

Minutes and Exhibits From April 5, 2023 Lovell Planning Board Meeting

1. Call to Order: 6:32 PM

Heinrich explained Associate Planning Board (PB) Members role. Passed list around for PB names, e-mail, phone and added to the agenda some proposed ordinances to review.

2. Attendance

- PB Members present: Eugene Jordan (Eugene), Andrew Brosnan (Andrew), Diane Caracciolo (Diane), Mike Lewis (Mike), Rose Micklon (Rose), Heinrich Wurm (Heinrich), Dave Durrenberger (Dave).
- CEO Present: Alan Broyer (Alan)
- Also present: Jim Katsiaficas (acting Town Attorney) Mark Lopez (Bridgton Investment Fund LLC Applicant), Gordon Smith (Attorney for Mark Lopez), Scott Ransley (21 Lily Cove Applicant), Chris Brink (Ordinance Committee), Jill Rundle (Ordinance Committee)

3. Review, Accept / Correct Minutes

Heinrich called for vote to approve minutes from 3/1/23, followed by some PB members requesting changes to 3/1/23 minutes including clarification that Jim Katsiaficas (Jim) was not the Town Attorney but acting as Town Attorney, John Bliss is spelled Jon, noted Gordon Smith was also at the 3/1/23 meeting, and Diane noted on 3/1/23 she was questioning the new format of the minutes. Vote to approve the minutes with suggested changes: 5 Yes.

4. Conditional Use Applications – (See below)

5. New Business Conditional Use Application - None

6. Old Business Conditional Use Application

Bridgton Investment Fund LLC – Conditional Use Application for a Warehouse/Distribution Center

Jim read the findings of fact he had prepared in advance of tonight's PB meeting. No Planning Board members saw Jim's findings of fact before tonight's meeting. Jim noted a change to his #4, as Mark advised there will be employees.

SLR Landscape study was reviewed. SLR's report noted that Phase 1 plantings were undersize vs. the drawings submitted for Phase 1, concluding "Some of tree sizes and caliper are not up to the specified code", SLR's report noted that the proposed landscaping for Phase 2, agreed with specific performance standards written in the ordinances, but the report did not provide any suggestions as recommendations, in support of the authority granted the planning board to make landscaping and planning screens improvements per Section 9.9.I (which grants the PB authority to apply conditions, yet said study did not include the PB).

Dave asked if any PB members were present for the study or study discussion. Heinrich advised it was just the CEO. Dave noted per report, Phase 1 plantings are not at specified Height and Caliper. Gordon advised they were planted 1 year ahead (without reference to a drawing stating that was acceptable reason). Dave reiterated the site line drawing presented by applicant, shows 10 ft / 6 ft heights of plantings. However, neither Heinrich nor other PB members shared a concern about landscaping nor

Submitted by Dave Durrenberger

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advocated for the PB ability to utilize Section 9.9.I for landscaping and screening design conditions, for which specific performance standards, do not exist (which is why it's called a conditional application).

With no further discussion on Section 9.9.I, Dave noted if performance standards (for other ordinance permitted uses) were to be the reference for this conditional use, Section 7.6.A requires "trees need to be located throughout the lot", which is not part of the Phase 2 plan. Dave mentioned 7.6.A requires "landscaping along the boundaries" and Phase 2 drawings show only specifically planted landscaping along west boundary. Heinrich inquired who will maintain the landscaping, to which Jim advised you can put any conditions, as maintenance in the approval.

Heinrich called for Vote to Accept the approval standards and Jim read through numbered approval standards. Heinrich called for a vote on each motion.

Motion 1 vote: 5 Yes

Motion 2 vote: 5 Yes

Motion 3 vote (Traffic): 4 Yes, Dave No, citing there was no defined use, occupant for the structure to be built, as required by 9.9.C.3 A narrative describing the proposed project, including such details as the projected number of employees; months, days, and hours of operation; and number of customers to be served.

Motion 4 vote: 5 Yes

Motion 5 vote: 5 Yes

Motion 6 vote (Hazardous materials) was discussed. Dave questioned what is the source document to be referenced to determine what are the hazardous materials that can't be stored on the property, to which Jim advised it will be the "USDOT Check the Box Is it Hazmat" and linked here for perpetuity [Check the Box: Is it Hazmat? | US Department of Transportation](#) and hazardous materials include, as read by Jim: aerosol, alcohol, lithium, fire extinguishers, bleach, fire extinguishers to name a few (see Exhibit A for a list of hazardous materials contained at the above link, that Jim was reading from). And when asked what quantities the thresholds are? Jim advised if there is not an actual quantity, you would look to The Code of Federal Regulations. Conclusion: The hazardous materials listed at the above link and below, will never be stored in the Bridgton Investment Fund warehouse, to which Gordon replied, "We are on board with this".

Motion 6 vote: 5 Yes

Motion 7 vote: 5 Yes

Motion 8 vote: 5 Yes

Motion 9 vote: 5 Yes

Motion 10 vote: 4 Yes, Dave No, citing he does not see screening blocking the view for Phase 1, and no screening plan designed with respect to the Section 9.9.I authorities granted to PB for Phase 2. Jim noted an applicant condition can be to follow the fertilizer plan from SLR, and standard maintenance can be employed to maintain the health of the buffer throughout the life of the project.

Heinrich called for vote to approve the Application: 4 Yes, Dave No, citing there are no conditions applied per Section 9.9.I for a) screening landscaping, b) previously suggested by Diane to move the

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building further back on the parcel, and c) previously suggested by Jane Lansing (former PB) to utilize exterior finishes to blend the building into the surrounding.

Conclusion: The application was approved

Ransley (21 Lily Cove Conditional Use Application)

Scott presented that he and his wife own and plan to expand the camp on his property.

Dave cautioned that expanding what is now a Primary Structure dwelling unit (subject Camp), then converting it (reclassifying it) to be an Accessory Structure, so as to build yet another dwelling unit, is not permitted by Lovell ordinances, because this is making a new Accessory Structure and per 5.2.C.1.d “all new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements”

Also 5.2.C.1.d.1 “Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream or upland edge of a wetland than the principal structure is prohibited” noting the Applicant had already presented plans in a prior PB meeting to build a structure further from the high-water line, and re-iterated those plans tonight, but for now is focused on getting approval to expand the subject Camp.

Dave read from a Jeff Kalinich (Maine DEP) e-mail (Exhibit B) re: a prior PB application by Applicant Cormier, for which the Applicant’s lot had (2) dwelling units, the newest of which was illegally built as a dwelling unit, and the Applicant wanted to convert the older dwelling unit closer to the high-water line to be an Accessory Structure, to be able to keep the newer dwelling unit in the rear. Jeff Kalinich summarized his findings on the Cormier application as follows “it is not possible to remove the kitchen from the cottage in its current location to obtain compliance, since that would make the cottage an accessory structure, and new accessory structures are not allowed closer to the lake than principal structures per Lovell’s Ordinance.”

Eugene expressed that he does not agree, and it should be allowed to expand a structure within the setback then build another dwelling behind it, he thinks this gets done all over Maine. Jim asked what the subject Camp is now used for to which Scott replied, it is a dwelling unit. Jim suggests putting the project on hold, while Scott investigates or another option would be if Scott gets a permit to expand the subject Camp tonight, he could let the permit lapse. Jim again suggested waiting to decide.

Heinrich motioned to Vote for expansion of application as currently proposed (which is to add a large deck to the Camp only): 5 Yes.

7. CEO Report – No report presented.

8. Miscellaneous

Heinrich recapped the Ordinances approved in March Town Meeting, noting the Information Amendment did not get accepted. Made mention of LD2003, suggesting we get some help, mention of Article 9, a correction needed for Article 6.3 where lot size min was 2 acres, but in ~2008 this was accidentally removed. Need to quickly get to a Town vote to change it. Chris Brink (Chris) proposed a fee schedule, paid for by applicants as a future ordinance.

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Chris suggests setting a town meeting for Late June for LD2003 and Article 6.3 change, and cited that Paul Denis has a good approach for LD2003 but needs legal support from the Town Attorney. Heinrich wants a 2nd opinion on Section 9, do we have any authority, a possible suggestion of some training on Section 9, though it was not supported by the PB in the past.

Andrew suggested we have a meeting, without Applicants, lay out a plan on the topics we have identified. Jill Rundle mentioned we need to get to a Town Meeting by July 1.

Heinrich stepped through elections for PB positions and suggested a person be hired to take PB minutes, that is not part of PB. Andrew for Chair vote: 5 Yes, Eugene for Vice-Chair vote: 5 Yes, Dave for Secretary vote: 5 Yes.

9. Public Hearing – None

10. Meeting Adjourned: 9:30 PM

- Date and Time of Next Meeting – May 3, 6:30 PM

Additional Exhibits

Exhibit A – List of Hazardous Materials

You can find a list of common hazardous materials below.

- [Aerosol spray receptacles](#) (e.g., household cleaners, disinfectants, hairspray, spray paint)
- Airbags and airbag inflators
- [Alcohols](#) (e.g., rubbing alcohol, high-proof spirits)
- Ammunition and gun powders
- Bleaches
- Camping equipment (e.g., camping stove, kerosene lanterns)
- Car batteries
- Carbon dioxide canisters and cylinders
- [Consumer electronics with lithium batteries](#) (e.g., cell phones, laptops)
- [Dry ice](#)
- [Essential oils](#) (flammable)
- Fertilizer compounds and ammonium nitrate fertilizers
- Fire extinguishers
- Fireworks – consumer and novelty
- [Fragrances](#) (e.g., perfumes and colognes)
- Fuels (e.g., gasoline, diesel fuel, propane, kerosene)
- Fuel-powered equipment (containing fuel)
- [Hand sanitizer](#)
- [Inks](#) (flammable)
- Insecticides and pest control products
- Lighters and matches

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- [Lithium batteries](#), including portable chargers and power banks
- Mercury and articles that contain mercury
- [Nail polish and nail polish remover](#)
- Oxygen tanks (medical and recreational)
- [Paints](#)
- [Paint thinners and removers](#)
- Refrigerant gases (e.g., liquid nitrogen or carbon dioxide)
- Scuba tanks
- Smoke detectors
- Swimming pool chemicals
- [Wood treatment products](#) (e.g., sealants, stains, varnishes)

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Exhibit B – Jeff Kalinich E-mail

Lovell Code Enforcement

From: Kalinich, Jeffrey C <Jeffrey.C.Kalinich@maine.gov>
Sent: Wednesday, May 18, 2022 11:13 AM
To: Cormier, Kevin; Heinrich Wurm
Cc: Katy Cormier; David Hart; Alan Broyer
Subject: RE: DEP response
Attachments: CormierGPE.png; CormierGPE2.png

Kevin,

Thanks for meeting Alan and I to review greatest practical extent (GPE) for the relocation of the cottage. This is a summary of our findings and determination of GPE.

The cottage can't be relocated to the easterly side of the garage because of road and sideline setbacks. The westerly side of the garage has several large trees that would need to be removed to relocate the cottage here so the southerly side of the garage is the best area for relocation given its existing development and flat terrain. The footprint of the cottage measures approximately 26'x42' on the southerly and westerly sides. On the southerly side of the garage we measured 26 feet out and approximately located the 75' lake setback and 20' sideline setback as shown in the attached CormierGPE diagram. The red area on this diagram between the garage and sideline setback contains a vegetated buffer. This buffer area contains a few large pines. With a 30% expansion of the cottage, the footprint of the new addition will be approximately 1222 square feet. This is approximately a 26'x47' footprint. The attachment titled CormierGPE2 shows the approximate location of the expanded footprint in blue. This relocation and expansion will avoid damage to the large pines and allow for the flow of stormwater on the easterly side to continue to the buffer. This location will also allow for a holding tank to be placed on the easterly side of the addition without damaging the large pines; if a holding tank is needed. A holding tank may not be needed in this area since it may be possible to pump directly to an existing holding tank by the leach field. This GPE determination will also apply if instead of removing the cottage entirely a new foundation is placed under it or the cottage is removed by more than 50% of its market value.

We also discussed the status of the second unpermitted shed. You indicated that arrangements have been made to remove this shed. When this shed is removed the fill placed under it must be removed as well and the area permanently stabilized with vegetation. If the original legally existing shed is removed by more than 50% of its market value it must be relocated to beyond the 100 foot setback.

As we also discussed this parcel contains an unpermitted second dwelling which is referred to as the garage. The presence of this second dwelling is a violation of Lovell's Ordinance which the Department insists be resolved either by the permitting of this project or through an enforcement action. If the footprint of the cottage is combined with the garage the issue of an unpermitted second dwelling will be resolved. If the footprint of the cottage remains in its current location then the unpermitted kitchen will have to be removed from the garage to resolve the violation. It is not possible to remove the kitchen from the cottage in its current location to obtain compliance, since that would make the cottage an accessory structure and new accessory structures are not allowed closer to the lake than principal structures per Lovell's Ordinance.

Let me know if you have any questions.

Jeff

Jeffrey C. Kalinich
Assistant Shoreland Zoning Coordinator

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