

Town of Brunswick, Maine

DEPARTMENT OF PLANNING AND DEVELOPMENT

DRAFT FINDINGS OF FACT **(REVISED FEBRUARY 24, 2022)** SKETCH/FINAL PLAN MAJOR DEVELOPMENT REVIEW PLANNING BOARD

CASE NUMBER: 21-073
PROJECT NAME: Paul's Marina Bulkhead and Pier Replacement (Commercial)
LOCATION: 36 Eastern Shore Road (Map MP3, Lot 19)
**APPLICANT/
REPRESENTATIVE:** Waterman Marine
c/o Peter Spencer
475 U.S. Route 1, Ste. 6
Freeport, ME 04032
OWNER: Judith Marsh
86 Eastern Shore Rd.
Brunswick, ME 04011
REVIEW DATE: February 24, 2022
ZONING DISTRICT: Rural Protection 1 (RP1)
OVERLAY ZONING: Flood Protection Overlay (FPO)
Rural Protection Stormwater Management Overlay (RPSMO)
Shoreland Protection Overlay Resource Protection (SPO-RP) Subdistrict

I. APPLICATION COMPLETENESS

Based on concerns pertaining to this project that have been brought to staff's attention since the initial draft, staff has reviewed the application and determined that it is incomplete. Specifically, the Rivers and Coastal Waters Commission has expressed a concern that the applicants' claim of an eight-inch (8") depth of mud to ledge has not been field verified; it is no longer clear that the proposed project is within the owner's lease area in State waters; and a construction easement, and additional documentation for Maine DEP may be necessary to complete

Draft Motion #1:

The Planning Board concurs with staff's conclusion that the basic Final Plan Major Development Review application materials have not been submitted and that the application is incomplete such that the Board cannot proceed with substantive review of the application.

II. PROJECT SUMMARY

The proposed project has been reviewed by the Town Codes Enforcement Officer and Town Attorney and found to be exempt from the existing dock moratorium on permanent docks as the applicant has proposed the use of pilings pinned to ledge.

The draft Findings of Fact are based on the Sketch/Final Plan Major Development Review Application titled "Paul's Marina / Bulkhead Replacement and Expansion," dated December 17, 2022 and submitted by Peter Spencer of Waterman Marine on behalf of Judith Marsh (Attachment A). The Staff Review Committee (SRC) reviewed the Final Plan Major Development Review application on January 5, 2022. The SRC meeting notes are included under separate cover.

The proposed project includes the following improvements:

1. Removal of the existing bulkhead/timber crib due to its deterioration.
2. Replace the existing bulkhead/timber crib with a concrete bulkhead with a concrete deck that will be larger than the previous structure due to a proposed approximately 600 square foot expansion at the southeast part of the structure and an approximately 575 square foot expansion at the northeast part of the structure.
3. Construct a new 240 square foot (8' x 30') fixed timber pier to attach to the new bulkhead and pinned and chained to the ledge.
4. Attach a new approximately 210 square foot (6' x 35') seasonal ramp to connect the pier to the season float system. The float system and ramp will be stored off-site during the off-season.

Although the application materials refer to exposed ledge and the use of driven piles in areas without ledge, per the applicant the project area is all ledge that is covered by approximately eight inches (8") of mud.

Other Necessary Reviews and Permits:

1. Town Department of Planning and Development

If approved, a building permit and Flood Hazard Development Permit issued from the Town of Brunswick Codes Enforcement Officer will be required.

2. Rivers and Coastal Waters Commission (RCWC)

Per Section 3.4.1.S.(1) of the Zoning Ordinance, "all applications for docks and wharves shall be provided to the Harbor Master for review and written comment by the Brunswick Rivers and Coastal Waters Commission prior to action taken by the Review Authority." The RCWC reviewed the project at their meeting on January 26, 2022. The RCWC letter to the Planning Board is included as Attachment C. In summary, the RCWC found that they were unable to comment on the application as thoroughly as they would have liked to due to a lack of information. The RCWC requested additional information to be reviewed at their next regularly scheduled meeting on Wednesday, February 23, 2022. Staff responded to Marko Melendy, RCWC Chair, via email (Attachment D) to explain that some of their requests, such as the need for a stormwater management plan, were at the discretion of the Planning Board. On Thursday, February 17, 2022, the applicant provided revised plans and additional documentation for review by the RCWC and Planning Board.

A letter from the RCWC meeting on February 23, 2022 summarizing their continued concerns with the project has been attached as an addendum to the meeting materials.

3. Marine Resources Committee (MRC)

Per Section 3.4.1.S.(3) of the Zoning Ordinance, the Brunswick Marine Resources Committee (or the Maine Department of Marine Resources) is to submit a letter stating that, "the proposed activities, construction, or the materials used will not adversely affect fisheries, spawning areas, or other wildlife." The MRC reviewed the project at their meeting on

February 2, 2022 and have provided a letter (Attachment E) stating that the proposed project will not adversely affect the surrounding fisheries, spawning areas, or other wildlife.

4. Maine Department of Environmental Protection (DEP)

The proposed project requires a Natural Resources Protection Act (NRPA) Permit from the DEP. The applicant has included a copy of their application for said permit. Any approval shall be conditioned upon the receipt of any necessary permits required by the DEP.

5. United States Army Corps of Engineers (ACOE)

According to the applicant, an ACOE permit application was submitted on January 6, 2022. This date is prior to subsequent plan revisions requested by Town Staff and the RCWC. However, the applicant has asserted that ACOE has been sent the revised, most current documents. As is the case with Item 4 above, any approval of the proposed project shall be conditioned upon approval by the ACOE.

III. APPLICABLE REVIEW STANDARDS

2.3.3. Shoreland Protection Overlay (SPO) District

(1) Setbacks of Structures from Water Bodies and Wetlands

As a functionally water-dependent use, the proposed project is excluded from setback requirements.

The Planning Board finds that the provisions of Section 2.3.3.C.(1).a. are satisfied.

(2) Prohibited Locations of New Structures within the SPO District.

As a use requiring direct access to the water as an operational necessity, the proposed project is permitted in its proposed location.

The Planning Board finds that the provisions of Section 2.3.3.C.(2) are satisfied.

(12) Erosion and Sedimentation Control

According to the applicant, the proposed bulkhead will be located in the same location as the existing bulked no soil disturbance or net new disturbance is anticipated. The applicant also claims that no soil disturbance will result from the addition of riprap on their and their neighbor's property. Therefore, an erosion and sedimentation control plan or a stormwater management plan are not required.

The Planning Board finds that the provisions of Section 2.3.3.C.(12).a. are satisfied.

(14) Structures and Other Activities Extending Over or Below a Water Body or within a Wetland or Shoreline Stabilization Area

The proposed project maintains the same number (1) of piers. However, the addition of rip rap on the neighboring property warrants, at minimum, a

construction easement.

The Planning Board finds that the provisions of Section 2.3.3.C.(14) are not satisfied.

(24) Stormwater Runoff

As the proposed new impervious area does not exceed 1,000 square feet, the project is not required.

The Planning Board finds that the provisions of Section 2.3.3.C.(14) are satisfied.

2.3.4. Flood Protection Overlay (FPO) District

Due to the proposed project being located within the FPO, the applicant shall apply for a Flood Hazard Development Permit to be reviewed and approved by the Town Codes Enforcement Officer. Any approval of the proposed project shall be conditioned upon the approval of a Flood Hazard Development Permit.

Provided the applicant receives approval of a Flood Hazard Development Permit, the Planning Board finds that the provisions of Section 2.3.4. are satisfied

2.3.10. Rural Protection Stormwater Management Overlay (RPSMO) District

The proposed project is located in the Coastal Subdistrict of the RPSMO District. However, per Section 5.2.12.C.(3) of the Zoning Ordinance projects with disturbed area less than 500 square feet are exempt from the permit requirement. Furthermore, Section 5.2.12.C.(4) of the Zoning Ordinance exempts, "functionally water dependent use activities within the Shoreland Protection Overlay (SPO)."

The Planning Board finds that the provisions of Section 2.3.10 are not applicable.

3.3. Rural Area Permitted Use Table

Marine activity is designated as a permitted use within the Rural Protection 1 (RP1) Zoning District. However, there are supplementary standards established in Section 3.4.1.S.

3.4.1.S. Marine Activity

The Rivers and Coastal Waters Commission and Marine Resources Committee have both had the opportunity to review the proposed project. Due to the proposed bulkhead being located in the same spot as the existing bulkhead, the proposed project will cause erosion, sedimentation, and/or siltation. The applicant has indicated that the existing fuel tank is up to date on all necessary certifications and licenses. As previously referenced, the applicant has applied for, but not yet received approval of a NRPA Permit.

Provided the applicant receives approval of a NRPA Permit and any other permit required by the Maine Department of Environmental Protection or United States Army Corps of Engineers, the Planning Board finds that the provisions of Section 3.3. and

3.4.1.S. are satisfied.

4.1. Applicability of Property Development Standards

Town of Brunswick Zoning Ordinance:

As the subject property is located within an existing subdivision, all regulations for the Rural Protection 1 (RP1) Zoning District established in *Chapter 4 – Property Development Standards* of the Zoning Ordinance apply. The application has been reviewed by the Town Codes Enforcement Officer and found to comply with all applicable standards.

The Planning Board finds that the provisions of Section 4.1 are satisfied.

4.2. Dimensional and Density Standards

As indicated in Item 4.1, the Town Codes Enforcement Officer has reviewed the proposed project and found that it complies with the applicable standards as established in *Table 4.2.4: Dimensional and Density Standards Table for Rural Zoning Districts*.

The Planning Board finds that the provisions of Section 4.2 are satisfied. Provided the applicant receives approval of a NRPA Permit and any other permit required by the Maine Department of Environmental Protection or United States Army Corps of Engineers, the Planning Board finds that the provisions of Section 3.3. and 3.4.1.S. are satisfied.

4.3. Natural and Historic Areas

The applicant inventoried natural and historic areas pertinent to federal, state, and local review. Based on a map provided by the Town’s Coastal Resources Manager there is eel grass in the area to the northeast of the proposed project area, but not within the project area itself. The Maine DEP and U.S. ACOE will further review any potential adverse effects on any natural areas as part of their permit review processes.

Provided the applicant receives approval of all permits required by the Maine Department of Environmental Protection and United States Army Corps of Engineers, the Planning Board finds that the provisions of Section 4.3. are satisfied.

4.4. Flood Hazard Areas

The subject pier system is within Flood Protection Overlay (FPO) District. As referenced above, the applicant shall apply for a Flood Hazard Development Permit to be reviewed and approved by the Town Codes Enforcement Officer.

Provided the applicant receives approval of a Flood Hazard Development Permit, the Planning Board finds that the provisions of Section 4.4. are satisfied

4.5. Basic and Municipal Services

No changes are proposed or anticipated to solid waste disposal. No impact to the public storm drain system from stormwater management is proposed in accordance with Section 4.5.3 and 4.5.4, respectively.

The Board finds that the provisions of Section 4.5 are satisfied.

4.6. Landscaping Requirements

Landscaping standards in Section 4.6 are not applicable to the proposed project.

The Board finds that the provisions of Section 4.6 are not applicable.

4.7. Residential Recreation Requirements

The proposed project does include the addition of any residential dwelling units.

The Planning Board finds that the provisions of Section 4.7 are not applicable.

4.8. Circulation and Access

The proposed activity will not alter circulation and access.

The Board finds that the provisions of Section 4.8 are not applicable.

4.9. Parking and Loading

No changes to parking areas are proposed; and loading is not applicable.

The Board finds that the provisions of Section 4.9 are not applicable.

4.10. Lighting

No new lighting is proposed.

The Board finds that the provisions of Section 4.10 are not applicable.

4.11. Architectural Compatibility

No buildings are proposed. Therefore, architectural compatibility standards are not applicable.

The Board finds that the provisions of Section 4.11 are not applicable.

4.12. Neighborhood Protection Standards

The proposed development is not within a Growth Mixed-Use District or Growth Special Purpose District and is therefore not required to comply with Section 4.12. Therefore, subsection 4.12 is not applicable to the proposed development.

The Board finds that the provisions of Section 4.12 are not applicable.

4.13. Signs

No signs are proposed.

The Planning Board finds that the provisions of Section 4.13 are not applicable.

4.14. Performance Standards

The applicant has indicated that the proposed project will operate in accordance with the performance standards listed at Section 4.14. No changes to existing operations, including operating hours are proposed.

The Planning Board finds that the provisions of Section 4.14 are satisfied.

4.15. Site Maintenance

All site features constructed or installed as required by this development approval will be maintained in good repair and replaced if damaged or destroyed. As proposed, no landscaped areas are proposed.

The Planning Board finds that the provisions of Section 4.15 are satisfied.

4.16. Financial and Technical Capacity

Evidence of financial and technical capacity to construct and maintain the project is included within the application.

The Planning Board finds that the provisions of Section 4.16 are satisfied.

4.17. Administrative Adjustments / Alternative Equivalent Compliance

No administrative adjustment / alternative equivalent compliance is requested.

The Board finds that the provisions of Section 4.17 are not applicable.

IV. WAIVERS

The applicant has not requested any waivers. The RCWC requested the applicant provide a stormwater management as listed in Appendix D – Submission Requirements of the Zoning Ordinance. However, staff concurs with the applicant that a stormwater management plan is not necessary for the project and should be considered “Not Applicable” on the application checklist.

V. DRAFT MOTION – IF PLANNING BOARD CONSIDERS THE APPLICATION COMPLETE

Draft Motion #2:

That the Sketch/Final Plan is approved with the following conditions:

- 1. That the Board’s review and approval does hereby refer to these findings of fact, the plans and materials submitted by the applicant and the written and oral comments of the applicant, his representatives, reviewing officials, and members of the public as reflected in*

the public record. Any changes to the approved plan not called for in these conditions of approval or otherwise approved by the Director of Planning and Development as a minor modification shall require a review and approval in accordance with the Brunswick Zoning Ordinance.

2. *Prior to the issuance of any building permit, the applicant shall submit and receive approval of a Shoreland Protection Overlay Zone Permit from the Town.*
3. *Prior to the issuance of any building permit, the applicant shall submit and receive approval of a Flood Hazard Development Permit from the Town.*
4. *Prior to the issuance of any building permit, the applicant shall submit to the Director of Planning and Development a copy of an approved Natural Resource Protection Act Permit, and any other permit, required by the Maine Department of Environmental Protection.*
5. *Prior to the issuance of any building permit, the applicant shall submit to the Director of Planning and Development a copy of an approved development permit from the United States Army Corps of Engineers.*

VI. EXHIBITS

- A. Sketch/Final Plan Major Development Review Application titled “Paul’s Marina / Bulkhead Replacement and Expansion,” dated December 17, 2022, and submitted by Peter Spencer of Waterman Marine on behalf of Judith Marsh
- B. SRC Meeting Minutes from January 5, 2022.
- C. Letter from Marko Melendy, Town of Brunswick Rivers and Coastal Waters Commission Chair, dated January 27, 2022.
- D. E-mail correspondence with Marko Melendy and Matt Panfil, Director of Planning and Development, dated February 15, 2022.
- E. Letter from Cody Gillis, Brunswick Marine Resources Committee Chair, dated February 2, 2022.
- F. Revised elevation drawing, undated, received February 9, 2022.
- G. Public Comments