

Kennebunkport Planning Board
November 5th, 2014 ~ 7:00 PM
Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, November 5th, 2014. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. David Kling (Chair), Greg Reid, John Hathaway, Peter Fellenz, Helen Conaty, Thomas Boak, Ray Hilwig
Others Present: Amy Tchao, Town Counsel, Werner Gilliam, Town Planner

Approval of Minutes: Mr. Kling deferred approval of the minutes from the October 15th, 2014 meeting until the next Planning Board meeting.

Items:

1. **140801 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan Review – Public Hearing – for approval to construct a new educational, scientific and nature interpretation center with associated site improvements consisting of parking, walkways, landscape and site lighting. [8 Mill Lane, identified as Assessor’s Tax Map 09, Block 01, Lot 12 in the Village Residential Zone.]**

Mr. Kling introduced the Agenda item announcing this is a continued Public Hearing and due to the number of items on the Agenda will limit the time allowed to 1 ½ hours for public comments. In the interest of time Mr. Kling added the Planning Board would defer their deliberation and decision until the next meeting.

Ms. Conaty was absent at the last Planning Board meeting, but stated she has watched the October 15th meeting in its entirety and has reviewed all of the materials submitted on this Application. Mr. Kling stated with that admission he feels confident Ms. Conaty should have voting privileges for this Application. The Applicant and other Board members concurred with Mr. Kling’s decision.

Mr. Kling announced the Board has received a lot of correspondence which has been catalogued by Lisa Harmon in the Code Enforcement Office, a copy of the updated correspondence list will become part of the record.

Mr. Kling acknowledged receipt of letters from the town’s Fire Chief and Sewer Department Superintendent stating his approval of the plans and revisions as submitted.

Mr. Kling asked Mr. Durward Parkinson to first review for the Board the list of documents they have submitted. Mr. Parkinson gave a brief summary of material submitted prior to tonight’s meeting such as:

- Memo from Attorney Ralph Austin detailing the relevant zoning ordinance provisions and how this project complies with each provision of the ordinance
- Letter of support from the Kennebunkport Conservation Trust Board of Trustees
- Information from an archeologist
- Information from the Maine Historical Conservation Commission.

One of the issues that have surfaced from this Application, Mr. Kling stated, is a concern about noise, whether it be from traffic, events, buses, trolleys, or mill operations. Mr. Kling asked the Applicant how many school outings, including buses, would they anticipate with the season spanning from May to October. Mr. Parkinson responded they couldn’t provide an exact number but if you use the guidelines that the mill will only operate a few times a week based on the tide, adding that school is in session in May, June, September and October when the mill will be open. Mr. Reid also added that school bus traffic should only occur during school hours which are roughly 8:00am to 2:30p.m. Ms. Leia Lowry, Director of Education for the Conservation Trust addressed the Board stating they currently only have two groups of children visit the mill two times a year. One of those groups walk to the mill site rather than take a bus, Ms. Lowry added. Mr. Kling summarized there would be 1 or 2 buses a week during school hours and asked if they proposed to restrict the number of events per week as well. Mr. Parkinson replied with not knowing exactly all of the possibilities they wanted to leave that area flexible.

Mr. Kling asked the Applicant to describe the modifications made to the buffer landscaping plan. Mr. Steve Doe responded the planting proposed along the Lombard property line will be evergreens and will supplement the existing vegetative buffer along the other property line. Mr. Reid asked how tall the evergreens were to be. Mr. Doe replied they were to be 6-7 feet tall.

Mr. Kling announced the Board would proceed with the Public Hearing and reminded everyone to speak of items only relevant to this Application and the Land Use Ordinance.

Mr. Kling stated Mr. Parkinson and Mr. Austin have submitted drafts of this Application’s review in accordance with Article 10.10 and invited Attorney Bannon to do the same. Mr. Bannon agreed he would submit a draft as well.

Mr. Peter Warren of West Street addressed the Board to discuss specifically Articles 10.10.B.1.e and 10.10.A.1.e. Mr. Warren provided the Board and Applicant with several photos of the property as it is currently, and a photo with a CAD model image to represent the view of the property if this proposed mill is built. Mr. Warren highlighted the fact that the mill will create a dam in the creek which will have an adverse effect on the fish in the river.

Mr. Warren also raised the issue of noise from the grinding of the mill. Mr. Warren showed a video of a mill grinding using 4 foot diameter stones which he stated are comparable to those in the Application. Mr. Bradbury concurred they would have mill stones of 4 ft. diameter. Mr. Warren showed two videos to the Board of a mill grinding at a noise level of 80 db.

In his materials previously submitted to the Board, Mr. Warren presented numerical comparisons of noise levels from working grist mills with the noise level of the West Street neighborhood. Mr. Warren also informed the Board of the following:

- Sound travels further over water
- People across the river will hear the noise of the mill the same as those next to the mill
- Trees or landscaping do not buffer sound waves.

Mr. Warren concluded his presentation by stating this Application violates Article 10.10.A.1.e which states: "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;".

Mr. Kling asked if there was a noise standard in the town that quantifies what a noise nuisance is. Mr. Gilliam responded the only specific reference to noise levels is in Article 6.16 Sound Pressure Levels in the Land Use Ordinance.

Ms. Alyson Daniels of 4 West Street addressed the Board to oppose approval of this Application citing it will eliminate the beautiful views of the Kennebunk River currently enjoyed.

Ms. Lora McGrath of 2 Oak Street submitted copies of photographs of the property stating the proposed grist mill would interfere with the current use of the area for kayak and paddleboard lessons as well as a popular spot for artists to set up easels for painting.

Ms. Nina Pearlmutter of 13 Locke Street addressed the Board along with her husband Orrin Frink whose cousin ran the mill previously in existence. Ms. Pearlmutter cautioned about the noise the grist mill would make and was concerned about the lack of experienced mill workers available for an antiquated device as well as the explosiveness of the flour dust. All of these items, Ms. Pearlmutter stated would be detrimental to the value of her house and would cause a potential increase in traffic on the road and on the river.

Mr. David Graham, architect, addressed the Board to share some computer generated images of what the property would look like with the proposed grist mill building on site. Copies of the photos Mr. Graham supplied the Board members were also provided for the Applicants attorneys.

The Board members deliberated briefly on whether to continue the public hearing in the hope of concluding that segment of this review. Mr. Kling apologized to the other Applicants in attendance and announced those other Agenda items would have to be addressed at a future Planning Board meeting.

The Public Hearing for the Kennebunkport Conservation Trust continued.

Mr. Vernon Moore of 9 West Street addressed the Board to express his opposition to this Application. Mr. Moore stated education about the mill, history of the river and Kennebunkport are already taking place on the premises without rebuilding a replica for students. Mr. Moore also stated the present parking lot at the Village Fire Station causes serious runoff of rainwater to their property currently.

Mr. Peter Frink addressed the Board stating he is not represented by any lawyers or is a member of the Conservation Trust. Mr. Frink questioned whether the 13 parking spaces included in the Application were adequate based on the number of visitors anticipated.

Ms. Susan Graham of 12 Oak Street addressed the Board and presented copies of a map of the Grist Mill Neighbors, highlighting the Applicant's property with her property. Ms. Graham stated she opposes this Applicant and suggested there is plenty of evidence in the zoning ordinance to provide the Planning Board reason to reject this proposal.

Ms. Jura Litchfield addressed the Board to submit her letter for the record.

Ms. Patty Frink asked the Board to require the Applicant to provide evidence of how they will satisfy the requirements of their hydropower permit from the State of Maine.

Mr. Gordon Ayer addressed the Board in opposition to this Application and suggested the property remain in its current state as a pocket park. Mr. Ayer also suggested an emphasis on the town's long history of boatbuilding would be a better focus of the trust in terms of use for the Mill Lane Park. As a former member of the Planning Board, Mr. Ayer reminded the Board they do not have to approve every Application before them. Mr. Kling commented if any Application fails one part of the requirements of Article 10.10 the Board will have to deny the Application.

Ms. Susan Graham submitted a letter to the Board to be included in the record.

Mr. Brandon Gillard addressed the Board in support of the Application stating the assumption the dock will be removed once the mill is built is not true. As a member of the Trust, Mr. Gillard explained people will have the same access to the water as they have been enjoying on the property.

Mr. Dave Jordan, a board member of the Conservation Trust addressed the Board stating only 10% of the yearly projected budget for this proposal would be raised by any kind of events held on the property.

Ms. Graham offered her opinion that the noise standard should be what the standard is in a residential neighborhood and pointed out events held at the Trust's Headquarters are on 100 acres of land which shields any noise while the grist mill would be located on only 1 ½ acres.

Ms. Pearlmutter addressed the Board to caution them that the benefit to the community if this Application were approved would not outweigh the detriment done to the neighborhood in terms of decreased land valued and increased noise.

The Planning Board took a brief recess.

The meeting reconvened at 9:25pm.

Ms. Patty Frink addressed the Board expressing her concern about overflow parking during town events such as the tree lighting and parades. Mr. Kling responded the Board's discussions and deliberations after the Public Hearing has concluded will include Article 6.9 Off-Street Parking and Loading – Non-Residential.

Ms. Patricia Dugan addressed the Board to share her experience at a mill in Massachusetts where it was quiet enough inside the building with the mill running to carry on a conversation. Ms. Dugan cautioned the public to rely on people's personal experience over a video from the internet.

Mr. Kling opened the rebuttal section of the Public Hearing.

Mr. Ralph Austin addressed the Board stating the three main issues being raised tonight are noise, impact on scenic views and parking. The issue raised about protection and preservation of archeological resources was addressed by the Board of Archeologists who performed an exhaustive study with the Maine DEP, Mr. Austin added.

Mr. Austin offered the following information in his presentation:

- Applicant has submitted three letters prior to this meeting specifically addressing the noise issue
- The problem using YouTube videos is they don't provide any context such as microphone position, sound levels of the microphones or if the mill videoed is in working order
- Information submitted by Mr. Peter Warren is based on a hammer mill from Buehler Mfg.
- The Kennebunkport Conservation Trust is not using a hammer mill.

Mr. Doug Butler, project manager for the Trust gave a brief presentation of building construction, wall ratings for STC (Sound Transmission Classification) and the noise levels of the mill with respect to the neighborhood. Mr. Austin added the Trust did contact mill operators in the U.S. and Europe and found none of them had experienced problems with noise in their areas.

Mr. Parkinson pointed out for the Board two pictures previously submitted showing the view of the property with the mill digitally added.

Mr. Todd Richardson, practicing landscape architect, addressed section 10.10.A.1.n. which states: "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. Richardson advised it is important to consider the notion of movement in the landscape and does not view this Application as having a negative or adverse impact in the overall composition of the landscape.

Ms. Leia Lowry provided the Board with a brief summary of the Trust's Discovery Days program and the Trust in Our Children program which have been running since 2006 and 2008, respectively. Ms. Lowry emphasized the Trust has been working towards the goal of providing the children safe educational opportunities to learn about the town's past so they will carry that understanding into the future.

To address the issue of parking, Mr. Austin referred to Articles 6.9A.7 and 6.9.A.9. which states there shall be 1 space for every 600 sq. ft. of floor area. Using that guideline the required number of spaces would be 7 whereas the Applicant is providing 13 spaces, Mr. Austin concluded.

In discussing the issue of danger from a flour dust explosion, Mr. Austin provided information from Bud Warren of the Tide Mill Institute and Jim Kistler from River Heritage which concluded this proposed grist mill would produce a minimum amount of dust. Mr. Gilliam added before any permit was issued an approval from the State Fire Marshall would have to be obtained.

Mr. Kling asked if there would be an issue of flour dust emanating from the building. Mr. Butler replied the building would be fully sprinkled along with an HVAC system to circulate air, adding it would be a fully contained environment that would not allow dust to flow from the mill to adjacent properties.

Mr. Austin reiterated the Trust has consistently maintained the public would continue to have access to launch kayaks or fish from the property. Mr. Doe added in the event of a wedding or other gathering on the property, it would not interfere with the path to access the dock. Mr. Parkinson added there would be no wedding receptions held on the property, just ceremonies where guests would most likely arrive by trolley and there would be no amplified music. Mr. Kling offered there could be restrictions placed if approved to address this issue.

Mr. Fellenz questioned how often the property is being used now for picnicking and other activities besides the launching of kayaks. Mr. Bradbury replied he would say the property has been under used and have consistently tried to find a balance of providing a learning experience in their programming and being sensitive to the neighborhood.

In reference to their October 29th memo, Ms. Conaty asked the Applicant for further feedback on compliance with item #2. Mr. Parkinson responded there was a list of potential education activities provided in the green folder given at the last meeting and assured the Board any activities would be consistent with the Ordinance.

Mr. Kling closed the Public Hearing.

Mr. Kling announced the Board would tentatively schedule their deliberation on the Application for December 3rd, 2014. Town Counsel Amy Tchao suggested the Board asked each of the Attorney to provide proposed Findings of Fact and Conclusions 1 week prior to the December 3rd Planning Board meeting.

2. **Phillip McCabe Revocable Trust / Albert Frick Associates** – Minor Subdivision Amendment –**Public Hearing** – for approval to relocate head of access drive to its original permitted location prior to Ocean Sound Subdivision approval. [260 Ocean Avenue, identified as Assessor’s Tax Map 20, Block 004, Lot 01 in the Cape Arundel Zone.]
3. **Wallace Woods** – Sketch Plan – for review of a proposed nine lot cluster style residential subdivision. [North Street, identified as Assessor’s Tax Map 9, Block 3, Lot 1B.]
4. **Oak Ridge Estates / Albert Frick Associates, Inc.** – Final Plan Application - **Initial Review** – for approval to create a seven lot subdivision off Oak Ridge Road [Oak Ridge Road, identified as Assessor’s Tax Map 39, Block 001, Lot 03 in the Free Enterprise Zone.]
5. **141001 Raymond Shmalo/Shmalo Family LLC**, Site Plan Review – **Initial Review** – for approval to turn vacant retail space located in Units 7 & 8 into two bathrooms to become part of and for the exclusive use of Units 5 & 6, Salt & Honey Restaurant. [24 Ocean Avenue, identified as Assessor’s Tax Map 11, Block 009, Lot 10, Units 7 & 8 in the Dock Square Zone.]

Board Review of Agenda items Number 2 thru 5 were deferred until the next Planning Board meeting on November 19th, 2014.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary