

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

A regular meeting of the Planning Board was held on Wednesday, January 4th, 2012. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. David Kling (Chair), Kendall Burford, Leo Famolare, Gordon Ayer, Greg Reid, Peter Fellenz

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

Items:

1) 110902 Robert T. Murphy / Lower Village Survey Co., Authorized Agent – Site Plan Review – Public Hearing – to add Gabions & vegetation to seaward side of existing seawall. [115 Marshall Point Road, identified as Assessor's Tax Map 31, Block 003, Lot 07 in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item stating this Application was voted complete at the October 5th, 2011 Planning Board meeting pending the Board's receipt of the DEP permit which has since been received. Mr. Kling asked Mr. Blood to give a brief description of the Application since some changes were made at the DEP's request.

Mr. Leon Blood of Lower Village Survey addressed the Board stating the initial Application to place gabions in front of the seawall has been revised at the request of the Maine Fish and Wildlife Department because there was a chance piping plovers could become entangled in the gabion cages if they were ever to become uncovered. Mr. Blood explained the new proposal is to put boulders down underneath a surface of a planting mix of Rosa rugosa and dune grass. Mr. Blood added all of this work has to be done before April 1st which was one of the conditions from the DEP. The DEP also requested a small change to the walkway to the beach which has been made on the revised site plan, Mr. Blood concluded.

Mr. Kling stated the Board had received a letter from an abutter expressing concerns about the Right of Way and its condition after the construction was completed. Mr. Blood indicated he had not received a copy of the abutter's letter. Mr. Blood explained the plan is to open up the Right of Way and establish some travel mats for the machines to operate over. The travel mats would be removed when the construction was complete, Mr. Blood added.

Mr. Kling opened the Public Hearing. There were no comments from the public. Mr. Kling closed the Public Hearing.

Mr. Famolare made a motion to approve the Application as presented with the conditions adopted. Mr. Ayer seconded the motion and the vote was unanimous. Mr. Fellenz was assigned as the Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on January 18th, 2012.

2) 111101 John & Jeannie Scollins / Doyle Enterprises, Authorized Agent – Site Plan Review – Continued Initial Review – 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:

- Revision to site plan from Diane Doyle dated December 23, 2011 which brought the proposal into conformance with the front setbacks
- Memo from Brian Shaw to the Applicant and Planning Board dated December 29, 2011 pointing out certain parts of the Land Use Ordinance in particular Article 8
- Response in email from Diane Doyle dated January 2, 2012
- Email message from an abutter, Jeremy & Ann Weiss initially dated December 28, 2011 and an addendum dated January 4, 2012 with 2 pictures of the building attached
- Received today a message from David & Alice Dustun expressing their concerns about a number of issues

Ms. Diane Doyle addressed the Board and stated she did not receive any of the abutter's letters.

Mr. Kling stated the Board also received a copy of the DEP's Permit By Rule and asked Ms. Doyle to provide a summary of the Application

Ms. Diane Doyle stated currently there is a single floor flat roof building with an accessory building that falls in the flood plain. Ms. Doyle explained they are hoping to build a 2 story 2 bedroom home by including the accessory building's volume in their calculations. Ms. Doyle stated currently the basement is a crawlspace and is not sure if the new building will need to be raised or if the new basement will have 50% underground.

Mr. Kling stated it would be an issue for the Planning Board if the basement contained a potential living space with a 3rd bedroom because the septic system is only for a 2 bedroom dwelling. Ms. Doyle responded she was not sure how deep the basement would be because they

have not dug there yet and don't know if there is a lot of ledge. Mr. Kling explained a decision on the basement would have to be made before any Public Hearing could be held particularly reflecting on some of the abutter's concerns.

The Board members offered their opinions on the Applicant's proposal to eliminate the accessory building and putting the entire expansion to within the setbacks and further away from the water to make the property less non-conforming. Mr. Kling explained at the last Planning Board meeting the Board's tentative conclusion was to include the square feet and volume of the accessory building as the basis for the allowable expansion.

Mr. Kling stated there was a question about the proposed location of the deck and asked Mr. Shaw to explain the issue to the Board. Mr. Brian Shaw addressed the Board stating as long as the deck is not receiving its support from the house so in the event of a flood, the deck could break away without damage to the house.

Mr. Kling instructed Ms. Doyle to review the correspondence from the abutter's to address their concerns and asked for clarification on the height of the basement. The Board would need that information prior to making a decision on the Application, Mr. Kling explained.

Ms. Doyle responded the plan provided to the Board shows the basement with 50% of its volume below ground level with 1 bedroom and bathroom. Ms. Doyle reminded the Board of the Land Use Ordinance's definition of a basement is: "Any portion of a structure with a floor-to-ceiling height of six (6) feet or more and having more than fifty (50%) percent of its volume below the existing ground level." Ms. Doyle explained if she cannot reach 50% in the basement then they will not have a basement. However, Ms. Doyle asked the Board to vote on the proposal submitted assuming a full basement would be built.

Mr. Kling asked Mr. Shaw if he was satisfied with the area calculations in the Application. Mr. Shaw responded as stated in his Memo to the Board that he strongly disagrees with the inclusion of the shed volume into the new house as proposed. Mr. Shaw cited page 8-2 of the Land Use Ordinance which outlines the Calculation of Basis of Floor Area:

8.3.B.1.a. "Calculation of Basis of Floor Area. The basis of the floor area of the original structure, for determining the allowable expansion, shall be defined as follows:

The total of the following areas:

1. The sum of the horizontal areas of the floor or floors of the structure enclosed by exterior walls, plus
2. The sum of the horizontal areas of unenclosed portions of the structure such as open porches and decks, plus
3. The sum of the floor area of attached garages.

8.3.B.1.b "Exclusions from Basis of Floor Area. The following areas shall be excluded from the basis of the floor area of the original structure, for determining the allowable expansion:

1. Unfinished attics;
2. Crawl spaces; and
3. Basements, as defined in Article 2 of the Ordinance, whether finished or unfinished.

8.3.B.1.c "Calculation of Basis of Volume. The basis of the volume of the original structure, for determining the allowable expansion, shall be defined as follows:

The total of the following volumes;

1. The volume of all portions of the structure enclosed by roof and fixed exterior walls, as measured from the exterior faces of them walls and roof; plus
2. The volume of attached garages.

Mr. Shaw disagreed that the Planning Board had the authority to approve the inclusion of the accessory building's volume in the main structure's calculations. Mr. Ayer argued the Planning Board has the sole authority to allow a 30% expansion to the greatest practicable extent as dictated in the Land Use Ordinance.

Mr. Shaw asked the Board to instruct the Applicant to provide the full measurements and calculations of the existing and proposed structures.

Mr. Kling explained to the Applicant that there is a risk if there is a material change to the Application as submitted then it needs to be reviewed and approved again by the Planning Board. Ms. Doyle stated she understood the risk.

The Planning Board agreed to continue this Review to another meeting pending receipt of information on the basement along with the architect's calculations of the proposed structure.

3) 111201 Atlantic Coast Hospitality d/b/a Kennebunkport Inn / Ralph Austin, Authorized Agent - Site Plan Review – Initial Review
- Applicant seeks re-approval of their previous request to change a permanent canopy structure into a permanent structure comprised of fiberglass panels and glass, which was approved by the Planning Board on April 21, 2010. [One Dock Square, identified as Assessor's Tax Map 11, Block 002, Lot 08 in the Dock Square Zone.]

Mr. Kling introduced the Agenda item. Mr. Ralph Austin addressed the Board along with Kevin Harrington, Operations Director of the Kennebunkport Inn. Mr. Austin stated this is a re-application of a plan the Board approved in April of 2010. Mr. Reid recused himself from this review due to a conflict of interest.

Mr. Austin explained the owners did not proceed with the Application because they were anticipating selling the property which did not happen. Mr. Austin explained this Application is exactly the same as the approved Application with the exception of eliminating a slight separation between two sets of center doors as shown in the site plan.

Mr. Ayer made a motion to approve the Application nunc pro tunc to the date of the Board's earlier approval. Mr. Burford seconded the motion and the vote was unanimous. Mr. Austin stated he would prepare a Memorandum noting this approval and provide it to the Code Enforcement Office in recordable form.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary