

Kennebunkport Planning Board
March 21, 2012 ~ 7:00 PM
Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, March 21st, 2011. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. David Kling (Chair), Gordon Ayer, Leo Famolare, John Hathaway, Greg Reid, Peter Fellenz

Approval of Minutes: Mr. Reid made a motion to approve the minutes from the March 7th, 2011 Planning Board meeting. Mr. Famolare seconded the motion and the vote was unanimous.

Items:

1) Ivy Three Subdivision / Sebago Technics, Authorized Agent – Findings of Fact - for initial approval of a proposed lot division on acreage located on Endcliffe Road/Dover Lane. Identified as Assessor's Tax Map 07, Block 013, Lot 01B in the Cape Arundel Zone. *John Hathaway, Case Manager*

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

Mr. Ralph Austin informed the Board Mr. Steve Doe has submitted the Application to the Code Enforcement Office for Final Review which will appear on the Agenda for the April 18th, 2012 Planning Board meeting. Mr. Austin stated there are no changes in this new Final Application. The Board was in complete consensus to waive a Public Hearing for the Final Review and schedule a final vote at the meeting to be held on April 18th, 2012.

2) CDMK, LLC Properties/ Mitchell & Associates, Authorized Agent - Public Hearing - for re-approval of an original approval of Subdivision and Multiplex consisting of 2 multi family-unit lots totaling 12 dwelling units and 34 duplex lots for a total of 80 dwelling units, located between North Street and School Street. There will be no changes to the original approval and the Applicant is only looking for an extension of the original approvals. [49 & 51 North Street, Tax Assessor's Map 12, Block 005, Lots 21, 21A & 22 in the Village Residential & Free Enterprise Zones]

Mr. Kling introduced the Agenda item stating this is a re-approval and noted it states in the Subdivision regulations a requirement that substantial construction be completed within 5 years of approval. Mr. Kling stated there were some conditions added regarding the Planning Board's review of the details of the Performance Guarantee. Mr. Kling reminded the Applicant that those conditions along with the original conditions of the initial approval would still persist.

Mr. Hathaway asked the Applicant to provide the Board with an update. Mr. Tom Macone of CDMK, LLC Properties addressed the Board stating the 18 month appeal process after the initial approval left little time to secure financing during an economic downturn. Mr. Macone explained the economy is beginning to turn and he expects to begin construction within months of final approval.

Mr. Kling opened the Public Hearing.

Ms. Andrea Mabee, an abutter, addressed the Board to ask if the Applicant has re-applied, and if so, if the Application is exactly the same as the initial Application. Mr. Kling responded this Application is a re-approval so all aspects of the proposal are the same as required by the Land Use Ordinance. Mr. Gilliam added the complete Application is available in the Code Enforcement Office for review by the public.

There were no further comments from abutters or the general public. Mr. Kling closed the Public Hearing.

Mr. Reid made a motion to approve the Application. Mr. Famolare seconded the motion.

Mr. Ayer stated his opinion that the Board is overlooking its statutory obligation to fully review the Applicant's financial capacity.

Mr. Hathaway asked Mr. Ayer if tabling this approval until the Applicant provides further information would satisfy his concerns. Mr. Kling reminded the Board of Article 13 – Performance Guarantees and of the condition added to the original Planning Board approval found in the recorded Findings of Fact.¹

Mr. Ayer reminded the Board that under Article 13.1, the Applicant is obligated to provide the town with the following:

Types of Guarantees.

With submittal of the application for final plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover 125% of the total estimated (such estimates to be approved by the town based on a recommendation of the town's consulting engineer and other applicable agents and employees of the town) construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

- A. *Either a certified check payable to The Town of Kennebunkport or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;*
- B. *A performance bond payable to The Town of Kennebunkport issued by a surety company, approved by the municipal officers, or town manager;*
- C. *An irrevocable letter of credit (see Appendix B for a sample) from a financial institution establishing funding for the construction of the subdivision, from which The Town of Kennebunkport may draw if construction is inadequate, approved by the municipal officers, or town manager; or*
- D. *An offer of conditional approval limiting the number of units built or lots sold until all requirement improvements have been constructed.*²

Mr. Hathaway made a motion to postpone voting on this Application for one month until the Planning Board receives from the Applicant more evidence of financial capacity. Mr. Hathaway's motion obviates Mr. Reid's motion of approval.

The Board members had a lengthy discussion on Mr. Hathaway's motion.

Mr. Ayer seconded Mr. Hathaway's motion, citing Article 13.2 of the Subdivision Regulations which states: "*The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the Town of Kennebunkport shall have access to the funds to finish construction.*"

Mr. Macone addressed the Board stating he has been very open and forthcoming during this process and that it is difficult to procure financing without an approval from the Town.

The Board voted 3-2 in favor of Mr. Hathaway's motion. Mr. Kling and Mr. Reid opposed the motion.

3) 010202 Lauren Guptill, Rococo Ice Cream – Site Plan Review – **Public Hearing** – for approval to open an ice cream shop in a retail space that most recently housed a barber shop. [6 Spring Street, Unit 3, Tax Map 11, Block 002, Lot 06A.]

Mr. Kling introduced the Agenda item. Ms. Lauren Guptill addressed the Board stating she is hoping to open an ice cream shop at 6 Spring Street to sell homemade ice cream.

Mr. Reid asked the Applicant what her intention was for seating on the premises. Ms. Guptill responded there may be a 4 person bench inside but the space is too small for any further seating inside. Ms. Guptill added there is a bench outside the premises that may be used as well.

Mr. Famolare asked about receptacles for trash. Ms. Guptill replied there will be trash receptacles inside and could place one outside if necessary.

Mr. Ayer asked if the brick area next to the coffee shop will be used as a seating area. Ms. Guptill responded she is not sure if that area will be accessible but it is not part of her retail space.

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

Mr. Ayer made a motion to approve the Application as submitted subject to the condition that the Applicant provides appropriate trash receptacles at her own expense. Mr. Famolare 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 on April 4th, 2012.

4) 111101 John & Jeannie Scollins / Doyle Enterprises, Authorized Agent – Site Plan Review – **Continued Initial Review** – for approval to remove the existing one story cottage and replace it with a new two story cottage in a different location to make it more conforming to setbacks. [11 Harwood Drive, identified as Assessor's Tax Map 21, Block 005, Lot 25 in the Cape Porpoise West Zone.]

Mr. Kling introduced the Agenda item and acknowledged receipt of the following correspondence:

- Legal opinion dated January 31, 2012 as requested by Brian Shaw
- Memo from Brian Shaw dated February 24, 2012
- Revised Application dated March 7, 2012 including correspondence from several abutters mostly in support
- Comments from Applicant in an Email dated March 19, 2012.

Ms. Diane Doyle, representing John & Jeannie Scollins addressed the Board stating she submitted a packet in February in response to Mr. Shaw's memo. Mr. Shaw's memo contends that Article 8.3.b.1 states that an accessory structure cannot be included in the calculations for the percentage volume increase. Mr. Kling stated he received a message from the Town Manager, Larry Mead who will ask the town attorney for a legal opinion on the matter.

Mr. Kling asked Mr. Werner Gilliam if he was in agreement with the calculations provided. Mr. Gilliam replied the numbers as presented are a factual interpretation of what is currently on the property.

Mr. Gilliam provided further clarifications on a number of items in Mr. Brian Shaw's February 24th memo and the Applicant's response to said memo. Some of the items discussed were:

- The propane tank location does meet the front setback.
- The metal galvanized egress wells violate the side setbacks. Ms. Doyle responded those could be eliminated if needed.
- There is one masonry step to grade that is in the setback area. Mr. Gilliam suggested grading the front yard to make up for 7 inches so that the single step would meet the setback.
- Mr. Gilliam stated the Applicant has not provided the final elevations and grades after the septic is put in.

The Applicant stated there will be a net of 17 cubic yards of fill on the site. Mr. Reid and Mr. Gilliam questioned whether the amount of fill to be added is realistic.

Mr. Ayer made a motion to find the Application complete. Mr. Famolare seconded the motion and the vote was unanimous. Mr. Gilliam noted that by deeming the Application complete this does not equate that the Board or the Code Enforcement Office agrees with the figures presented.

OTHER BUSINESS

Mr. Gilliam provided the Board with some proposed changes to the Land Use Ordinance and some background information to be reviewed before the town votes on the proposed language in May.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary

¹ “Performance guarantees must be issued to the Town and be in full force and effect for each phase of development prior to the issuance of related permits and the initiation of construction. While performance guarantees do not have to be submitted to the Town before the Final Plan Application or any amendments thereto are approved by the Planning board, all performance guarantees will otherwise comply with Subdivision Regulations Article 13. Performance guarantees will be issued to cover the costs of all required improvements to be constructed in each phase and will include public sewer and water connections as well as the sidewalk connection on North Street. Except for performance bonds covering sewer development, which must be approved by the Board of Selectmen, all other performance guarantees (amount, form, terms, source and timing) must be approved in advance of issuance by the Planning Board and the Town Manager, with input and recommendation from the Town’s consulting engineer.” Kennebunkport Planning Board Findings of Fact for CDMK, LLC Properties, May 18, 2011.

² Article 13.1, Kennebunkport Subdivision Regulations, Revised July 19, 2006.