well, when the agenda is posted to review. She also discussed the 'check-off' memo that will track who has received what applications.

It was suggested that the Conservation Commission might also like to see Shoreland applications, as well.

It was the **consensus of the PB** for the Town Planner to use this as a process in the Planning Department.

C. Memo from E. Cole-Prescott dated March 9, 2018 Re: §§44 and 45 and §1-2, Land Use Tables and Definitions Comparison

Mr. Lentz said that there are 169 items on this list and 69 that don't have definitions. He added that this will be discussed at the next work session on May 1st.

Ms. Bennett suggested that we pick up the marijuana discussion at some point in the future.

Mr. Lentz said that the Town Planner is working on that and that the SB is going to discuss it Thursday night.

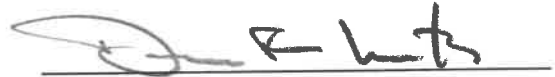
The Town Planner said she has that for the May 1st agenda, as well as the budget.

ITEM 10 – SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board Meeting is scheduled for May 1, 2018 at 7PM.

ITEM 11 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:20 PM.


Dennis Lentz, Chair
Date approved: 5/01/2018

Respectfully submitted,

Ellen Lemire, Recording Secretary