

**Kennebunkport Planning Board**  
**May 2, 2018 ~ 7:00 PM**  
**Kennebunkport Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, May 2, 2018. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Tom Boak (Vice Chair), Mark Messer, Nina Pearlmutter, Neil Higgins, Edward Francis  
Mr. Higgins will have voting privileges for this meeting.

Approval of Minutes: Ms. Pearlmutter made a motion to defer approval of the minutes from the April 4<sup>th</sup>, 2018 and April 18<sup>th</sup>, 2018 Planning Board meetings. Mr. Messer seconded the motion and the vote was unanimous.

Before continuing with the Agenda, Mr. Boak announced there will be a joint Public Hearing with the Board of Selectmen on May 10<sup>th</sup>, 2018 with regards to the proposed amendments to the Land Use Ordinance. Mr. Boak added there needs to be a minimum of three members of the Planning Board present at that meeting.

Items:

1. **180202 Seaside Hotel Associates, d/b/a The Nonantum Resort** – Site Plan Review – **Continued Deliberations**– for approval to tear down an existing garage and storage building, replace with a new storage building and clean up the parking plan. (95 Ocean Avenue, identified as Assessor's Tax Map 8, Block 001 Lot 13 in the Riverfront Zone.)

Mr. Boak introduced the Agenda item.

Mr. Gilliam passed out to the Planning Board members copies of a draft Findings of Fact for the Board to review.

Before reading through the draft Findings of Fact, Ms. Pearlmutter asked Mr. Messer how he resolved the issue that this is basically two lots in two different zones where the Applicant is taking parking spaces that were previously approved in the Riverfront Zone and putting them into a residential lot and expanding a non-conforming use.

In response to Ms. Pearlmutter's question, Mr. Messer read the draft Findings of Fact beginning with Item #2 which states: "*The property is comprised of two separate lots. The location of the resort is 95 Ocean Avenue, Kennebunkport, Maine. It is identified as Map 8, Block 1, Lot 13, and is in the Riverfront Zone. The location of the other lot, which is the focus of the application, is across the street from the resort, at 98 Ocean Avenue, and is identified as Map 8, Block 9, Lot 10. It is divided by two zones, the Village Residential Zone, with part of it in the Shoreland Zone.*"

Mr. Boak commented that the whole parcel of 98 Ocean Avenue is in the Village Residential Zone and the Shoreland Zone is an overlay zone.

Mr. Messer continued reading the draft Findings of Fact, and the Board members focused their discussions on Items #8 and #9 which state:

8. *The Planning Board considered the historical use of the Nonantum, in particular the two lots having served as functionally dependent upon each other for many decades. The resort has had parking, storage, and employee housing across the street and the Planning Board determined that the two lots could be considered one in terms of the past overall use of parking for guests and employees. The overall impact of the additional parking, on the property as a whole, would not have an adverse impact on the environment or on neighboring properties. The Planning Board further concluded that the impact would be less, given the removal of parking spaces directly along the river bank of the Kennebunk River. The lack of public commentary was another consideration in this decision.*

9. *As private parking is not a permitted use in the Village Residential Zone (LUO Article 4.3), and cannot be expanded, the Planning Board's conclusion is that this plan would not be an expansion. It would be a transfer of established parking spaces on the property."*

Mr. Boak commented there should be a notation in the beginning of the Findings that identifies the representative of the Applicant and makes reference to the property deed.

Ms. Pearlmutter suggested there should perhaps be a statement included that explained the rationale for removing parking spaces on one parcel in the Riverfront Zone and adding them to a non-conforming parcel in the Village Residential Zone that is essentially an expansion of a non-conforming use. Mr. Messer explained he did not view the proposal as an expansion since the parking considered the two properties as a whole historically.

Mr. Gilliam offered his recollection of past Planning Board discussions on this matter was that the relocation of parking spaces that are non-conforming due to the setback versus parking spaces that are non-conforming due to the zone. Mr. Gilliam continued that the Planning Board is charged with making a judgment on the adversity of the situation and must determine which situation the Board deems to be less onerous.

One question to ask is why is it more important to eliminate parking that is directly on the river with virtually no setback into a location that meets the setback requirement but by virtue of the zone does not allow the expansion, Mr. Gilliam concluded.

Mr. Francis offered his opinion that this Application is not comprised of two separate lots because the Application is specifically for 98 Ocean Avenue not for 95 Ocean Avenue.

The Board members had a brief discussion on Mr. Francis' suggestion and Article 8.8 Non-Conforming Uses in the Land Use Ordinance.

Mr. Gilliam reminded the Board members in the Application there is a copy of the previously approved parking plan that encompassed the two properties and that having a reference to that piece is an important component.

Mr. Boak offered his opinion that the key to this Application is the fact that the overall parking plan is grandfathered.

Mr. Gilliam offered the Board members if they would find it helpful if the Applicant provided a revised cover sheet that listed both properties as part of the Application. Ms. Hewitt-Gordon agreed to provide a revised cover sheet.

Mr. Messer agreed to amend the Findings of Fact and bring a final draft to the next Planning Board meeting on May 16, 2018. Mr. Boak instructed all Board members to submit any specific language you think should be included in said Findings directly to Mr. Messer.

The Planning Board members agreed to wait until the next Planning Board meeting to review the final draft of the Findings of Fact and to vote on approval of the Application at that time.

2. **180301 David McCullough / Walsh Engineering Associates, Inc., Authorized Agent on behalf of David McCullough - Site Plan Review – Findings of Fact** – for approval to create a private road over a tributary to serve the back lot on the property. The property is located at 97 Goose Rocks Road, identified as Assessor's Tax Map 16, Block 003 Lot 07 in the Farm and Forest, Shoreland and Resource Protection Zones.

Mr. Boak read the Findings of Fact into the record. Ms. Pearlmutter made a motion to approve said Findings. Mr. Messer seconded the motion and the vote was unanimous.

3. ~~**80201 Binnacle Hill Phase 2 / Terradyn Consultants, Authorized Agent – Preliminary Subdivision Review – Public Hearing**~~ for approval of a thirteen (13) lot cluster subdivision on 24.78 acres. (Henchey Way, Map 41, Block 2, Lot 8 in the Goose Rocks, Shoreland and Resource Protection Zones.) **At the request of the Applicant, Public Hearing continued to the May 16, 2018 meeting.**

**Other Business:** Discussion about court decisions relating to Grist Mill.

Mr. Gilliam explained copies of the Supreme Court decision and the Superior Court decision were sent to the Board members prior to this meeting in regards to the Grist Mill Application. After speaking with Town Counsel Amy Tchao, Mr. Gilliam stated it was Attorney Tchao's opinion that the Board needs not take any further action regarding this Application. Mr. Gilliam asked the Board members if they felt the Planning Board should issue a formal denial of the Grist Mill Application in agreement to the Court's decision.

The Board members had a brief discussion whether Justice Douglas' conclusion that "The Board's decision will be vacated and the matter remanded to deny the application" requires a further denial by the Planning Board.

Mr. Messer made a motion that based on the Court's decision to reverse the Kennebunkport Planning Board's decision to approve the Application of the Kennebunkport Conservation Trust to build a grist mill (Case #150401), the Planning Board agrees with the Court's decision and denies said Application. Mr. Mahoney seconded the motion and the vote was unanimous (5-0).

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

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