

Minutes for Tuesday, July 16, 2013 Planning Board Meeting

1. Call to Order: Chairman David Johnson called the meeting to order at 7:15 PM.

2. Introduction of Attendees: Present were: Chairman David Johnson, Secretary Laura Chadbourne, Member Gail Bartlett, Alternate Member Ron Kiesman, and CEO Eric Gulbrandsen. Absent: Member Julie Frum.

Also in attendance were 6 members of the public:

Applicants Mr. Shawn Ashe and Mr. Michael Ashe

Abutters Lucy Marx and Steve Marx

Abutter Cornelia (Connie) Santomenna

Abutter Robert Santomenna; also acting as attorney for Cornelia Santomenna and the Marx family

3. Public Hearing

A. Chairman David Johnson called the hearing to order.

B. Chairman determined there was a quorum.

C. Opening Statement: Chairman described the purpose of hearing, for a Conditional Use Permit (CUP) application, and general procedure governing its conduct:

- i. Presentation by the applicant without interruption (not applicable if applicant is not present).
- ii. All questions by board members, abutters, etc. go through the chair to the applicant during the hearing; anyone with a question or comment shall state for the record their name, address, business or professional affiliation, the nature of their interest in the hearing, and whom they represent even if all know who they are.
- iii. Presentation by abutters or others (not applicable if no abutters are present).
- iv. Rebuttal statements by anyone who has previously spoken.
- v. Opportunity for comments or questions by other attendees.
- vi. Once everyone has had an opportunity to be heard, the hearing will be closed.

The public hearing began with opening statements from Shawn Ashe (SA). Shawn and his brother Michael talked to the town in the fall of 2012 prior to purchasing the land to see if a dock would be permissible. They were told a 4x10 dock was allowed without a permit, but that a larger dock would require a CUP. The Ashes are requesting a 30' length to the dock for safety concerns, as there are large rocks beneath the water in that area. They would not want any people hurt by jumping off the dock, for instance.

Laura Chadbourne (LC) asked: How many boats do you plan to have at the dock?

SA: a canoe, a kayak, maybe a jet ski

Robert Santomenna (RS) asked SA: Are you aware that your ROW is just an easement?

SA: Yes.

RS: You don't own it.

SA: That's correct, we would just use it for access to the lake.

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RS: I am an attorney representing my wife who owns property two lots down from the Spinneys, and I also represent members of the Marx family who own the abutting property.

Lucy Marx (LM) and Steve Marx (SM) then presented comments. LM spoke for her elderly father, who bought a 50' wide piece of land on Stearns pond with George Spinney many years ago. Neither her father nor George Spinney had any intention to build on the land but rather to preserve it in its natural state.

SM: Eventually the 50' lot was further divided in two 25' lots, one attached to the existing Spinney lot and the other 25' lot attached to the existing Marx lot. As he understands it, there is a 30' setback requirement for structures, and also a limit of one dock per 100' of shoreline.

RS: I brought a letter with me and would like to share it. Would you like me to read it aloud?

David Johnson (DJ): I would like to hear it read.

LC: I would like it read aloud as well.

RS handed a copy of the letter to Secretary Chadbourne who entered it into Planning Board correspondence. He also handed out copies to other Board members. RS read the letter aloud for the record. Key points from the letter included:

- History of the ownership of the land and intention of owners to keep the land undeveloped.
- Reasons the CUP should be denied, based on the Sweden Zoning and Land Use Ordinance:
 - The applicants are not the owners of the property.
 - A 30' setback is required but the ROW is on a strip only 25' wide.
 - There is no need for the dock since there is already a dock on the Spinney property.
 - The Marx property would not be protected from detrimental effects of the proposed use.
 - Proposed dock is not compatible with residential and recreational uses permitted on the adjoining Marx property.
 - A dock of any length requires a conditional use permit if it would result in more than one dock per 100 feet of shoreline.

RS also presented a copy of a survey created for the Marx family sometime back. LC then passed around copies of the revised tax map of the lot, created by O'Donnell and Associates within the last 2 weeks as the older published town tax map did not appear to match the lot's deed. There was quite a bit of discussion by several attendees to familiarize everyone with the drawings.

LC: Why would the Spinneys grant an easement if the intent was to preserve the land in its natural state? This is a general question to the audience.

RS: Possibly they were ignorant of the 30' setback requirement.

DJ: When was the right of access granted?

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RS: Registry of deeds states Claire Spinney granted the ROW to the Philbricks on February 4, 2012.

DJ: So not long before they sold the land.

Ron Kiesman (RK): What does the deed say?

RS then read aloud from the deed:

“This right and easement includes the right to travel over said strip or parcel of land, by foot and vehicle, and the further rights to construct and make use of a private dock for mooring a boat and/or private recreational swimming purposes, to launch a float for private recreational swimming purposes...”

RS noted he was not reading from the town Ordinance.

Michael Ashe (MA): We asked this question last fall to the Town Hall. We spoke initially to Alberta Ridlon who got Eric Gulbrandsen on the phone. He told us it was a “grandfathered lot”. We also asked who would have to apply for a permit, whether us or the Spinneys. Eric said it should be the Ashes.

MA: We are not looking to open a marina but rather to simply recreate and enjoy the woods.

SM: We can take your word for it but our concern is what happens down the road if the property changes hands?

MA: Same could be said of the Spinneys.

RS: Whether the pre-existing lot was conforming or not, i.e., grandfathered, since it’s on a 25’ strip, it’s academic. You can’t make a non-conforming lot *more* non-conforming.

RK: In terms of who should apply for the permit, we had another case some time back where the Board refused to hear it because the owner of the property would not come forward.

RK: If the CUP were approved, the Board could make it a condition of granting the permit that the property owners submit written approval for the dock.

MA: The water access is a major part of the value of the lot we purchased. There was a discrepancy on the town tax map; we called Craig Holden and he explained it.

DJ: Not everyone knows the Zoning Ordinance inside out. It’s unfortunate.

RS: One last comment: the 30’ setback is a big issue. The existing dock structure that is there now has no setback at all.

Eric Gulbrandsen (EG): One could dismiss this if there is no standing to apply. In regards to the call from the Ashes, I’m not a lawyer and was not shown a copy of the deed at the time. I do not remember the details of that telephone conversation.

LC: The Board already determined at our last meeting that there was standing to apply.

EG: We have never honored the 30’ setback in the past; as long as the dock was on the property, it was sufficient for this town. Docks are temporary in nature so this has never been applied. If we make an exception, then we should check all the docks in town. As far as the Ordinance stating one dock per 100’ of shorefront, that came into the Ordinance as a concern for new properties and subdivisions in particular.

DJ: Thank you for your input. But we have to look at the regulations. Technically we could relook and make some docks come out, but some historical docks were there before the rules changed. In this case, we have to go by the rules in the Ordinance.

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At this point, Chairman Johnson asked if the group had any more comments or questions before the public hearing was closed. There were none. Chairman Johnson closed the Public Hearing portion of the meeting.

After the Public Hearing, the Board reviewed the following **Factors Applicable to Conditional Uses** as set forth in the Zoning Ordinance Sect. XIII Subsection E (Page 49). It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. To approve the application, the Board must conclude the following:

1. The use will not have an adverse impact on the spawning grounds, fish, aquatic life, bird or other wildlife habitat. **The property is located in the Limited Residential Zone and not in a Natural Resource Protection Zone. While it is still in the Shoreland Zone, it does not appear that the proposed dock will have an adverse impact on the spawning grounds, fish, aquatic life, bird or other wildlife habitat.**
2. The use will conserve shore cover and visual, as well as actual, access to water bodies. **The proposed dock does not appear to impact shore cover or visual impact to Stearns Pond.**
3. The use is consistent with the Comprehensive Plan. **The Planning Board sees no conflict with the Comprehensive Plan.**
4. The need for a particular location for the proposed use. **The Board believed there could be an issue with the proposed dock location being nearly on the property line of the abutter; Board decided to revisit this question if all other conditions were met.**
5. Traffic access to the site meets the standards contained in this Ordinance, and traffic congestion has been minimized in accordance with performance standards in this Ordinance. **Traffic access is not an issue with the proposed dock.**
6. The site design is in conformance with all municipal flood hazard protection regulations. **The proposed dock conforms because it would be considered a temporary structure.**
7. Adequate provision for the disposal of all wastewater and solid waste has been made. **Wastewater and solid waste will not be generated by the proposed dock.**
8. Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Hazardous waste will not be generated by the proposed dock.**
9. A storm water drainage system capable of handling a 25-year storm without adverse impact on adjacent properties has been designed, and will be put into effect and maintained. **Storm water drainage will not be generated by the proposed dock.**
10. Adequate provisions to control soil erosion and sedimentation have been made. **As long as no shoreland ground is disturbed or excavated for the construction of the dock, soil erosion and sedimentation should not be a concern.**

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11. There is adequate water supply to meet the demands of the proposed use, and for fire protection purposes. **The proposed dock does not make any demands on water supplies.**
12. The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development such as, but not limited to, noise, glare, fumes, dust, odor and the like. **The Board had a potential concern with noise from the dock since the proposed placement of the dock is just next to the abutter's property. Board decided to revisit this question if all other conditions were met.**
13. All performance standards in this Ordinance applicable to the proposed use will be met as follows:

Section VIII.C.5.c "Zone Requirements, Limited Residential Zone, Dimensional Requirements, Structure Setbacks", page 9:

- 75 feet from roadway centerline
- 100 feet (at all points) from high-water line of a great pond; 75 feet (at all points) from a stream or upland edge of a wetland.
- Height of structure from rear and side lot lines, **but not less than 30 feet [emphasis added].**

At this point, Board members discussed the definition of a "Structure" and read the definition from the Zoning Ordinance (page 55). While the definition on page 55 does not *specifically* mention docks, it does define a structure as "Anything built for support...of persons...". Also in Section X.L. "Performance Standards, Piers, Docks and Other Shoreland Construction", docks are consistently referred to as "structures" ("...temporary / floating **structures** (including but not limited to marinas, wharves, docks, or piers...)").

David Johnson suggested the Board vote on whether a dock is considered a "Structure" within the Zoning Ordinance. Laura Chadbourne moved that a dock is considered a structure. David Johnson seconded the motion. Vote: L. Chadbourne and D. Johnson for; Gail Bartlett against. Motion passed; dock is considered a structure.

EG: I do not agree.

RS: [to Chair] May I be permitted to make an observation? [Chair granted] The dock has to extend into the water; it's clearly a structure.

RK: Even a picnic table is considered a structure so we pick and choose what to enforce.

Given that a dock is considered a structure, the Board then voted on whether the proposed dock conformed to Section VIII.C.5.c "Zone Requirements, Limited Residential Zone, Dimensional Requirements, Structure Setbacks", page 9:

- 75 feet from roadway centerline
- 100 feet (at all points) from high-water line of a great pond; 75 feet (at all points) from a stream or upland edge of a wetland.

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- Height of structure from rear and side lot lines, ***but not less than 30 feet*** [emphasis added].

Laura Chadbourne moved and David Johnson seconded that the proposed dock did not meet this standard. The Board voted unanimously that the proposed dock did not meet this performance standard; conclusion:

Since the width of the ROW is 25', the proposed dock situated in the ROW would be less than 30 feet from the abutting lot (Marx, Map U-8, Lot 4). Therefore, the proposed dock does *not* meet this particular performance standard in the Zoning and Land Use Ordinance.

Section X.L., page 26: "Performance Standards, Piers, Docks and Other Shoreland Construction."

1. **In a Natural Resource Protection Zone:** No permanent or temporary/floating structures (including but not limited to marinas, wharves, docks, or piers) shall be constructed in, on, over or abutting any great pond or stream. **The proposed dock extension is not in a Natural Resource Protection Zone; it is in a Limited Residential Zone.**
2. **In other than Natural Resource Protection Zones:**
 - a. Any permanent structure shall require a permit from the Department of Environmental Protection and a Conditional Use Permit from the Planning Board, if:
 - (1) It is to be constructed in, on, over or abutting any great pond; or
 - (2) Any fill is deposited or dredging is performed therein**The proposed dock will not be a permanent structure.**
 - b. Any new temporary/floating structure shall require a Conditional Use Permit if it:
 - (1) *Extends more than 10 feet from the high water mark of a pond or a lake (or more than 10% of the width of a stream measured at normal high water elevation), or is wider than four feet; or*
 - (2) Has any permanent parts located between the banks of any stream or below the normal high water elevation of any lake or pond; or
 - (3) Is constructed as part of any commercial use; or
 - (4) Requires dredging, filling, draining, removing or displacing of any shoreland soils, sand, vegetation or other materials; or
 - (5) Is located where navigation or recreational safety may be imperiled; or
 - (6) Is to provide berthing for more than three watercraft, two of which are motorized; or
 - (7) ***Increases the number of structures to more than one per each 100 feet of shoreline of the lot.*** [emphasis added]

Since the width of the ROW is 25', and a dock already exists on the Spinney property approximately 50' from the edge of the Ashe's ROW, the proposed dock

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situated in the ROW would increase the number of structures to more than one per 100 feet of shoreline. Therefore, the proposed dock does *not* meet this particular performance standard in the Zoning and Land Use Ordinance.

14. The proposed use will be compatible with all uses permitted in the underlying Zone and on abutting properties.

The proposed dock is compatible for the proposed use as outlined for a Limited Residential Zone in accordance with the Sweden Zoning and Land Use Ordinance, Section C.3 (page 8), assuming a Conditional Use is permitted:

“The following uses may be allowed only upon approval of the Planning Board in accordance with the provisions of Section XIII.

CONDITIONAL USE:...Piers and docks requiring a Conditional Use Permit.”

However, the proposed dock is not compatible with the Structure Setback requirement for a Limited Residential Zone in accordance with the Sweden Zoning and Land Use Ordinance (see detail above).

15. The proposed use will not have unreasonable impact upon Municipal facilities. **The proposed dock extension will not have an unreasonable impact upon Municipal facilities.**

Part III: Vote.

The Board voted on each factor relative to the Conditional Use Permit. Dave Johnson moved for an overall vote and Laura Chadbourne seconded the motion. The Board denied the Conditional Use Permit unanimously due to the application not meeting all required factors for approval of a Conditional Use Permit.

After the vote, a short group discussion occurred:

Gail Bartlett (GB): Every dock on Stearns Pond is on a small lot. If we as a town get strict about enforcing this, we'll have to go to all new owners and make them apply for a permit.

EG: All owners of docks over 10 feet long would need to reapply. A 4' x 10' dock does not require a permit.

RS: No; if you actually read the Ordinance, you'd need a CUP granted if your 4' x 10' dock resulted in more than one dock per 100' of shoreline.

LC: The Board will be sending a Letter of Decision to the applicants within 7 days.

RS: Could I get a copy of that letter?

LC: I think so; it's probably considered public record. Unless it's a problem, I will send you a copy of the letter.

EG: [to applicants] If you would like to go to the Board of Appeals on this, you have 60 days to apply.

MA: What about a floating dock or raft? It seems to be OK if it's within 100 feet if it's a permitted use.

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EG: Are rafts in the Ordinance? If it's not permitted, then it's prohibited. So technically, probably all rafts are prohibited.

Applicants and abutters departed the meeting.

At this point, the Board adjusted the sequence of the meeting agenda to allow for CEO Eric Gulbrandsen to hear and share CEO business.

4. Old Business

A. Proposed "Patriot Way" subdivision: Laura Chadbourne shared guidance recently received from the Southern Maine Regional Planning Commission (SMRPC) by Planning Board Assistant Julie McQueen regarding the appropriate process to review the proposed "Patriot Way" subdivision. SMRPC recommended that the subdivision applicant make application for the subdivision to the Town of Sweden Planning Board (in addition to the application already made to Bridgton). In this way, both towns would be assured of getting the same notifications and information directly from the applicant. In addition, SMRPC recommended that Sweden require the applicant to set aside funds for technical reviews and administrative costs related to the application (as is the town's right per Section 7.1.C of the Subdivision Regulations dated March 12, 1999). Any unused funds would be refunded to the applicant. The representative from SMRPC also contacted Georgiann Fleck, Executive Assistant to the Town of Bridgton Planning Board, regarding his recommendations. Eric Gulbrandsen mentioned that it was possibly not required by state law that the applicant make a full application to the Town of Sweden since they had already applied through Bridgton. David Johnson stated that it was important that the applicant apply directly to both towns to ensure information flowed directly from the applicant to the right parties, and not sent through an intermediary (i.e., Bridgton). The Sweden Planning Board has an obligation to be sure they do their due diligence in order to protect the interests of all parties involved to the best of their ability; including the residents of Sweden who may be impacted by the proposed subdivision and the applicant.

David Johnson noted he would follow up with the applicant's representative, George Sawyer of Sawyer Engineering in Bridgton, within the next few days to set expectations with him for the August 6, 2013 joint meeting of the Sweden and Bridgton Planning Boards.

5. CEO's Report: Eric Gulbrandsen presented the CEO report for June 2013. The following activity occurred:

1. BUILDING PERMITS ISSUED:

Kathy Reilly & Elaine Demasse, R6,26A, Lee Gray Rd., 24'x26' garage, expand a deck
\$88.60

John Hornstein, R5,1, Webber Pond Rd., permit renewal
\$25.00

2. R. V. PERMITS ISSUED:

Christina & Eduardo Velez, R5, 11-3, Black Mountain Road
\$100.00

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3. CERTIFICATES OF OCCUPANCY ISSUED:

NONE

4. VIOLATION NOTICES ISSUED:

NONE

5. TIMBER HARVEST NOTIFICATIONS:

NONE

6. OTHER:

Letter to CMP concerning vegetative screening on Bridgton Road & Webber Pond Road

Eric mentioned he would forward a copy of the letter to CMP to Secretary Chadbourne for the Planning Board files.

Gail Bartlett moved and Laura Chadbourne seconded the acceptance of the CEO's June 2013 report. The motion passed unanimously.

6. Read Minutes from June 18, 2013 Meeting: The minutes from the June 18, 2013 meeting were read by David Johnson. Gail Bartlett moved and David Johnson seconded the acceptance of the minutes. The motion passed unanimously.

7. Communication & Bills

A. Correspondence Received (by date):

1. 6/21/13: rec'd via USPS by Secretary Laura Chadbourne, letter from the Bridgton Planning Board containing a cover letter and:
 - a. DRAFT Bridgton Planning Board meeting minutes from June 4, 2013, where the proposed "Patriot Way" subdivision was discussed. The meeting minutes were scheduled to be approved at the next Planning Board meeting on July 2nd.
 - b. Legal opinion letter dated 6/11/13 from David M. Kallin of Drummond Woodsum in Portland, ME, regarding process and procedure for a joint Bridgton/Sweden Planning Board meeting.
2. 6/23/13: email rec'd by Laura Chadbourne from The Bridgton News (via Eric Gulbrandsen), confirming that block ad request for Ashe CUP was received.
3. 6/25/13: rec'd by USPS by Laura Chadbourne, cover letter and enclosure from Georgiann Fleck. Enclosure was an impact statement submitted by Glen Garland, Bridgton Fire Chief, regarding the proposed "Patriot Way" subdivision.
4. 6/25/13: rec'd by Laura Chadbourne via USPS, Ashe CUP application page signed by both applicants, Shawn and Michael Ashe.

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5. 6/29/13: rec'd by Laura Chadbourne via email from Board Member Gail Bartlett, edits for the draft 6/18 Meeting Minutes, plus a notification that Gail's email address had changed. Note: L. Chadbourne updated the Sweden Planning Board Guide contact information to replace Gail's old email address with the new one.
6. 7/1/13: rec'd by Laura Chadbourne in PB mailbox, Memo to all town department heads reminding them to tightly close and lock the office doors (interior and exterior doors) when leaving the premises, noting that the doors had been found unlocked several times.
7. 7/9/13: email rec'd by Laura Chadbourne from Shawn Ashe. Shawn noted that they had not yet received the certified letter about the CUP site walk and public hearing, but that they'd been away for a couple of weeks. Laura tracked the certified mail piece online and replied that notice of the certified letter had been left with them on 6/27. Laura also attached a soft copy of the certified mail letter. Shawn thanked Laura via email.
8. 7/14/13: rec'd by Laura Chadbourne in PB mailbox, certified mail receipts for all Ashe CUP letters mailed on 6/24/13 with the exception of the letter delivered to the applicants (Shawn and Micheal Ashe).
9. 7/16/13: rec'd by Laura Chadbourne from David Johnson at the PB meeting, letter of resignation dated July 9, 2013 from Planning Board Member Bob Scott.

B. Correspondence Sent (by date):

1. 6/18/13: sent by PB Secretary Laura Chadbourne to Treasurer Sarah Rose, check for Ashe CUP application fee in the amount of \$50.00.
2. 6/23/13: email sent by Laura Chadbourne to Shawn and Michael Ashe, requesting that Michael Ashe sign the CUP application (the application previously only had Shawn's signature).
3. 6/23/13: email sent by Laura Chadbourne to The Bridgton News, requesting placement of a block ad in the July 5 and July 11, 2013 editions of the paper. Block ad contained public notice of the Site Walk and Public Hearing regarding the Ashe CUP application.
4. 6/23/13: email sent by Laura Chadbourne to Georgiann Fleck, executive assistant to the Bridgton Planning Board, confirming that a quorum of the Sweden Planning Board was expected to attend the 8/6/13 joint Board meeting regarding the "Patriot Way" subdivision application.
5. 6/24/13: sent by Laura Chadbourne via certified mail, letters to applicant and all abutters re: Ashe CUP, notifying them of the site walk and public hearing scheduled for July 16, 2013. Individual letters were sent to the following abutters: Steven

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Spinney, Jessica Lavey, Melanie & Erik Eldracher, Andrew, Lucy, and Stephen Marx, Letters were also cc'd to the Board of Selectmen, Board of Appeals, and CEO Eric Gulbrandsen and placed in those respective mailboxes at the Town Office.

6. 7/14/13: email sent by Laura Chadbourne to Georgiann Fleck, requesting a copy of approved Meeting Minutes from the Bridgton Planning Board's 6/4/13 meeting (the minutes should have been approved at their 7/2/13 meeting).

8. New Business:

A. Bob Scott has resigned from the Planning Board, letting Chairman Dave Johnson know via phone on July 8th. Bob left his Board materials at the Town Office and Laura Chadbourne collected them tonight, July 16th. Bob also gave a letter of resignation dated July 9th to David Johnson in person. Dave brought the letter to this meeting and passed it to Laura Chadbourne for filing.

9. Announcements:

A. The next regular Meeting will be **Tuesday, August 20, 2013** at 7:00 PM at the Sweden Town Office.

B. A joint meeting of the Sweden and Bridgton Planning Boards will take place on August 6, 2013 at the Bridgton Town Office to discuss the proposed "Patriot Way" subdivision. Laura to re-check the start time of the meeting and confirm via email with Board members.

C. The board has an opening for one Member and one Alternate Member (a Member serves a 5-year term; Alternate Members serve a 1-year term). Should anyone express interest, they can be appointed by the Selectmen.

Gail Bartlett moved that the meeting be adjourned at 9:24 PM. Chairman Dave Johnson adjourned the meeting.

Respectfully submitted,

Laura Chadbourne
Secretary