

September 11, 2002

Phippsburg Planning Board

Expansion of Business Hearing

The Expansion of Business Hearing was called to order at 6:02pm.

Planning Board members present were: Marie Varian, Chairman; Marion Hebert, Steve Thayer, Josh Bate and Bruce Kaake. Selectmen present were Michael Rice and Alan Douglass. Codes Enforcement Officer, Lee Rainey, also attended the Hearing.

The purpose of the Expansion of Business Hearing was to hear from Bob Smith of Sebasco Harbor Resort (Map 29, Lot 11). Smith was accompanied by Steve Mohr of Mohr and Seredin, Landscape Architects, Inc.

In answer to Varian's question regarding abuttor notification, Mohr stated that certified letters had been mailed to 25 people and that the receipts from those letters had been returned.

Smith explained to the Boards, attending abuttors and interested parties that the proposed expansion is designed to further the continuing growth of the Resort and that he is open to any comments or suggestions that anyone might have. He presented a modified model of the proposed construction of two buildings which showed a change in the roof line, although the basic footprint remains the same as was presented to the Board in August. He stated that the roof line will actually be lower by at least two feet. The two new buildings will be comprised of a total of 18 units and will replace three cottages which will be moved to other locations. Mohr pointed out an existing area which can accommodate 24 additional parking spaces and stated that, under the present system, there is adequate water supply to support the additional units. A copy of the septic system was submitted with the application which was constructed during the summer. Mohr further stated that the new units would not be added to existing overboard discharge system, that the units would be served by an underground subsurface disposal system as will the relocated three cottages.

Selectman Rice asked for comments from the audience. Several abuttors were in the audience and Ona Barnett, owner of adjacent Rock Gardens Inn, raised the question of parking, stating that she owns a portion of the parking area abutting the Resort. Overflow parking from the Resort often occupies that area, she added. She asked Smith how a "bottleneck" could be prevented on the corner leading to the Inn. Smith answered that the Resort has the capability to do that. Barnett also voiced her concerns regarding the overboard discharge issue and how it impacts the environment.

Selectman Rice stated that there are people who are very sensitive to the environment that want all overboard discharge removed. He added that, in fairness to Smith and to anyone

who is planning to do any expansion, it would be prudent to know that that pressure is not going to go away.

Mohr explained that this is a licensed overboard discharge that goes through at least one annual inspection and as a part of their ongoing work that has been done for the Resort, a study has been or is being done to eliminate the overboard discharge, an analysis of water consumption and the effects of key events on the Resort conducted, so they are aware of the fluctuations. They are still in compliance with the DEP license, he added.

Selectman Rice asked the Planning Board what Barnett's recourse regarding parking would be if the plan for the Resort were to be approved and whether it would become a civil issue between the two property owners. Varian answered that, in her opinion, if there is presently a gentleman's agreement and Barnett finds that she needs the space, all she would have to do is inform Smith. Smith agreed that this would not be an issue, that there is the capability and acreage providing adequate parking for both staff and guests on Resort grounds; however, people do not park in designated areas.

Selectman Rice stated that there is a need for better policing and control of the parking situation.

It was decided by the Boards that a site inspection was in order and was set for Sunday, Sept. 15 at 9:00am.

The meeting recessed at 6:50pm and will reconvene at 6:00pm on October 9.

Respectfully submitted,

Marion J. Hebert
Recording Secretary/
Planning Board Member

September 11, 2002

Phippsburg Planning Board

Regular Meeting

Planning Board Members present: Marie Varian, Chairman; Marion Hebert; Steve Thayer; Josh Bate; Bruce Kaake

The meeting was called to order at 6:55pm and a quorum was declared. Varian advised that the late start of the meeting was due to the Boards participation in an Expansion of Business Hearing.

The first order of business was to hear from Dr. Gregory Gensheimer of Newbury Point in West Point (Map 27, Lot 20). Dr. Gensheimer approached the Board in August to discuss alternate road access to his property and asked the Board to grant him the use of a former roadbed for that access. Gensheimer was asked to come before the Board again this month with an application.

Gensheimer provided this Board with an application which listed his abutters and requested the use and maintainence of an existent roadbed crossing subdivision lots 8, 9 and 10 for vehicular access. An amended final plan of the Newbury Point Subdivision depicting road grades was presented with the application as well as a map showing a portion of elevations from a Topographical Survey of the area. An accompanying letter from Dr. and Mrs. Gensheimer stated, in part, that the grades on the Newbury Point Road do not conform to the design standards set forth in Section H (5) of the Shoreland Zoning Ordinance for the Town of Phippsburg.

Gensheimer explained to the Board that there is a major problem with the line of sight and grade on the subdivision road. He referred to the Shoreland Zoning Ordinance, Section 14. Table of Land Uses, Subsection 26, Note 7, which states "Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP (Resource Protection) area, in which case a permit is required from the Planning Board." He added that his property is within the Resource Protection area and is permitted in its use, so he feels that they meet the requirements of the Ordinance.

Varian advised that she had gone back into the records from 1997 and found the origination of the Subdivision and the roads at that time. Mr. Leary, owner of the Subdivision, had given up all use of any of the roads on the property in order to build the Subdivision road. She added that section 14.26 of the Ordinance allow for a road in Resource Protection, under certain conditions, if no alternative exists.

Gensheimer argued that that is not what the Ordinance says. He referred again to Note 7 of Subsection 26, noting that it does not state the word “and”, but the word “or.” Varian agreed, stating that the Board interprets that to mean that if there is an alternative way that is acceptable to any use that is acceptable, then the alternative would be used before we would get into using the road in Resource Protection.

Gensheimer stated that he understood that perspective, but that it has been proven that the existing Subdivision road does not meet the design requirements of the Ordinance and that their experience with the road has proven that it is deadly and is unsafe to the point where continued use without some kind of modification could result in a fatal accident. He added that the Ordinance does not require or prove that there is any alternative access, that the Ordinance requirement is that this potential access for vehicular use is access to a permitted use in the Resource Protection zone.

Again, Varian explained, that the roadway provided by Mr. Leary in the Subdivision is the road that the lot owners are to use to gain access to their properties. If, she added, there is something not proper with those roads, but was proper at the time of the passage of the Subdivision, that would be a separate decision not for the Board to make. It would also be a situation where the Board could address the application, based upon what is stated in the Ordinance with relation to Resource Protection.

Gensheimer stated that, given the question of the extinguishment of the existing roadway, neither the Town, the Planning Board, nor the State in researching the archives was able to discover any written document that addresses that. He added it is necessary to fall back to the Shoreland Zoning Ordinance definition of road which states “a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.” He added that it is clear, given the history of that particular area, that whatever that piece of land is called at present, is in fact the definition of a road although it may not be in use currently. He stated that when the Subdivision was licensed, it was never contemplated by the Planning Board or anyone else that the ownership of lots 7, 8, 9 and 10 would be by a single party.

Bate asked Gensheimer if he had purchased the lots after the establishment of the Subdivision and if the road in question was in place. Gensheimer answered that he had and that the road was in place at that time. He further stated that part of the purpose in purchasing lot 10 was their experience with the existing subdivision roadway, which they deemed completely inaccessible in winter time even with reasonable maintenance.

Varian pointed out that the Subdivision Covenants allows for the establishment of a

Homeowners Association and that anyone buying lots in the Subdivision will chip in and

pay for the maintenance of the roads. She asked why something is not being done if the road is not in good condition.

Gensheimer answered that the Subdivision Association has never met, did not even exist until April of this year and added that the Subdivision Association does not own the road, that the developer still owns the road. He added that all correspondence to Subdivision owner, Gerald Leary, has gone unanswered. The existing roadway cannot be made safe because of it's design and has proven to be unsafe even in summertime, he advised.

Varian stated that the pathway along the shore, which contained growth in 1997, was not used by cars or trucks at that time. Gensheimer agreed that it was not used for regular vehicular access. Varian further stated that the pathway was cleared and became large enough for a vehicle to access the road. But, she added, for some 16 years Gensheimer was the sole owner and was able to have access and egress on the Subdivision Road. Gensheimer argued that he has never removed a single tree on the former roadbed, but had maintained a walkway. He added that this doesn't alter the fact that this particular passage, however defined, was a pre-existent road based on the Ordinance definition which was in force when the property was acquired. He reiterated that he simply wants to resume vehicular passage along the roadway according to the permission that the Ordinance allows, noting that there will be no cutting of trees, none has even been done, and no construction.

Varian emphasized that the Board stated in 1997, in order to get the Subdivision approved, there would be no other vehicular access except the Subdivision road. She added that if that road has deteriorated that is nothing the Board can do anything about. Gensheimer answered that the road is probably in as good shape as it has even been and yet it is still unsafe, but he does not have to prove that nor does he have to address the current roadway at all. Varian agreed that he does not have to prove anything, but that the Board looks at the situation of the Subdivision road being in place, therefore there is no need for another roadway. Gensheimer again stated that his application is in conformance with the Zoning Ordinance.

Bate asked if the road was discontinued as a condition of the Subdivision. Gensheimer answered that it was. Bate, addressing Gensheimer, stated that when he bought into the Subdivision, that condition was there. Gensheimer replied that it wasn't, that there was no mention in writing of the old access road or of it's existence or absence. It is existent on the face of the earth and in the old plans, but does not exist on the approved Subdivision Plan, he explained. He further advised that there is nothing on record with either the Town or State that mentions discontinuance of that road. Bate stated that he

felt Gensheimer was exaggerating the unsafe condition of the road. Again, Gensheimer replied the burden of proof was not incumbent upon him.

Shoreland Zoning Coordinator for the Department of Environmental Protection, Alex Wong, approached the Board. He informed the Board that Codes Enforcement Officer, Lee Rainey, had invited him to attend this meeting. Mr. Wong referred to Section 12.D.2 of the Shoreland Ordinance, Resumption Prohibited, and stated that the roadway in question has not been in use for over two years and that use has been discontinued. He advised that, in the Department's view, that constitutes a discontinuance and resumption should be prohibited. He then referred to Section 14, Table of Land Uses and stated that the Department has always taken the stance, similar to the Planning Board's, that the original alternative should exist prior to the allowance of the road. When the Shoreland Ordinance was created for the Resource Protection areas it was to protect them and in order to do so, the Zoning was specifically stricter and a more reasonable alternative should be attained prior to the allowance of a road to even an existing allowed use, he explained. He also advised Gensheimer that, as a representative of the DEP, he had visited the site and it was his feeling that the chances of the use of the road in question being approved by DEP are "very slim."

Gensheimer stated that he realized the DEP has to be subsequently addressed and has also read the Ordinance regarding conforming and non-conforming uses and since this is a permissible use with a permit, whether it is conforming or non-conforming use is confusing. He added that there has never been a single year since he has had ownership of the property that there has not been vehicular access across the road.

Mrs. Gensheimer, speaking from the audience, stated that she would like to address the issue of not having to prove the alternative access. She spoke of preventing a possible death resulting from what is deemed to be an unsafe and unchangeable road.

Varian referred to Section 15.H of the Ordinance entitled Roads and Driveways and pointed out that the Board is not talking about building a new road, that it is an established Subdivision and that they have to live within the parameters of that Subdivision. She advised Gensheimer that his request would have to come under Section 14, Table of Land Uses, Item 26 which does not permit road and driveway construction except with Note 7, which has been read. She added that the words "Except to provide access to permitted uses" to mean that if there is a permitted use somewhere and there is no road to it, one may be able to build a road. The second part of Note 7, where the word "or" comes in would be addressed by the Board as is there a reason to use this road which would otherwise be totally prohibited. She added that that would have to be what the Board's decision is based upon.

Board member, Steve Thayer, made a motion to deny Gensheimer's application and received unanimous approval for the denial. The comment "Sec. 14.26 in Table of Land

Uses - an alternative access presently exists. Subdivision was approved with only one Subdivision road” was entered on the application.

Steve Mohr, Landscape Architect, representing Sebasco Harbor Resort, next approached the Board regarding the relocation of Long Cove Road. He explained that the reason for meeting with the Planning Board at this meeting was to revisit the plans proposed for changing Long Cove Road. He pointed out an amended plan for the road, depicting a grade of 5 percent, which is under what the Ordinance allows, and explained that drainage improvements are required. He asked for comments from the Board and attending abutters.

Resort owner, Bob Smith, stated that approval is needed from all property owners who have rights-of-way over Long Cove Road abutting the Resort, that that documentation is not completed at this time, but should be completed by October. He added that the accessibility of the relocation of Long Cove Road would be an asset as far as safety is concerned and stated that the Resort would take over the maintenance of the road.

Abuttor and owner of Rock Gardens Inn, Ona Barnett, asked if anything would be done to improve Round Cove Road. Smith answered yes, that that improvement was part of the last Subdivision Plan and that road would need to be altered before construction would commence. Questions regarding drainage on Long Cove Road were asked and Mohr commented that a culvert will be installed. The Board will be on the property on Sept. 15 and will view the proposed construction.

The next item Mohr pointed out was the 5 lot Subdivision (Fairway Cottages), approved by the Planning Board last year. He explained that when the design was completed for the septic field, it was found that a stream is just meeting State standards and, for the protection of the Resort, control of that piece of land is necessary. He added that this easement and the fact that Lot 2 owns that piece of land, was seen as a potential problem. This fact was brought before the Board in August. He produced an amended plan showing an eliminated golf course easement, the squaring up of the lot and the lot line running in another direction. He added that, in the deed that was created for Lot 3, Smith has created rights of passage for Lot 2. He asked the Board to approve the amended plat to eliminate that piece of easement for the golf course and part of Lot 2. Lot 2 will be left with an area of just over 54,000 square feet. Notes have been added indicating that this plan amends by Book and Page the previously recorded Subdivision Plan.

The amended Subdivision received unanimous approval from the Board and mylars and plans were signed by all members.

The Board next heard from Ellen Fontaine and Jim Guidi, representatives of Parker Head, Inc. (Map 11, Lot 58) regarding the proposed three lot Subdivision which has been named

Parker Head Point Subdivision. They had presented a proposed plan to the Board in August. The Board was provided with an survey of the area, a copy of the By-Laws of the Parker Head Point Association, yet to be formed. The survey showed the location of the proposed septic field, designed by William Maier. Fontaine also provided a copy of the Deed. She advised that the pins have not yet been placed, but that would be completed before a site inspection is conducted. Varian advised that the septic locations would also need to be flagged.

Guidi advised that the road has been moved back from the original plan and will, possibly, be named Old Lookout Road. He added that fill will be brought in for one section of the road. Thayer asked about the width of the road and was told that that figure will be added to the plan.

Varian advised that within a few days, letters will be sent to abutters. The applicant is hoping for final approval in October. She asked if there was a letter available addressing the water supply. A letter will be provided to the Board in October.

A site inspection was scheduled for Sunday, Sept. 29 at 9:00am.

The Board next heard from Richard Lee of Small Point (Map 24, Lot 12). Lee and his cousin have purchased the former Wyman store property in Small Point and they approached the Board to discuss plans for renovations. Lee provided the Board with a sketch showing the store and surrounding property. He advised that he is proposing to divide the 4+ acre lot into three lots, one being the existing store and the other two potential residential lots. He acknowledged that the two proposed residential lots do not have adequate acreage without including the proposed common area on the water. The two lots, combined, constitute three acres.

Varian pointed out that the Board has no allowance for a lesser lot size in the Ordinance regarding a Cluster, which Lee had mentioned as a possibility. For a minor Subdivision, she advised, each lot would need an acre.

Lee advised that, at present, the site contains hazardous waste. He further stated that it will be cleaned up immediately. At the last moment of negotiations, owners Myron and Lynda Wyman chose not to go with the statutes which guarantees access to a small family cemetery on the property and forced Lee to give up a 20 foot swath down the boundary. He added that that made them unable to get the required acreage for the residential lots and that what the Wymans are asking to retain is a non-conforming lot. This property is in the process of being surveyed.

Lee asked about road frontage for the two lots and whether additional parking for the store would be allowed. Rainey suggested that the lots could be reconfigured as long as

each had 150 foot road frontage. Lee pointed out that there is a ridge in the land which would prevent that reconfiguration.

Varian advised that if the Wymans sell Lee the two lots and kept the remaining 20 foot wide swath for themselves, they would be in violation of creating a non-conforming lot. She stated that, in her opinion, the Wymans cannot retain the 20 foot swath of land legally without a variance, since it is a non-conforming lot.

A long discussion ensued regarding the possibility of providing the Wymans a perpetual easement to the cemetery, the cleanup of the hazardous waste on the property, and how Lee could get the minimum acreage required for his proposed Subdivision. He will go back to the Wymans and will be back in October for further discussion

Varian presented a permit from Miguel and Margarith Diaz, owners of property at 722 Main Road (Map 7, Lot 27, zoned Resource Conservation) requesting the renewal of a permit issued by the Board on September 12, 2001. At that time, the Board gave approval for them to demolish two existing buildings, construct a new single home with an attached two car garage. The permit was never acted upon and now is about to expire. There will not be any changes in the proposed construction nor in the footprints. The new permit was unanimously approved with the comment "All footages will be verified by Codes Enforcement Officer prior to demolition." The \$20 fee was paid.

The August minutes were approved as written.

The meeting adjourned at 9:20pm.

Respectfully submitted,

Marion J. Hebert
Recording Secretary/
Planning Board Member

