

Kennebunkport Planning Board
April 4th, 2012 ~ 7:00 PM
Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, April 4th, 2011. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. David Kling (Chair), Leo Famolare, John Hathaway, Greg Reid, Peter Fellenz. Mr. Fellenz will have voting privileges for this meeting.

Approval of Minutes: Mr. Famolare made a motion to approve the minutes from the March 21st, 2011 Planning Board meeting. Mr. Reid seconded the motion and the vote was unanimous.

Items:

1) 010202 Lauren Guptill, Rococo Ice Cream – Site Plan Review – Findings of Fact – for approval to remove the existing one story cottage and replace it with a new two story cottage in a different location to make it more conforming to setbacks. [11 Harwood Drive, identified as Assessor's Tax Map 21, Block 005, Lot 25 in the Cape Porpoise West Zone.]

Mr. Kling read the Findings of Fact into the record. Mr. Reid made a motion to approve said Findings. Mr. Hathaway seconded the motion and the vote was unanimous. Mr. Fellenz asked the Applicant when she anticipates opening for business. Ms. Guptill replied she is aiming for a May 3rd opening day.

2) 111101 John & Jeannie Scollins / Doyle Enterprises, Authorized Agent – Site Plan Review – Public Hearing – for approval to remove the existing one story cottage and replace it with a new two story cottage in a different location to make it more conforming to setbacks. [11 Harwood Drive, identified as Assessor's Tax Map 21, Block 005, Lot 25 in the Cape Porpoise West Zone.]

Mr. Kling introduced the Agenda item and acknowledged receipt of the following correspondence:

- Letter from Brian Willing of Drummond Woodsum, Town Counsel.
- Letter from John & Jeannie Scollins stating they were unable to attend tonight's meeting but expressed their appreciation of the neighborhood support.
- Email sent to Code Enforcement Officer Brian Shaw from Alice & David Duston, abutters, with a number of comments and concerns about the Application.
- Additional changes from the Applicant in the proposed plan detailing the following 3 changes:
 - Relocated the area wells
 - Removal of the front porch masonry steps
 - Revised fill calculations received by the Code Enforcement Office March 28, 2012

Mr. Kling stated the Board has received the revised plan and will need to discuss the legality of the inclusion of the shed in the volume for the allowable expansion.

Ms. Diane Doyle addressed the Board representing John & Jeannie Scollins stating there were 3 items still outstanding which were addressed in the Board's latest packet of information. Ms. Doyle explained they have relocated the area wells to be within the setbacks; have removed the front step that was also in the setback; and have recalculated the amount of fill needed to be 121 cubic yards.

Mr. Kling asked Ms. Doyle what the grade elevations will be at the end of the construction. Ms. Doyle responded they would be the same for the most part as the house is not being raised. Mr. Kling reminded the Applicant that during construction they would have to follow all erosion control measures.

Mr. Reid commented that after removing the front porch masonry step there are still 6 risers leading up to the porch level and asked Ms. Doyle how they were compensating for the change in elevation. Mr. Matt Provençal, Architect replied they are regrading to compensate, thus lowering the risers in essence.

Mr. Famolare asked what the level of the first floor of the house will be. Mr. Provençal replied it is 16.62.

Mr. Kling opened the Public Hearing.

Ms. Doyle addressed the Dustons' concerns about stormwater drainage onto their property by stating they are not regrading enough to change the flow of stormwater on the property and do not foresee the sump pump running continuously unless in extreme circumstances. Mr. Provençal added an engineer has taken several test pits and found no indication of high ground water in the area.

Ms. Doyle also explained there would be some decorative screen or vegetation around the air conditioning compressor so as not to be an eyesore to neighbors. Ms. Doyle added the generator would only be used on an emergency basis.

Ms. Jeremy Weis of 9 Harwood Drive addressed the Board stating her primary issue with the Application is it is exceeding the 30% allowable expansion as stated in the Land Use Ordinance. Ms. Weis also questioned the Applicant's interpretation of the Planning Board's authority in determining the setbacks are met to the greatest practicable extent.

Mr. Kling responded to Ms. Weis's concerns citing the following two sections of the Land Use Ordinance and a state regulatory Board:

1. Definition of Building Footprint: "The area of a lot covered by all portions of any building and/or detached or attached accessory structures, including but not limited to garages, sheds, decks porches, bulkhead entrances, steps, cantilevered sections, and roof overhangs."
2. Article 8.3.B.5 Reconstructions or Replacement of a Non-Conforming Structure: "If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure."
3. Maine Municipal Authority Planning Board Authority section on Ordinance Interpretation: "Ambiguity Construed in Favor of Landowner. The restrictions of a zoning ordinance run counter to the common law, which allowed a person to do virtually whatever he or she wanted with his or her land. The ordinance must be strictly interpreted. Where exemptions appear to be in favor of a property owner, the board should interpret them in the owner's favor. *Forest City, Inc. v. Payson*, 239 A.2d 167 (Me.1968)."

Mr. Famolare read the following letter into the record:

"To: Brian Shaw, Code Enforcement Officer

From: Brian Willing

Re: 11 Harwood Drive, Kennebunkport

Dear Brian:

I am following up with you regarding the proposed expansion of the Scollins property of a non-conforming single family residence within the Shoreland Zone at 11 Harwood Drive in Kennebunkport, Maine (Tax Map 21, Block 5, Lot 25).

As discussed in detail in the January 31, 2012 correspondence, this firm's opinion is that the area and volume of the accessory building should not be aggregated with the residential structure at the Scollins's property for purposes of calculating the maximum permissible expansion of the principal replacement structure based on a plain reading of Article 8.3 of the Ordinance. We have not, however, been able to locate any case law in Maine directly on point, and so the issue is not completely free from doubt. *But see Lewis v. Me. Coast Artists*, 2001 ME 75, ¶26, 770 A.2d 644, 653 ("The underlying policy of zoning is to gradually eliminate nonconforming structures and uses.... The accepted legal standard has been to strictly construe zoning provisions relating to the extension, expansion or enlargement of nonconforming buildings.") (Internal citations omitted)."

Mr. Famolare added that the Town Attorney has taken the position that they do not agree with an accessory building being included in the total calculation but they have not found any case law to substantiate it. Mr. Famolare concluded any action the Board takes allowing the Applicant to combine the two structures would be contrary to the Town Counsel's recommendation.

Mr. Brian Shaw suggested the Board review section 8.8.A of the Land Use Ordinance Non-Conforming Uses: Expansions, which states: "Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansion of such structures in Shoreland Zones as allowed in Article 8.3.B.1 above."

Mr. Craig Perkins, also of 9 Harwood Drive, addressed the Board and questioned the Applicant's accuracy in their elevation calculations and was concerned the new basement would cause water to leach under his house.

Ms. Deborah Bowman addressed the Board representing the Conservation Commission and offered her opinion that from an environmental aspect the proposed Application is more compliant by removing the shed. Ms. Bowman also disclosed her Aunt and Uncle owned the property prior to the Scollins purchasing it.

Each Board member discussed at length the legality of adding an accessory building into the calculations for allowable expansion in order to increase a structure's conformity with the Land Use Ordinance.

Mr. Kling closed the Public Hearing.

Mr. Fellenz made a motion to deny the Application as presented. Mr. Famolare seconded the motion. The Board voted 4 to 1 in favor of the motion. Mr. Kling voted against the motion. The Application of John & Jeannie Scollins has been denied by a majority vote of the Planning Board. Mr. Famolare will prepare the Findings of Fact to be read at the next Planning Board meeting.

Adjournment: A motion was made to adjourn, it was seconded and the vote was unanimous.

Submitted by: Patricia Saunders, Planning Board Recording Secretary