

Minutes for Thursday, May 28, 2020 Planning Board Meeting

Note: this meeting was held by video-conference as allowed by State of Maine emergency measures put in place in March 2020 in response to the COVID-19 pandemic.

1. Call to Order: The meeting was called to order at 7:05 PM.

2. Introduction of Attendees - present were:

- **Planning Board (PB) Members:** David Johnson (Chair), Laura Chadbourne (Secretary), Melanie Eldracher, and Alternate Member Bill Graham. Absent: Members Kevin Taylor, Morris Gibely, and Alternate Member Ron Kiesman. In accordance with the PB By-laws, Bill Graham was designated by the PB Chair to serve as a voting PB Member.
- **Code Enforcement Officer (CEO)** Arthur Dunlap was in attendance.
- **Additional attendees:**
 - Jim and Aimee Heath, applicants for a Conditional Use Permit (CUP) for a dock on Keyes Pond
 - Kay Lyman
 - Barbara Kalavik (Bingham)
 - Colleen Caralozza
 - Jane Gibbons
 - Joan Howard

3. Minutes from the May 19, 2020 Meeting: The minutes were reviewed by the group. Melanie Eldracher moved and Bill Graham seconded to approve the meeting minutes as written. The motion passed unanimously.

4. New Business:

Chair David Johnson noted that this meeting was to continue business from the Planning Board meeting on May 19, 2020, including review of the Conditional Use Permit (CUP) application from James and Aimee Heath (Map U-01, Lot 2) and other items under “Old Business” from the May 19, 2020 agenda. He also reminded attendees that the Public Hearing portion of the CUP review had been conducted, completed, and closed on May 19, 2020. The PB would be reviewing the CUP without further public comment.

Secretary Laura Chadbourne stated that on May 22, 2020, the applicants had sent an email to the PB conveying their wish to revise their dock plan from 34 feet long to 24 feet long, comprised of one 4x6 section, one 4x8 section, and one 10x10 section. Dave Johnson invited the applicants to speak about the change. Aimee Heath provided a verbal explanation of the change in proposed dock length. They had learned through the Public Hearing that Keyes Pond is a special place and that they wanted their dock to be in character with other docks on the pond, but still needed a length that would allow them to enjoy their boat and the water.

The Board then reviewed the revised CUP application (with the dock length at 24 feet instead of 34 feet), beginning with the **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:

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1. The use will not have an adverse impact on the spawning grounds, fish, aquatic life, bird or other wildlife habitat. **Bill Graham moved and Laura Chadbourne seconded that the property is located in the Limited Residential 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. The motion passed unanimously.**
2. The use will conserve shore cover and visual, as well as actual, access to water bodies. **Bill Graham moved and Melanie Eldracher seconded that the proposed dock not appear to impact shore cover or visual impact to Keyes Pond. The motion passed unanimously.**
3. The use is consistent with the Comprehensive Plan. **Bill Graham moved and Melanie Eldracher seconded that the proposed use does not conflict with the Comprehensive Plan. The motion passed unanimously.**
4. The need for a particular location for the proposed use. **Bill Graham moved and Melanie Eldracher seconded that the location of the dock is on the property and conforms to sideline setbacks to adjacent properties; therefore, the location is appropriate. The motion passed unanimously.**
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. **Bill Graham moved and Melanie Eldracher seconded that traffic access is not an issue with the proposed dock. The motion passed unanimously.**
6. The site design is in conformance with all municipal flood hazard protection regulations. **Bill Graham moved and Melanie Eldracher seconded that the dock conforms because it is not a permanent structure. The motion passed unanimously.**
7. Adequate provision for the disposal of all wastewater and solid waste has been made. **Bill Graham moved and Melanie Eldracher seconded that wastewater and solid waste will not be generated by the proposed dock. The motion passed unanimously.**
8. Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Bill Graham moved and Melanie Eldracher seconded that hazardous waste will not be generated by the proposed dock. The motion passed unanimously.**
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. **Bill Graham moved and Melanie Eldracher seconded that storm water drainage will not be generated by the proposed dock. The motion passed unanimously.**
10. Adequate provisions to control soil erosion and sedimentation have been made. **Bill Graham moved and Melanie Eldracher seconded that as long as no shoreland ground is disturbed or excavated for the construction of the dock, soil erosion and sedimentation would not be a concern. The motion passed unanimously.**
11. There is adequate water supply to meet the demands of the proposed use, and for fire protection purposes. **Bill Graham moved and Melanie Eldracher seconded that the proposed dock does not make any demands on water supplies. The motion passed unanimously.**
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. **Applicants were asked if the dock would be made of a material that would cause excessive noise or glare. Applicants confirmed they will be building the dock of wood, not aluminum. Bill Graham moved and Melanie Eldracher seconded that the proposed dock will not produce noise, glare, odor or other detrimental features, and is an adequate distance from abutting properties. The motion passed unanimously.**

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

Board determined that dock meets requirements of Section VIII.C.5.c

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

Board noted that 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 (*Note: CEO Arthur Dunlap asked to speak and noted that the Maine Department of Inland Fisheries and Wildlife regulated boat usage on lakes. It is illegal for a motorized boat towing a person on any device (i.e., waterskiier) to come closer than 200 feet from shore.*); 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.

Board determined the dock does indeed require a Conditional Use Permit as it extends more than 10 feet and is wider than 4 feet. Applicants did apply for a Conditional Use Permit.

3. Application for Conditional Use Permit:

- a. For any proposed shoreland construction or alteration requiring a permit from the Department of Environmental Protection, a copy of said permit and all attachments thereto shall constitute the application to the Planning Board.
- b. For all other proposed shoreland construction, application to the Planning Board shall be made in accordance with Section XIII. CONDITIONAL USE.

Board determined that the applicants took appropriate action by applying for a Conditional Use Permit.

- 4. Conditions of Permit.** In addition to meeting the factors applicable to Conditional Uses, specified in the Section XIII. CONDITIONAL USE, the Planning Board may authorize the issuance of a permit providing the proposed structure and its attendant activity:
- a. Shall not adversely interfere with existing recreational and navigational uses and safety, nor unreasonably alter scenic and aesthetic qualities;
 - b. Shall not pollute, interfere with, or harm the natural environs of any lake, pond, tributary, stream or river; or harm any fish or wildlife habitat;
 - c. Shall not cause soil erosion or lower the quality of any waters;
 - d. Shall not adversely alter the natural flow or storage capacity of any water body; and
 - e. Shall not create or cause to be created unreasonable noise or traffic of any nature.
 - f. Shall have access from the shore developed on soils appropriate for such use and constructed so as to control erosion.
 - g. Shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use and character of the area.
 - h. Is constructed in a location approved by the Code Enforcement Officer.

The Board discussed item 4g and determined that the dock was not larger than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

David Johnson moved and Bill Graham seconded that the proposed dock met the performance standards in this Ordinance applicable to the proposed use. The motion passed unanimously.

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

Bill Graham moved and Melanie Eldracher seconded that 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:

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“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.”

The motion passed unanimously.

- 15. The proposed use will not have unreasonable impact upon Municipal facilities. Bill Graham moved and Melanie Eldracher seconded that the proposed dock will not have an unreasonable impact upon Municipal facilities. The motion passed unanimously.**

David Johnson then moved for an overall vote and Melanie Eldracher seconded the motion. **The Board approved the Conditional Use Permit, as revised by the applicants for a 24 foot dock, unanimously, with the following conditions as allowed by Section XIII, Subsection F, “Conditions Attached to Conditional Use Permits” (Page 50):**

1. The dock shall be constructed as described in the Conditional Use Permit Application. The Sweden Code Enforcement Officer (CEO) will inspect the location and construction of the dock once it is built to ensure it was constructed in the specified location and as outlined in the Conditional Use Permit application.
2. The dock will be constructed of a material conforming to Maine Department of Environmental Protection standards for freshwater use.
3. Any construction debris resulting from the construction of the dock will be disposed of properly.
4. As noted in Section X.L.2.b.6 in the Town of Sweden Zoning and Land Use Ordinance (page 27), since the Conditional Use Permit application did not request a specific number of watercraft to be allowed at the dock site, applicants must comply with the Ordinance’s standard of three (3) or fewer watercraft, two of which are motorized.

Secretary Laura Chadbourne noted that she would ensure a Letter of Decision was reviewed by the PB Chair and sent to the applicants within 7 days as required by the Zoning Ordinance.

5. Old Business:

- A. The PB briefly reviewed correspondence items related to PB’s request for 2020 funding:
 - i. Ltr (email with attached signed letter) from PB dated 2-25-2020 to Sweden Board of Selectmen (BOS), amending language in the PB’s 2020 funding request from \$10,000 to \$16,000, to include \$11,000 for administrative support and additional funds to cover legal fees and standard expenses at the Planning Board’s discretion.
 - ii. Ltr (email) from BOS to PB dated 2-25-2020 informing PB that BOS did not support the PB’s amended funding request.

The Board noted that after the original agenda for the evening’s meeting had been published, the Board of Selectman (BOS) had voted (on Tuesday, May 26th) to cancel rather than postpone the annual Sweden Town Meeting. Board members expressed several concerns:

- Without a town meeting, none of the PB funding requests can be approved.

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- Funding requests to be voted on at the town meeting were to support continued functioning of the Board and enable Board members to uphold their sworn duties, including managing risk to the town and working on projects that could benefit Sweden (i.e., solar development).
- Funding requests were also in the warrant to support updates to the town's Zoning Ordinance (ZO) which is out of compliance with state law. Without funding, updates will be delayed another year (11+ years since last update), posing additional risk to the town.
- Without the funding to update the ZO, the Board will not be able to move forward with amendments to the Ordinance to support solar development (if so desired by townspeople).
- By its actions, the BOS is blocking funding that would enable the town to move forward with solar development projects that are actively on the table and which would bring significant tax revenue to the town.
- The PB is disappointed that the BOS had not sought any input from other boards and committees in the town before making the decision to cancel.
- It does not appear that the BOS considered creative solutions to hold the town meeting. There are ways to safely hold meetings, particularly outdoors now that warmer weather is here.

6. Announcements:

- A. The next regular Planning Board meeting is scheduled for Tuesday, June 16, 2020 at 7:00 PM at the Sweden Town Office or via video conference.
- B. The annual Sweden Town Meeting originally scheduled for Saturday, March 28, 2020 at 9 AM at the Town Meeting House has been cancelled as per BOS vote on May 26, 2020.

A motion was made to adjourn the meeting. The Chair adjourned the meeting at 8:13 PM

Respectfully submitted,

Laura Chadbourne,
Secretary, Sweden Planning Board