

**Kennebunkport Zoning Board of Appeals
32 North Street, Village Fire Station
October 27, 2014 @ 6:00 P.M.**

A meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, October 27, 2014. The meeting convened at 6:00 p.m. in the North Street Fire Station.

Members Present: Mr. Christopher Perry (Chair), Paul Cadigan, James Fitzgerald, Wayne Fessenden

Others Present: Sheila Matthews-Bull, Board of Selectmen Representative

6:00 p.m.

1. Attendance

Mr. Perry called the meeting to order and did a roll call of those in attendance.

2. Elect officers

Mr. Perry briefly explained the duties of each officer of the Board and asked the Board members to consider who would like to be nominated for each position.

Mr. Cadigan nominated Mr. Perry as chairman. Mr. Fitzgerald seconded the nomination. The Vote was 3-0 in approval of the nomination. Mr. Perry abstained from voting.

Mr. Perry nominated Mr. Cadigan as Vice-Chairman. Mr. Fitzgerald seconded the motion and the vote was 3-0 in approval of the nomination. Mr. Cadigan abstained from voting.

Mr. Perry nominated Mr. Fitzgerald for Secretary. Mr. Cadigan seconded the motion and the vote was 3-0 in approval of the nomination. Mr. Fitzgerald abstained from voting.

3. Approval of minutes from the April 28, 2014 meeting, as well as any minutes not previously approved.

Mr. Cadigan made a motion to approve the minutes from the April 28, 2014 meeting. Mr. Fitzgerald seconded the motion and the motion passed with a vote of 3-0. Mr. Fessenden was not in attendance at that meeting and abstained from voting.

4. Other business.

Referring to the ZBA Bylaws on the website, Mr. Perry stated there is a missing sentence in Section 2 paragraph C and also suggested that paragraph G in that same section should include mention of the video recording. Mr. Perry asked for a motion to make those two changes to the Bylaws. Mr. Fitzgerald made a motion to amend the Bylaws as previously described. Mr. Fessenden amended the motion to change the wording to state "audio and/or video".

Mr. Perry also brought to the Board's attention that the previous practice of granting variances with a majority of 4 affirmative votes does not apply as the Bylaws are currently written. Mr. Perry explained the Bylaws state a motion is passed with a majority vote; so if there are 5 members present, a majority of 3 could pass a motion. The Board members had a brief discussion whether to adopt the practice of granting variances with a supermajority (meaning a vote of 4 in favor of the motion) and to amend the Bylaws as such or to leave the Bylaws as they are written.

Mr. Cadigan restated Mr. Fitzgerald's previous motion to amend the Bylaws and to add the words "audio and/or video". Mr. Fitzgerald seconded the motion and the vote was unanimous (4-0). Mr. Perry offered to bring these questions to the Town Attorney for clarification.

Mr. Perry provided copies of an article entitled “Zoning Variances Should be the Exception.” The Board had a brief discussion regarding the article.

Town Planner, Mr. Werner Gilliam arrived as well as Mr. Tom Shore, Zoning Board of Appeals member.

7:00 p.m.

5. Seaside Hotel Associates, d/b/a Nonantum Resort / Tina Hewett Gordon, Authorized Agent - The Applicant is seeking a variance to allow construction of a new elevator and staircase so the hotel will meet current codes as well as ADA access. This Variance Application is available for review in the Code Enforcement Office at the Kennebunkport Town Hall. The property location is 95 Ocean Avenue, Tax Map 8, Block 001, Lot 13 in the River Front Zone.

Mr. Perry introduced the Agenda item. The Applicant Tina Hewett-Gordon arrived along with John Einseidler Architect for the Applicant.

Mr. Fessenden acknowledged he stores his boat at the Applicant’s marina and offered to be recused if the Board deemed there is a conflict of interest in his reviewing this Application. After a brief discussion the Board members unanimously agreed there was no conflict of interest in Mr. Fessenden serving on the Zoning Board for this Application.

Ms. Hewitt-Gordon addressed the Board stating in working with Mr. Einseidler, she believes they have a proposal that would make the hotel more ADA compliant and meet the current Code Enforcement requirements as well. This proposal is to add an elevator on the back of the building which encroaches on the setback, Ms. Gordon added.

Mr. Perry asked Mr. Gilliam if there are other reasonable alternate locations to build a new elevator that doesn’t use such a large part of setback. Mr. Gilliam responded the definition of reasonable is too subjective and added the Board should address whether this proposed location has the least impact.

Mr. Einseidler addressed the Board and explained the topography of the site would require blasting in order to create an elevator pit under the building in another location within the setbacks.

Ms. Gordon added they are asking for this variance to be allowed to grow the business and in order to respond to the demands of the market, accessibility is a huge part of this business.

Mr. Cadigan asked if the 40 foot setback was from the property line or the river. Mr. Gilliam replied the 40 foot setback is from the property line.

Mr. Cadigan asked if this building was grandfathered. Mr. Gilliam replied that based on a review of the records; there has not been any construction or expansion of this property that would make it non-conforming; adding that the dimensional requirements that were put forth in zoning were put in after the building was in existence.

Ms. Gordon explained if they tried to build a new elevator where the existing one is now they would lose 3 guest rooms.

Mr. Fitzgerald asked the Applicant if they had any statistics to support the number of guests they would have to turn away if they didn’t make these proposed changes. Ms. Gordon estimated there is a motor coach company that wants to schedule 30 consecutive nights that would translate to approximately \$50,000. Ms. Gordon also added the hotel is currently not able to accommodate many of the transient business due to their lack of handicapped accessible rooms.

Mr. Fitzgerald commented there is no criterion for granting a variance due to the potential negative impact on a business not expanding.

Ms. Gordon explained the requirements of having an elevator accommodate a stretcher and staircases wide enough to allow medical apparatus are less about market share and more about the safety of their guests.

Ms. Gordon asked the Zoning Board to table their decision until she can provide further information to the Board. Mr. Cadigan noted the Public Hearing portion of the meeting was still open. Mr. Perry clarified with the Applicant, they are requesting to suspend further action and discussion for this time and resume at a future date.

Mr. Perry requested all additional information be provided to the Board within 7 days from this date.

The Board unanimously agreed to continue this hearing to the next scheduled Zoning Board meeting on November 10th, 2014. This Application will be placed second on the Agenda.

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

Submitted by: Patricia Saunders, Recording Secretary