

September 10, 2003

Phippsburg Planning Board

REGULAR MEETING

The meeting convened at 6:00pm. A quorum was declared.

Members present were: Marie Varian, Chairman; Marion Hebert; Steve Thayer; Bruce Kaake; Clifford Newell; Josh Bate, Alternate; Codes Enforcement Officer, Lee Rainey

The first item on the agenda was to hear from Everett Parker representing Janice Wright regarding a land swap between the Wat-Tuh Lake Subdivision (Map 30, Lot____) and Sebasco Harbor Resort. Mrs. Wright appeared before the Board in August. A copy of the deed and an application was presented to the Board. The application asked to transfer to Sebasco Harbor Resort by Deed dated 6/9/2002 a parcel of land described in said Deed (copy attached). Amendment to Wat-Tuh Lake Subdivision plan requested to permit such transfer. Copy of plan is attached showing sketch of land transferred (roughly to scale - no survey done. The Subdivision was approved August 14, 1996.

Parker explained that he is acting for his in-laws, the Dabneys, and that in 2002 the Dabneys had exchanged slivers of land with Sebasco Harbor Resort and didn't realize they were creating an amendment situation. In 1996 the Dabneys had created the Wat-Tuh Lake Subdivision, pursuant to which two lots were sold. The transfer gave Sebasco Harbor Resort a "sliver" of land ending at Route 217 on Wat-Tuh Lake for a larger parcel back off Route 217 as well. He explained that, in order to remedy the situation, an amendment to the Subdivision Plan is in order.

Parker pointed out on the map that the "sliver" of land in question which was exchanged with Sebasco Harbor Resort is now being transferred to Janice Wright. Varian explained that this is a straight amendment to a Subdivision. The application was unanimously approved with the comment: "This is an amendment to the Wat-Tuh Lake Subdivision approved August 14, 1996. Amendment meets criteria of the Phippsburg Subdivision Ordinance." It was signed by all members.

The Board was next approached by Barbara Harrington. She presented an application signed by her husband, Granville Harrington. The application requested the reduction of the required setback from 250' Resource Conservation to 125' Resource Conservation from the northern boundary of Map 33, Lot 4 to the southerly boundary of Map 33, Lot 3. The Harringtons appeared before the Board in June and a site inspection was conducted that month. It was determined at that time that the land appears suitable for building at the 125' mark. A letter was presented to the Board from Kenneth Cotton, Site Evaluator & Land Use Consultant dated August 2, 2003 which agreed that the property has a large area of soil suitable for sewage disposal and meets the minimum criteria for subsurface wastewater disposal. The Board referred to Sections 15.B.6, a, b, c, and d of the

Shoreland Zoning Ordinance and determined that the criteria of that Ordinance has been met. The Board unanimously approved the application and it was signed by all members.

The Board next heard from Steve Mohr, representing Sebasco Harbor Resort (Map 30, Lot 29.15). Mohr presented a map depicting a proposed amendment to the Sebasco Fairway Cottages, Phase 2. A survey had been done by Owen Haskell in 1998 and was approved by the Board. That survey was later found to be incorrect. A new survey has been conducted by Capital Surveying Services, Inc. Mohr asked that the Board approve the reconfiguration of the two affected lots. The Board gave unanimous approval to the plan and the mylar was signed by all members. The \$20 fee was paid..

Sebasco Harbor Resort will be on the Agenda for October to continue the discussion, which started approximately a year ago, regarding Round Cove Road and the creation of a house lot.

Richard Gallagher of Wallace Circle in West Point (Map 27, Lot 58, zoned Village District) had approached the Board in August with an application requesting that he be allowed to construct a dormer and a 12'6" x 20' deck on his non-conforming house which is on a non-conforming lot. The Board conducted a site inspection on the property on August 17 and Varian provided a report of that inspection. It was determined that property lines are in dispute especially on the west side which is where Gallagher proposes to build the deck. The Board had planned to act on the application on August 17, but determined it could not as it needed clarification of the 30% rule as relates to square footage and volume. MMA's opinion has since been received.

Gallagher had submitted two surveys during his previous visit before the Board on August 13. He stated that he had found more surveys, one done in 1990 which, he advised, shows the pins exactly as they are. Other surveys were done in 2000 and 2002. He pointed out that the pin shown on those surveys is exactly where he indicated it to the Board during the site inspection. He added that there are no other documents which conflict with any of the surveys.

Atty. Michael Therriault, representing Don Wallace, approached the Board and stated that it is his feeling that Gallagher did not present a recorded survey. The survey is to establish a boundary between abutters, he advised, and that none have been done for the specific property owned by Gallagher. Therriault referred to Section 12.C. of the Shoreland Zoning Ordinance which specifies that a non-conforming structure may not be increased and made more non-conforming.

Gallagher, referring to the surveys, argued that he does not feel he should be put in the position of having to defend something that exists.

Varian explained that it is not up to the Planning Board to settle boundary disputes. She added that there is enough footage to build the dormer and agreed that this is a non-conforming situation.

Kaake stated that, in his opinion, the property should be surveyed. Gallagher argued that the three documents he presented to the Board all showed the pin in question in the same exact spot. He further stated that he objects to having to pay the price of a full survey. Kaake answered that the Board could not give approval based on documents which are not legal since none of the surveys which Gallagher provided were registered.

The application was split into two portions, the first being the dormer on the full length of the west side of the existing structure. The second part of the application regarded the addition of the deck. The first part of the application was unanimously approved by the Board with the comment, "Approval is given only for construction of the dormer which will use the entire expansion allowable of 3,431' 6" or 30%. The decision on the second part of the application is tabled until October 8, 2003. Varian explained that more information is needed from MMA DEP, and, perhaps, from the Town Attorney. Again, the Board stressed the necessity of a survey. The Board signed the application regarding the first part of the application.

The Board next met with Bob Smith, developer of the Kennebec Landing Subdivision (Map 3, Lot 47). Kevin Clark of Sitelines Engineers/Surveyors presented the FINAL revised plan and advised that they have had correspondence from DEP. Will Cook of DEP stated in his letter that because the open space is split into two locations it would have to be counted as two lots. Clark explained that the plan has been modified to reduce the number of lots by one, the area of which has been added to the land to be retained by Smith. The proposal will now include 12 residential lots and two Open Space lots. Clark stated that the Flood Zone analysis has been completed. A Declaration of Easement Rights, Protective Covenants, Restrictions and Reservations was provided to the Board, as was an Upper Watershed Stormwater Plan.

Clark advised that Lots 1, 2, 3, 4, 5, 6 and 8 could be affected by a FEMA ruling and it was determined that those lots could not be sold without that certification. He added that according to Siteline computations there should be no problem.

The Approval Notes and Conditions of Approval on the Plan were referred to. Questions were fielded from residents of the Fiddler Reach area. The Board reviewed the Covenants and Conditions of Approval on the plan. Peter Robers is still concerned that Lot 2 will attempt to access/egress directly onto the Fiddler Reach Road. He asked if a stop sign could be erected at Smithfield Crossing. Smith agreed and Lot 2 will access/egress that road. A private stop sign at Smithfield Crossing will be erected and

Lot 2 will access/egress that road.. The Board and developer agreed that those two items will be added to the plan.

Several abutters to the Subdivitsion again expressed concern regarding quality of water and the additional traffic on the Fiddler Reach Road. Both items have been addressed in prior meetings

The Final Plan was unanimously approved with the additions of Section 12.9 of the Subdivision Ordinance and the two additions as noted above. The fee had previously been paid. The mylar and copiies will be revised to reflect additions and will be signed by the Board at Town Hall on Thursday.

Ron Beal, Surveyor, representing Charles and Constance Walles of 158 Small Point Road (Map 18, Lot 12, zoned Resource Protection), approached the Board. The Walles' have presented an application for a Minor Subdivision. A site inspection was conducted on August 17, attended by all Board members, CEO, the applicant, and Beal.

Varian announced that all abutters had been notified. The name of the proposed Subdivision is Wildes Subdivision.

Walles has sold two lots from his property within five years and plans to sell two more. He proposed that each lot have a separate driveway entrance on Route 216. DOT has approved this as the driveways would be over 100' apart. The Town's Subdivision Ordinance allows only two access/egress roads per subdivision and the property already has three. The Board suggested that the driveways to the lots enter from near the Route 216 end of Walles' present personal driveway..

Several options were discussed with Beal, but the application was denied with the comment, "Proposed driveways would not be allowed under Sec. 10.5.C of the Subdivision Ordinance, which limits access/egress roads to two."

Lot #17 of the Parker Head Colony-Phase II Subdivision is in the process of being sold. In 2000, the Board had given approval for a lesser setback in the Resource Conservation Zone. No construction has been started. In August, Varian received a telephone call from a realtor seeking clarification of the setback status of the lot.

The Board has believed that the lesser RC setback approvals (Sect. 15.B.6 of the Shoreland Zoning Ordinance) have followed the land. The Board has not required the approvals to be recorded. Varian has long wondered if recordings should have been required and called MMA for a ruling on same and on if such approvals run with the land.

Atty. Rebecca Seel advised via telephone that Sect. 15.B.6 wording allows the Board to

permit an action and Sect. 16.E restricts a permit to a year's validity if no construction or use has been started. Seel feels such approvals are permits and not variances. She knows of no statute that would have required the recording of this type of permit.

Seel also advised that our past method of allowing setbacks should not be a basis for a lawsuit because we did not view the approvals as permits; we have been consistent, we have not discriminated, and we have not committed an illegal procedure. Rather, we have been going innocently along under a misunderstanding.

Seel said that we must decide how to handle any unused permits that may be out there. She suggested explaining to those people that we have a corrected interpretation of Sect. 15.B.6 and have them re-file an application. We should be sure that any policy action that we take is written into Board meeting minutes.

Regarding the present status of Lot #17, Varian asked if we could let this permit stand as we would not have known about the sale without the telephone inquiry which prompted the call to MMA. Seel felt that there would probably be no repercussion based on the above. Also, if we agree to the one-year permit, the Lot 17 owners should be advised of the new policy and that they would have one year from "now" to begin construction.

Seel advised that if we wish to make any particular changes to the ordinance wording we would have to use the amendment process.

The Board discussed reductions in setback in the Resource Conservation Zone. Newell made the motion to agree with MMA's opinion that Section 15.B.6 of the Shoreland Zoning Ordinance is a permit with a one year limit. The Board voted to accept the motion.

The August minutes were approved.

The meeting adjourned at 11:05pm.

Respectfully submitted,

Marion J. Hebert
Recording Secretary/
Planning Board Member

