

Kennebunkport Planning Board
September 6th, 2017 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A regular meeting of the Planning Board was held on Wednesday, September 6th, 2017. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Russ Grady (Chair), Tom Boak, D. Scott Mahoney, Mark, Messer, Nina Pearlmutter, Neil Higgins

Approval of Minutes: Mr. Mahoney made a motion to approve the minutes from the August 16th, 2017 Planning Board meeting. Ms. Pearlmutter seconded the motion and the vote was unanimous.

Mr. Grady announced the Planning Board would hold a workshop on September 13th, 2017 at the new Police Station Meeting Room to go over policies and procedures as functions of the Planning Board. No current applications will be discussed during this workshop, Mr. Grady added.

Items:

1. **170701 Edward Buttner/ Eco-Analysts, Inc., Authorized Agent–Site Plan Review – Continued Public Hearing** – for approval to construct a walkway, a 4' x 65' pier, a 3' x 20' seasonal ramp and a 4' x 16' float. [37LangsfordRoad, identified as Assessor's Tax Map 21, Block 011Lot 21 in the Cape Porpoise West, Shoreland and Resource Protection Zones.]

Mr. Grady introduced the Agenda item making particular note of the following occurrences:

- 1) A Public Hearing was held at the last Planning Board meeting.
- 2) There was a lengthy discussion on non-conforming lots at that meeting.
- 3) The Board agreed at that meeting to pose questions to the town's attorney for clarification.
- 4) The only questions posed were from Mr. Messer.
- 5) Attorney Amy Tchao's response was received today.
- 6) The Applicant's attorney acknowledged receipt of town counsel's letter.

Mr. Grady also commented this Application is for 37 Langsford Road only and is separate from other properties along Langsford Road.

Attorney Sandra Guay, along with Bud Brown addressed the Board on behalf of the Applicant. Attorney Guay asked the Board to disclose any conversations held in the past regarding this Application that have occurred outside of the publicly formal Site Plan Review. Several Board members disclosed they had conversations with other meeting attendees in the town but the conversations were about personal issues. No currently pending Applications were discussed by any of the Board members.

Ms. Guay also provided copies of a detailed survey of the property to each Board member and noted the lot coverage calculation is 17.01% which is less than the 20% allowed.

In reference to comments made at the last meeting, Ms. Guay asked the Applicant's abutters to think about how they would feel if others regularly entered their property without permission.

Ms. Guay then gave a brief summary of the Application and provided photos of the property with the stakes and twine laid out to offer visual guidance where the dock and walkway will be located.

Several of the Planning Board members expressed their dissatisfaction on receiving town counsel's letter today and not earlier in order to have ample time to review prior to this meeting.

Ms. Guay provided the Board with her interpretation of town counsel's memo.

Utilizing enlarged site plans and photos, Mr. Bud Brown gave a detailed description on the process of installing the stakes and rope to simulate where the walkway will be located.

Mr. Neil Higgins asked Mr. Brown if it was completely unreasonable to install a pathway rather than a wooden walkway. Mr. Brown replied it was not possible as they would have to fill in wetlands which is not permitted.

Ms. Pearlmutter offered her opinion that she has no objections to this Application after extensively reviewing Attorney Tchao's letter and reading through the applicable articles in the Land Use Ordinance. Although she disagrees with Mr. Brown's explanation of what constitutes a scenic view, Ms. Pearlmutter offered the walkway and dock is a better option than dragging a boat across the marsh grass and creating further erosion.

Mr. Grady also expressed his opinion that this Application is a very environmentally responsible way to enjoy the water and that it meets the requirements in the Land Use Ordinance.

Mr. Mahoney and Mr. Boak concurred with Mr. Grady's and Ms. Pearlmuter's comments.

Referring to Attorney Tchao's memo, Mr. Messer questioned that in order to be legal the walkway must be a functionally water dependent use and that walking to a studio is not a water dependent use. Mr. Messer cited the following three questions that Attorney Tchao asked in her memo:

1. Does the proposed walkway meet the definition of a "functionally water-dependent use"?
2. Does the proposed walkway "require direct access to the wetland as an operational necessity"?
3. Does the proposed walkway qualify as a "bridge" within the meaning of Article 4.14.B.9 and Article 5.11 of the LUO?

Mr. Messer, Ms. Guay and the other members of the Planning Board had a lengthy discussion Attorney Tchao's memo, Articles 4.17 and 5.11 of the Land Use Ordinance and whether the walkway qualifies as a bridge and is a water dependent use.

Since this is a continued Public Hearing, Mr. Grady asked the audience members if they had any questions or comments for the Planning Board.

Louise Mooney addressed the Board to express her opposition to the Application citing no convenience is gained by installing a dock or walkway and opposes this construction.

Mr. Bruce Jordan addressed the Board stating he is astonished at what is happening in Cape Porpoise and how this Application will change the town of Kennebunkport.

Ms. Pearlmuter agreed with Mr. Jordan that the town is changing but the Planning Board cannot restrict a property owner from doing what they want to do if it fits within the town's ordinances. Ms. Pearlmuter offered if someone wants to change how things are done in town they need to start by working with the town by changing the ordinances.

Ms. Nancy Spencer of 45 Langsford Road addressed the Board asking what materials would the 7-foot-high walkway be made of and to express her disapproval of the Application as she believes it is inconsiderate by the Applicant. Mr. Brown responded to Ms. Spencer's comments by stating the walkway will be 3 feet high with no railings.

Mr. Brown further explained that there is a difference between putting posts set back a fair distance from the edge of the creek and filling gravel or sand into the wetland itself. Mr. Brown added that the posts will not cause erosion because it will not touch the embankment.

Ms. Beth Maloney addressed the Board to express her displeasure with the Application and asked if the patio was included in the lot coverage calculations. Ms. Guay responded she doesn't believe there is a patio on the property.

Mr. Ed Butner addressed the Board stating he and his wife have tried to be mindful of how the dock is going to look and have done their best to make sure the impact on the wetland is as minimal as possible while being mindful of the integrity of the neighborhood.

Ms. Maloney asked if the patio was included in the drawings of the property. Mr. Boak replied there is a section of miscellaneous concrete on the plans. Mr. Grady added that the concrete is included in the calculations.

Ms. Kathy Jordan of 33 Langsford Road addressed the Board to voice her opinion in opposition to this Application and express her disappointment if the Planning Board approves this project. Ms. Jordan also questioned the futility in speaking at a Public Hearing if the Board was going to approve an Application despite several abutters' objections to the Application.

Ms. Pearlmuter reminded Ms. Jordan and the audience in attendance that the Planning Board's duty is to follow the ordinance and to make sure Applications are within the parameters of the regulations. Ms. Pearlmuter also reminded everyone that property owners have certain rights as well.

Mr. Boak also offered that this Application appeared and was approved by the Kennebunkport Board of Selectmen, Maine Department of Environmental Protection and the Army Corps of Engineers.

There were no further questions or comments from the audience in attendance.

Mr. Grady closed the Public Hearing.

The Planning Board members agreed to review each item in Article 10.10.A.1.a through p and vote approval or denial on each item. Mr. Grady reminded the Board members to treat this review as one Application with two components and if the Board approves or denies one component then the entire Application is approved or denied.

Mr. Boak read through each item and the Board voted as follows:

a. *The proposed use does not meet the definition or specific requirements set forth in this Ordinance or will not be in compliance with applicable state or federal laws;*

Mr. Grady, Mr. Boak, Ms. Pearlmutter, and Mr. Mahoney voted the Application does meet the definition or specific requirements set forth in this Ordinance. Mr. Messer voted against the Application stating the walkway does not meet the definition or specific requirements set forth in this Ordinance. The final vote was 4-1 in favor of the Applicant.

b. *The proposed use will create fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles;*

c. *The proposed exterior lighting will create hazards to motorists traveling on adjacent public streets or is inadequate for the safety of occupants or users of the site or will damage the value and diminish the usability of adjacent properties;*

d. *The provisions for buffers and on-site landscaping do not provide adequate protection to neighboring properties from detrimental features of the development;*

The Planning Board members voted unanimously (5-0) items b, c, & d are not applicable to this Application.

e. *The proposed use will have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor dust, glare or other cause;*

The Planning Board members voted unanimously (5-0) the Application will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause.

f. *The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety;*

The Planning Board members voted unanimously (5-0) this item is not applicable to the Application.

g. *The proposed use will have a significant detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the plan;*

Mr. Grady, Mr. Boak, Ms. Pearlmutter, and Mr. Mahoney voted this Application will not have a significant detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the plan. Mr. Messer voted against the Application citing both the dock and the walkway will have a significant detrimental effect on the value of adjacent properties. The vote was 4-1 in favor of the Applicant.

h. *The design of the site will result in significant flood hazards or flood damage or is not in conformance with applicable flood hazard protection requirements;*

The Planning Board members voted unanimously (5-0) the design of the site will not result in significant flood hazards or flood damage and is in conformance with applicable flood hazard protection requirements.

i. *Adequate provision has not been made for disposal of wastewater or solid waste or for the prevention of ground or surface water contamination;*

The Planning Board members voted unanimously (5-0) this item is not applicable to the Application.

j. *Adequate provision has not been made to control erosion or sedimentation;*

Mr. Grady, Mr. Boak, Ms. Pearlmutter, and Mr. Mahoney voted the Applicant has made adequate provision to control erosion or sedimentation. Mr. Messer voted against this Application in reference to the dock. The vote was 4-1 in favor of the Application.

k. *Adequate provision has not been made to handle storm water run-off or other drainage problems on the site;*

l. *The proposed water supply will not meet the demands of the proposed use or for fire protection purposes;*

m. *Adequate provision has not been made for the transportation, storage and disposal of hazardous substances and materials as defined by state law;*

The Planning Board members voted unanimously (5-0) items k, l, & m are not applicable to this Application.

n. *The proposed use will have an adverse impact on significant scenic vistas or on significant wildlife habitat which could be avoided by reasonable modification of the plan;*

Mr. Grady, Mr. Boak, Ms. Pearlmutter, and Mr. Mahoney voted the proposed use will not have an adverse impact on significant scenic vistas or on significant wildlife habitat. Mr. Messer voted against this Application in reference to the dock. The vote was 4-1 in favor of the Application.

o. *The proposed use will cause unreasonable highway or public road congestion; or*

p. *Existing off-site ways and traffic facilities cannot safely and conveniently accommodate the increased traffic generated by the development as far away from the development as the effects of development can be traced with reasonable accuracy.*

The Planning Board members voted unanimously (5-0) items o & p are not applicable to this Application.

The Planning Board members agreed to also review each item of Article 10.10.B.1.a thru h and to vote on each item. Mr. Boak read each item and the Board members voted as follows:

a. *Will maintain safe and healthful conditions;*

b. *Will not result in water pollution, erosion, or sedimentation to surface waters;*

The Planning Board members voted unanimously (5-0) the Application meets the conditions in item a & b.

c. *Will adequately provide for the disposal of all wastewater;*

The Planning Board members voted unanimously (5-0) that item c is not applicable in this review.

d. *Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*

Mr. Grady, Mr. Boak, Ms. Pearlmutter, and Mr. Mahoney voted the Application will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. Mr. Messer voted against the Application in reference to the proposed dock. The vote was 4-1 in favor of the Application.

e. *Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;*

The Planning Board members voted unanimously (5-0) the Application meets the condition in item e.

f. *Will protect archaeological and historic resources as designated in the comprehensive plan;*

The Planning Board members voted unanimously (5-0) that item *f* is not applicable in this review.

g. Will avoid problems associated with flood plain development and use; and

h. Is in conformance with the Performance Standards set forth in Article 5.6.

The Planning Board members voted unanimously (5-0) the Application meets the conditions in items *g* & *h*.

Mr. Grady made a motion to approve the Application. Ms. Pearlmutter seconded the motion. The vote was 4-1 in favor of the motion. Mr. Messer vote against the motion.

Mr. Grady was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on September 20, 2017.

- 2. 170701 Town of Kennebunkport Recreation Department / Wright-Pierce, Authorized Agent–Site Plan Review – Initial Review –** for approval to replace the current building on the adjacent property as well as a storage shed on this property with a new single-story structure [School Street, identified as Assessor’s Tax Map 11, Block 005 Lot 02 in the Village Residential Zone.]

Mr. Grady introduced the Agenda item.

Ms. Laurie Smith, Kennebunkport Town Manager along with Carol Cook, Director of Kennebunkport’s Parks & Recreation Program addressed the Board stating this Application is to replace the existing building with a new single-story structure to provide community office space, storage space as well as a kitchen and concessions space. In reference to a letter dated September 6th, 2017 from Attorney Amy Tchao, Ms. Smith gave a detailed explanation on the proposed deed amendment to be finalized regarding the Parsons Field parcel.

Using enlarged site plans, Mr. Travis Pryor addressed the Board and gave a brief presentation on the proposed project highlighting the setback requirements in accordance with the Land Use Ordinance. Mr. Pryor also explained the new building will be oriented to School Street and will have pedestrian access around the entire site along with access from the school.

Mr. Ron Williams, Architect for the Applicant, addressed the Board explaining the new structure will have office space, a common area that could be used for summer camp or adult programming during the day, men’s & women’s restrooms that could be accessed from inside and outside the building and can be locked on either side. The new building will also contain a kitchen and concessions area along with a storage room and a utility room, Mr. Williams explained. The style of the new building will have a masonry base with similar clapboard and white trim to match the style of the school building, Mr. Williams concluded.

Mr. Messer asked the Applicant if they could provide the Board with more specific information on possible uses of the building during the daytime for adult or senior programming.

Mr. Boak made a motion the Application is complete pending finalization of the legal deed amendment. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Grady announced a Public Hearing will be held at the next Planning Board meeting on September 20th, 2017.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary