

Kennebunkport Planning Board
August 5, 2015 ~ 7:00 PM
Kennebunkport Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, August 5th, 2015. 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, Ray Hilwig, Thomas Boak

Approval of Minutes: Mr. Reid made a motion to approve the minutes from the July 15th, 2015 and July 22nd, 2015 Planning Board meetings. Ms. Conaty seconded the motion and the vote was unanimous.

Items:

1. **Wallace Woods** – Final Subdivision Review – **Findings of Fact** - for approval of a proposed nine lot cluster style residential subdivision. [North Street, identified as Assessor's Tax Map 9, Block 3, Lot 1B.] *David Kling, Case Manager*

Mr. Kling read the Findings of Fact into the record. Ms. Conaty made a motion to approve said Findings. Mr. Hilwig seconded the motion and the vote was unanimous. Mr. Reid was recused from voting and signing said Findings.

2. **150601 Kennebunk Kennebunkport & Wells Water District** – Site Plan Review – **Public Hearing** – for approval to install 750' of new 12-inch water main, to be located within the existing Ocean Avenue public right-of-way. Two areas of the proposed work are within Resource Protection.

Mr. Kling introduced the Agenda item noting this meeting is for a Public Hearing and asked the Applicant to provide a brief summary of the project.

Mr. Don Gobiell, Technical Manager for the Kennebunk Kennebunkport & Wells Water District addressed the Board stating the owner of 255 Ocean Avenue has contacted the Water District to pay for the 765-foot extension of the 12-inch main to service their property. Mr. Gobiell added the water main itself will be located within the Ocean Avenue footprint but has two crossings into the Resource Protection Zone.

Mr. Kling asked if the Applicant has obtained Maine DEP approval. Mr. Gobeil replied they did complete a Permit-By-Rule for the DEP.

Mr. Kling asked what would happen if once the pipe is installed other abutters want to tie into the line. Mr. Gobiell explained there is a stipulated 10 year contract that states anyone who wants to tie into the line has to pay a prorated portion of the installation cost of the line.

Mr. Kling opened the Public Hearing. There were no comments or questions. Mr. Kling closed the Public Hearing.

Mr. Hilwig 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.

3. **150701 Lora McGrath** – Site Plan Review – **Initial Review** - for approval to construct a riprap revetment to stabilize the shoreline of the property in two areas of erosion. [2 Oak Street, identified as Assessor's Tax Map 9, Block 001 Lot 8 in the Village Residential Zone.]

Mr. Kling introduced the Agenda item. Mr. Silas Canavan of Walsh Engineering addressed the Board explaining the Applicant's existing shoreline is severely eroding and provided photos of the areas to be stabilized to prevent further erosion. Mr. Canavan further explained to keep the Applicant's lawn from disappearing into the river they will build 90 linear feet of stone revetment. More details of the construction of the revetment were provided on the plans submitted with the Application.

Mr. Canavan added there should not be any visual impact from the riverside and they have received an Army Corps of Engineers permit along with a Tier 3 NRPA permit. Mr. Kling asked the Applicant to provide copies of those permits as part of the Application. Mr. Canavan agreed.

Mr. Kling asked what the life expectancy is of the revetment. Mr. Canavan replied that none of this type of work will last forever but the hope is it will last approximately 20-30 years.

Mr. Kling asked Mr. Gilliam if the town had any issues with this Application. Mr. Gilliam replied the town had no issues at this time.

Mr. Reid made a motion to find the Application complete pending receipt of copies of the DEP and Army Corps of Engineers permits. Ms. Conaty seconded the motion and the vote was unanimous. Mr. Kling announced a Public Hearing would be held at the next Planning Board meeting on August 19th, 2015.

4. **150702 Andrew & Ellen Leinoff / Graham Architects, Authorized Agent** – Site Plan Review - **Initial Review** – for approval to remove and relocate a portion of the existing driveway located within 50' of the coastal wetland and to add 420 square feet of driveway

between the 50' and 75' setback to the coastal wetland. [8 Skipper Joes Point Road, identified as Assessor's Tax Map 31, Block 003 Lot 18 in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item.

On behalf of the Applicants Mr. David Graham addressed the Board stating this proposal is to remove and relocate a section of the driveway closer to the 50-foot setback. Mr. Graham added he received a Permit By Rule from the Maine DEP and provided a copy of such for the Board.

Mr. Reid asked if the Applicant is removing the garage from the existing house. Mr. Graham replied Yes, the Applicants want to build a good size garage with storage and will turn the existing garage into storage space.

Mr. Kling asked when the house was originally built. Mr. Graham responded he believes it was first built in the early 1980's.

Mr. Kling asked Mr. Gilliam if he had any issues or comments. Mr. Gilliam replied the Application is clear that the Code Enforcement Office can give permits for the driveway construction up to 75 feet and the Applicant is here tonight because of the area within the 50-foot setback.

Mr. Hilwig asked the Applicant what would become of the existing garage. Mr. Graham replied it will be converted into living space.

There were no further questions or requests from the Planning Board members for additional information.

Mr. Fellenz made a motion to find the Application complete. Mr. Hilwig seconded the motion and the vote was unanimous. Mr. Kling announced a Public Hearing would be held at the next Planning Board meeting.

5. 150401 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan Review – Continued Public Hearing
– for approval to construct a Community/Museum/Education Center/Building (Mill) with associated site improvements consisting of refining parking lot, walkways, landscaping 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 stating this is a continued Public Hearing from the last Special Planning Board meeting solely for the purpose of hearing the final statement of the Applicant. Mr. Kling informed the audience at this session the Board can ask the Applicant questions.

Attorney Durward Parkinson addressed the Board stating he understands the purpose tonight is to give their rebuttal to comments from the Public Hearing and cited the following topics to be addressed during this meeting, such as: scenic vistas, noise, dust, explosions, marine life, parking and traffic.

Mr. Parkinson introduced Tom Bradbury, Executive Director of the Kennebunkport Conservation Trust along with Attorney Ralph Austin, both of whom would be giving a presentation at this meeting.

Mr. Bradbury addressed the Board stating the Trust has done their best to keep this project within the context of the many other projects the Trust has undertaken. Mr. Bradbury added the Trust has worked cooperatively, cordially and successfully with neighbors and has tried to engage everyone to come to a compromise.

Mr. Bradbury then read a prepared statement into the record to address issues from abutters and opponents of this project. A few of the items addressed in his statement are:

- The proposal is to build an original mill that is approximately 800 sq. ft.
- The mill will not obstruct the view of the river
- The mill will have the distinction of being the only working tidal mill in the country
- The grinding of grain is for demonstration purposes and the Trust is confident that dust or noise will not disturb the neighbors
- There are several of Clem Clark's tools and pieces on display in the boathouse along with items from the vessel *Regina*
- There are organized trips every year with school children to the boathouse
- Out of respect to the surrounding neighborhoods, there are no signs on the building as there are no signs marking any of the trails on Trust properties or to the island lighthouse
- The Trust does not keep a full time employee on the site to monitor parking as the cars that are there are generally related to launching kayaks

Mr. Bradbury concluded his statement saying the grist mill site will remain a park and the addition of the mill will only enhance it and add to the character and beauty of the community.

Attorney Ralph Austin addressed the Board to discuss the issue of whether the boathouse is a museum and thus the grist mill would be an accessory building to the boathouse museum.

Referring to Town Counsel's memo dated July 15, 2015, Mr. Austin cited the following: "KCT has received all necessary permits to use and occupy the building in the manner that the KCT has occupied and used it since its final inspection and occupancy permit issued by the CEO

on December 6, 2011.” This statement shows, Mr. Austin continued, that contrary to the opponent’s Attorney’s statement, Town Counsel did not state the Trust has received approvals for a museum.

Mr. Austin also argued that the Planning Board needs to determine how the Trust has been using the boathouse and how that determination is defined in the Land Use Ordinance, adding that the boathouse has met the definition of a museum in the Land Use Ordinance. A museum is defined in the Land Use Ordinance as “A non-profit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in incidental retail sales of items related to its principal purpose.” Mr. Austin added that is exactly what the Trust has been doing with the boathouse since 2010 and showed the Board enlarged photos, also contained in the Application, of items currently on display in the boathouse. Mr. Austin concluded it is the policy of the Trust to keep the advertising of its properties minimal and the museum is open to the public with tours typically given by appointment.

Mr. Kling asked if the Applicant knew how many people have visited the boathouse since 2011. Ms. Leia Lowry, Director of Education responded for educational purposes there are school visits 2-3 times per year with between 30-40 children per visit. Mr. Austin added there is no record kept of how many individual tours have taken place or of the number of tourists who visit. “The building is not a storage building or storage locker”, Mr. Austin concluded.

The next issue Mr. Austin discussed was whether the grist mill constitutes an accessory structure to the boathouse. Mr. Austin stated the boathouse museum is dedicated to educating the public on the history of the boat building and maritime industry of the Kennebunk River and the grist mill will become part of the museum and will be subordinate to the boathouse.

Mr. Parkinson addressed the Board to discuss the topic of scenic vistas. Mr. Steve Doe of Sebago Technics provided enlarged photos submitted on behalf of the Applicant to point out some inaccuracies that were presented by opponents to the Application at previous meetings. Mr. Parkinson added the scenic vistas will be enhanced by the grist mill citing that the mill was the scenic vista and will be rebuilt with the same authentic shape, design and materials; the mill’s scale and design are minimally invasive.

Mr. Parkinson then introduced Mr. Kevin Durkin of Heritage Restorations to discuss the issue of noise, dust, fire and explosions.

Mr. Durkin addressed the Board stating that flour dust is a real concern in an industrial mill. However, Mr. Durkin continued, this is a pre-industrial mill with a modern-day dust collection system. As for noise concerns, Mr. Durkin stated there has never been a concern or complaint from any of the residents at their other mills.

Mr. Bud Warren from Topsham, Maine addressed the Board on behalf of the Applicant to discuss concerns from people in the neighborhood about dust, explosions, fire, and noise. Mr. Warren began his presentation by stating he has studied, written and documented tidal mills for 20 years and is currently president of the Tide Mill Institute. Mr. Warren spoke briefly about his experience stating the abutters concerns about the dangers are understandable but are based on a lack of awareness and a lack of information on traditional pre-industrial tide mills. Mr. Warren added that a mill like the one proposed would not make enough dust to be a danger in terms of explosions and will not have amounts of stored grain as large as those mills in the west with large silos of grain and would also not be a fire hazard to the neighborhood. Mr. Warren concluded that acceptable decibel levels have been submitted by the Trust and mills like the one proposed are not heard inside or at a distance of 25 feet away, adding that the Perkins mill building will be insulated so noise will not travel.

Mr. Kling asked if the sound levels are in fact as low as described might the Applicant consider a sound pressure standard lower than that. Mr. Parkinson responded it has been the Applicant’s approach to be agreeable to any reasonable considerations.

Mr. Parkinson then introduced Mr. Doug Butler to address concerns about noise. Mr. Doug Butler addressed the Board and gave a brief presentation on noise levels in the neighborhood addressing concerns raised by Mr. Peter Warren who submitted ambient noise levels in the area.

Mr. Parkinson summarized the presentation thus far by stating there is a fire suppression statement submitted by Fire Chief Allan Muir, the building will be insulated to further suppress noise of the mill and the water sounds from the undershot wheel are pleasant and will not disturb the neighbors.

To address statements made at previous meetings that the mill will have a major negative impact on marine resources and potentially destroying the ecosystem of the area, Mr. Austin stated the Maine Department of Environmental Protection has thoroughly reviewed this proposal and concluded this “proposed project will not significantly harm fish and wildlife resources”. Mr. Austin read several similar quotes from the Department of Marine Resources and the Department of Inland Fisheries and Wildlife all concluding the same as the Maine DEP.

Mr. Steve Doe then provided the Board with a brief explanation of how the mill will actually work which will not be on a daily basis.

On the topic of functions and uses, Mr. Parkinson stated the Applicant has reduced the functions to be held; limited to only mission related events and will end by 9:00pm. As for parking, Mr. Parkinson agreed the Applicant has reduced the area to 10 parking spaces using grass pavers and will have a turn circle to avoid vehicles backing up and are limited to museum visitors, staff, and school buses. No tour buses will be allowed, Mr. Parkinson added.

Mr. Austin addressed the issue of traffic impact on the neighborhood stating the number of persons that will visit the museum will be relatively small compared to the number of tourists that visit; adding that most visitors who come to the museum are visiting the town as their primary

destination not the grist mill. Mr. Austin added that the Maine DEP had to look at the traffic impact and found the Trust has adequately established a provision on safety and traffic improvements.

Mr. Parkinson thanked the Board for their consideration stating the Applicant believes they have met the legal requirements of the Ordinance and the standards of the Town.

Mr. Kling asked the Board members if they had any questions for the Applicant.

Mr. Fellenz stated that the Applicant is basing their conclusion the boathouse is a museum on the fact that it has been used as one since its approval in 2010 even though there is no mandated application or approval stating such. Mr. Austin agreed adding there is no formal application for a museum and that based on the Code Enforcement Officer's actions the totality is that the town did approve the occupancy and use for the boathouse to be used as a museum.

Ms. Conaty asked if at that time was there any thought given for a separate application for a change of use? After conferring with Mr. Bradbury, Mr. Austin responded there was no thought given to that as a change of use was not required since the town knew the public was going to be using the boathouse which is why the town required certain items such as handicapped bathrooms and fire prevention measures be taken. Mr. Austin added that no permits or approvals were appealed.

Mr. Kling closed the Public Hearing but kept the record open for receipt of draft Findings of Fact to be received from all involved parties. The deadline for receipt of those Findings of Fact was set for August 12, 2015.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary