

**Kennebunkport Planning Board  
March 6th, 2013 ~ 7:00 PM  
Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, March 6, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

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

Approval of Minutes: Mr. Hathaway made a motion to approve the minutes from the February 20th, 2013 Planning Board meeting. Mr. Fellenz seconded the motion and the vote was unanimous.

Items:

Mr. Kling announced that Town Counsel has asked for more time to review the proposed changes to the Subdivision Regulations so the Public Hearing will be held at the March 20<sup>th</sup>, 2013 meeting.

**1 130101 Jane and Glenn Oakley / Harvey Wells, Authorized Agent – Site Plan Review – Findings of Fact** – for approval to remove an existing one story home and replace it with a new 1 ½ story home in a different location to make it more conforming to setbacks. [66 Langsford Road, Assessor's Tax Map 21, Block 11, Lot 8 in the Cape Porpoise West Zone.] *John Hathaway, Case Manager*

Mr. Hathaway read the Findings of Fact into the record. Mr. Kling made a motion to approve said Findings. Mr. Fellenz seconded the motion and the vote was unanimous.

**2) 130102 Seaside Hotel Associates, d/b/a Nonantum Resort – Site Plan Review – Findings of Fact** – for approval to expand seating in Heckman's Pub, by relocating a wall between the pub and an adjacent gifts shop, and relocating the gift shop into an unused guest room. [95 Ocean Avenue, Assessor's Tax Map 08, Block 001, Lot 13 in the Riverfront Zone.] *Helen Conaty, Case Manager*

Mr. Kling read the Findings of Fact into the record. Mr. Famolare made a motion to approve said Findings. Mr. Hathaway seconded the motion and the vote was unanimous.

**3) 130103 Boughton Hotel Corp, d/b/a The Colony Hotel – Site Plan Review – Public Hearing** – for approval to increase the ceiling height in four guests rooms on the ground level of the Galland House and to make the heights conform to current building and safety codes. [140 Ocean Ave., identified as Assessor's Tax Map 08, Block 006, Lot 04 in the Riverfront Zone.]

Mr. Kling introduced the Agenda item. Mr. Ron Otte, Maintenance Manager for the Colony Hotel addressed the Board and gave a brief summary of the Application. Mr. Otte stated the first floor guest rooms of the Galland House currently have a ceiling height of 6 feet 3 inches which is not in compliance with the town regulations. Mr. Otte explained the proposal is to lower the floor of the guest rooms to obtain a ceiling height of 7 feet 7 inches. There is no change in size or use of the building and there will be no impact on the surrounding area, parking or traffic flow, Mr. Otte concluded.

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

Mr. Famolare made a motion to approve the Application. Mr. Fellenz seconded the motion and the vote was unanimous. Mr. Fellenz was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

**4) 130104 Hidden Pond, Phase II, Earth / Sebago Technics, Authorized Agent – Site Plan Review – Public Hearing** – for approval to increase the kitchen and food prep area at the Earth Restaurant by 412 square feet, relocate two sheds and remove one red pine. [354 Goose Rocks Road, identified as Assessor's Tax Map 38, Block 001, Lot 08 in the Free Enterprise Zone.]

Mr. Kling introduced the Agenda item noting this Application was voted complete at the last meeting.

Mr. Steve Doe of Sebago Technics addressed the Board stating per the Board's request; he did some research to the origin of the sheds near the restaurant. Mr. Doe cited a previous Application dated October 1, 2010 asking for "approval to amend a previously approved application to build a 1,952 square foot barn style building; enlarge Septic Field B; and to place small accessory structures on the property". Mr. Doe added he has met with Mr. Werner Gilliam in the Code Enforcement Office and there are permits for the sheds on file.

Mr. Kling opened the Public Hearing. There were no members of the public in attendance. Mr. Kling closed the Public Hearing. Mr. Famolare made a motion to approve the Application. Ms. Conaty seconded the motion and the vote was unanimous. Mr. Kling was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

**5) The Ledges at Ocean Avenue - Lot #8 / Sebago Technics, Authorized Agent – Continued Initial Review** - for approval to relocate septic field location as described on the Subdivision Plan. [Washburn Drive, Tax Assessor's Map 20, Block 004, Lot 03J in the Village Residential Zone.]

Mr. Kling introduced the Agenda item noting the Board has received some additional information from the Applicant.

Mr. Steve Doe of Sebago Technics addressed the Board stating at the last meeting the Board requested the Applicant find a different reserve location for the septic system. Mr. Doe explained they conducted soil tests on ground north of the proposed system and found a better location for the primary system which will enable the previously noted primary location to be used as a reserve location.

The Board members had no further questions regarding the Application. Mr. Fellenz made a motion to find the Application complete. Mr. Famolare seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on March 20, 2013.

~~6) Ivy Three, LLC / Sebago Technics, Authorized Agent – Initial Review for approval of the addition of croquet court, tennis court and parking lot expansion. [Dover Lane / Kings Highway / Endeliff Rd, identified as Assessor's Tax Map 07 Block 013 Lot 01B in the Cape Arundel Zone.]~~ **Removed from Agenda at the request of the Applicant.**

~~7) 130201 KPT Ventures d/b/a The Cape Arundel Inn / John Einsiedler, Authorized Agent – Site Plan Review – Initial Review – for approval to remove a window, replace it with a door and metal egress stairs on the east side of the building in the back. [208 Ocean Avenue, identified as Assessor's Tax Map 07, Block 012, Lot 04 in the Cape Arundel Zone.]~~ **Removed from Agenda at the request of the Applicant.**

**8) 130202 Arthur Holdsworth and Susan Applegate / Didonato Architects, Authorized Agent – Site Plan Review – Initial Review –** for approval to remove a one-story single family dwelling as well as attached deck and replace them with a new two story single family dwelling which will be relocated closer to Westerly and Northerly setbacks, as well as remove paved driveway and replace with grass pavers. [11 Belvidere Avenue, identified as Assessor's Tax Map 35, Block 21, Lot 13 in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item. Mr. Joe Didonato, representing the owners addressed the Board stating the property is in the Goose Rocks zone but is not in the Flood zone or Shoreland zone. Mr. Didonato stated the lot and the cottage are both non-conforming. Mr. Didonato explained they propose to demolish the structure and replace it with a new cottage utilizing the 30% expansion allowance to bring the existing 576 sq. ft. cottage to a new 2-story 1,216 sq. ft. dwelling. The proposal would shift the new building away from the setbacks and remove the paved driveway to be replaced with a 20'x20' parking area composed of grass pavers. All area and volume calculations are included on the site plan, Mr. Didonato concluded.

Mr. Kling asked Mr. Gilliam if he has verified the calculations provided by the Applicant. Mr. Gilliam stated he has done a preliminary check and does not have any questions at this time.

Mr. Famolare made a motion to find the Application complete. Mr. Fellenz seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on March 20<sup>th</sup>, 2013.

#### **Other Business:**

**Public Hearing** - to discuss revisions to the Town of Kennebunkport Subdivision Regulations.

*Public Hearing is postponed until the March 20<sup>th</sup>, 2013 meeting*

**CDMK, LLC Properties/ Mitchell & Associates, Authorized Agent** – New request for extension of approval of a previously approved subdivision and multiplexes based on additional information.

Mr. Kling stated CDMK, LLC Properties has provided new information to the Planning Board and asked to appear for a new request for an extension.

Mr. Hathaway asked as a point of order why this Applicant was put on the Agenda after the Board has voted and denied their request. Mr. Kling explained this is not a reconsideration of a previous Planning Board vote but a new request for an extension on an Application that was approved last September. Mr. Hathaway stated this sets a bad precedent and is not allowed according to the Planning Board's Rules and Regulations and could have the potential to impact the integrity of the Board's future votes.

Mr. Hathaway strongly objected to this item being placed on the Agenda for reconsideration. Mr. Kling reminded the Board this Applicant has provided new information and thus is allowed to present that new information as a new request for an extension. Mr. Gilliam addressed the Board stating it is his understanding a request to reconsider a vote has to be made at the same meeting the vote occurs. Since this is not the same meeting this is a new request, Mr. Gilliam continued, adding that based on the last meeting the Board has asked for additional information. Mr. Hathaway retorted there was nothing about the Planning Board's vote that suggested the Applicant could come back with additional information. Mr. Famolare interjected that normally a reapplication is received by the Board with sufficient time to review before the Applicant appears at a meeting and that this Board has only just received this information yesterday.

Mr. Larry Mead, Town Manager addressed the Board stating he was not present at the last Planning Board meeting but it was his understanding the Board denied the Applicant's extension but the Applicant was asked to come back with new information. Mr. Mead added if that is not the desire of the Board right now then he would suggest postponing this discussion until the next meeting.

Mr. Kling offered to provide some research to help guide the Planning Board procedurally and acknowledged Mr. Famolare's concern about providing sufficient time to review the material provided by the Applicant.

Mr. Kling made a motion to postpone the Board's review for 2 weeks. Mr. Hathaway amended Mr. Kling's motion to extend the review to one month.

Mr. Hathaway stated the reason for extending the timeframe to one month is to allow the absent Planning Board members a chance to attend. Mr. Kling stated he appreciated waiting for fellow Board members but did not see any reason for unnecessarily delaying the Applicant. Mr. Hathaway argued what the Applicant asked the Board for is an extension which was turned down and there are no grounds for them to come in to have their case reheard. Mr. Kling affirmed the Board is not reconsidering a previous vote.

Ms. Conaty stated there was much discussion at the last meeting for the Applicant to submit a draft of a performance guarantee and asked if the Applicant could provide that. Mr. Kling questioned whether or not the Applicant could obtain a draft without further documentation from the Planning Board.

Mr. Andrew Copelotti, of CDMK, LLC addressed the Board stating they are working on getting that information but are in a precarious position.

Mr. Famolare agreed with Mr. Hathaway in postponing the review for 4 weeks.

Mr. Kling explained even if the Applicant is granted an extension they will still have to appear before the Board for approval on the performance bond as well as receive approval from the Town Manager, the Town Engineers and the Board of Selectmen.

The Board voted 4 to 1 in favor of Mr. Hathaway's amended motion to postpone review of this Application for one month. Mr. Kling voted against the motion.

Mr. Kling asked Mr. Mead to request Town Counsel provide some guidance on this matter.

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

**Submitted by:** Patricia Saunders, Planning Board Recording Secretary