

**Kennebunkport Planning Board
February 20th, 2013 ~ 7:00 PM
Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, February 20, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

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

Approval of Minutes: Mr. Reid made a motion to approve the minutes from the February 6th, 2013 Planning Board meeting. Mr. Famolare seconded the motion and the vote was unanimous.

Items:

1) 130101 Jane and Glenn Oakley / Harvey Wells, Authorized Agent – Site Plan Review – Public Hearing – for approval to remove an existing one story home and replace it with a new 1 ½ story home in a different location to make it more conforming to setbacks. [66 Langsford Road, Assessor's Tax Map 21, Block 11, Lot 8 in the Cape Porpoise West Zone.]

Mr. Kling introduced the Agenda item noting this Site Plan has been slightly modified since the last meeting.

Mr. Harvey Wells, Architect addressed the Board stating the Applicant has agreed to move the location of the house further back from the Flood Plain in the northern section of the lot. After a discussion with Code Enforcement Officer Brian Shaw, Mr. Wells added the Oakley's have agreed to wait for the new flood maps to be released in order to determine if the building would need to be elevated accordingly. All other aspects of the Application would remain the same, Mr. Wells explained.

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

Mr. Reid made a motion to approve the Application as revised and presented. Mr. Hathaway seconded the motion and the vote was unanimous. Mr. Hathaway was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

2) 130102 Seaside Hotel Associates, d/b/a Nonantum Resort – Site Plan Review – Public Hearing – for approval to expand seating in Heckman's Pub, by relocating a wall between the pub and an adjacent gifts shop, and relocating the gift shop into an unused guest room. [95 Ocean Avenue, Assessor's Tax Map 08, Block 001, Lot 13 in the Riverfront Zone.]

Mr. Kling introduced the Agenda item. Ms. Tina Hewitt-Gordon, General Manager of the Nonantum Resort addressed the Board stating they are proposing to convert an under-utilized guest room into a gift shop in order to expand the pub area slightly. Ms. Hewitt-Gordon explained the expansion of the pub would be within the same building footprint.

Mr. Kling stated during a previous meeting there was some discussion whether the parking area was sufficient for the increase in seating and suggested making a condition of approval that any future expansion would require a revalidation of the parking arrangements from the Planning Board. Mr. Kling noted a parking analysis for this Applicant last occurred in 1995. Mr. Famolare and Mr. Ayer agreed Mr. Kling's proposal is a good compromise. Mr. Reid stated his opinion that there is not sufficient parking presently at the resort.

Mr. Kling opened the Public Hearing. There were no comments from the public. Mr. Kling closed the Public Hearing. Mr. Reid made a motion to approve the Application with the condition that any future expansion requires a revalidation of the parking on the premises. Mr. Famolare seconded the motion and the vote was unanimous. Ms. Conaty was assigned as Case Manager to prepare the Findings of Fact to be read at the Next Planning Board meeting on March 6, 2013.

3) The Ledges at Ocean Avenue - Lot #8 / Sebago Technics, Authorized Agent – Initial Review - for approval to relocate septic field location as described on the Subdivision Plan. [Washburn Drive, Tax Assessor's Map 20, Block 004, Lot 03J in the Village Residential Zone.]

Mr. Kling introduced the Agenda item noting this is lot #8 in The Ledges subdivision.

Mr. Steve Doe of Sebago Technics addressed the Board stating they are looking to amend the subdivision plan for a reserve septic system. Mr. Doe also stated Mr. Werner Gilliam indicated in a letter sent to the Board that the placement of the reserve septic system not be built upon and suggested that included a driveway. Mr. Doe explained if the septic system fails the owners would replace it in the same location as it exists and not in the reserve area.

Mr. Gilliam explained his comments were to provide the Applicant with a couple of options and cited in the subdivision regulations if the septic sites do not meet a certain depth a reserve field is required.

Mr. Kling offered since the Board agrees there is no issue with the location of the primary septic site, the Planning Board make an approval contingent on the Applicant finding a more suitable reserve septic site. Mr. Ayer disagreed with Mr. Kling's suggestion. Mr. Doe

responded he would suggest to his client to conduct more tests on the land to find a better reserve site and then report back to the Planning Board.

4) 130103 Boughton Hotel Corp, d/b/a The Colony Hotel – Site Plan Review – Initial Review – for approval to increase the ceiling height in four guests rooms on the ground level of the Galland House and to make the heights conform to current building and safety codes. [140 Ocean Ave., identified as Assessor's Tax Map 08, Block 006, Lot 04 in the Riverfront Zone.]

Mr. Kling introduced the Agenda item. Mr. Ron Otte, Manager for the Colony Hotel addressed the Board stating he is here to present their proposal for the Galland House located on the corner of Arlington Avenue and Old Kings Highway. Mr. Otte explained the house contains 14 sleeping guest rooms, four of which on the ground floor have a ceiling height of 6 feet 3 inches. Mr. Otte stated they propose to lower the floor of the guest rooms to bring the ceiling height to 8 feet. There is no change in use or occupancy, Mr. Otte added.

Mr. Ayer made a motion this Application is complete and to schedule a Public Hearing. Mr. Famolare seconded the motion and the vote was unanimous. A Public Hearing is scheduled for March 6, 2013.

5) 130104 Hidden Pond, Phase II, Earth / Sebago Technics, Authorized Agent – Site Plan Review – Initial Review – for approval to increase the kitchen and food prep area at the Earth Restaurant by 412 square feet, relocate two sheds and remove one red pine. [354 Goose Rocks Road, identified as Assessor's Tax Map 38, Block 001, Lot 08 in the Free Enterprise Zone.]

Mr. Kling introduced the Agenda item. Mr. Steve Doe addressed the Board explaining the kitchen and food prep area has become too small for the Earth restaurant and is looking to expand that area further back where two shed are currently located. Mr. Doe indicated on an enlarged Site Plan where the sheds are currently located and where the expansion would take place. There would also be minor work on walkways to gain access to the gate but there will be no changes to utilities, Mr. Doe explained. All of the storm water from this area currently goes into the detention pond and it will remain so if this Application is approved, stated Mr. Doe. In conclusion, Mr. Doe added there is one 8 inch caliber red pine that will be removed.

Mr. Kling asked what the total increase in impervious area would be. Mr. Doe responded is 336 sq. ft. Mr. Kling asked what the lot coverage was. Mr. Doe replied it is approximately 12%.

Mr. Kling asked Mr. Gilliam if there have been an issues about this property that the Code Enforcement Office is aware of. Mr. Gilliam replied there was none he was aware of.

Mr. Reid stated he does not recall the two sheds being a part of the original Site Plan approval and asked when they were added. Mr. Doe stated he recalled the sheds were an option during the approval process and the Applicant did have to get a permit from the Code Enforcement Office for the sheds when construction was occurring.

Mr. Ayer made a motion to find the Application of Hidden Pond Phase II for an expansion of the food prep area for Earth restaurant found to be complete. Mr. Reid seconded the motion and the vote was unanimous. Mr. Kling stated a Public Hearing will be held at the next Planning Board meeting on March 6, 2013. Mr. Ayer suggested to the Applicant to provide information on the approval of the sheds at the Public Hearing. Mr. Doe replied he would talk to Mr. Shaw prior to the next meeting.

6) CDMK, LLC Properties/ Mitchell & Associates, Authorized Agent - 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. Mr. Reid noted this is the first extension of the last re-approval.

Mr. Bob Metcalf of Mitchell & Associates addressed the Board stated they are asking for an extension for the re-approval which was granted last fall because they will not be able to begin the road work until the snow melts which would be past the March approval deadline. Mr. Metcalf added nothing has changed in the Application and the performance bond will be issued before road construction begins as required.

Mr. Kling informed the Applicant the expectation would be the Board would see the details of the Performance Bond along with the Town Manager and the Town Engineers. Mr. Metcalf acknowledged the bond would be presented to Mr. Larry Mead in a timely manner as they hoped to begin work in late April or early May.

Mr. Ayer asked the other Board members why the Board would grant this extension, citing the Board has not been provided the information they requested and that the town regulations require the Applicant establish their financial capability. Mr. Kling reminded Mr. Ayer that this request is simply for an extension, not a re-application.

Mr. Kling asked the Applicant if they have submitted a performance bond to Larry Mead, Town Manager. Mr. Metcalf replied they have submitted the information requested to Mr. Mead and had some discussions but have not actually executed the performance bond.

Mr. Kling reminded the Applicant that the last approval was such that the Planning Board would be a part of that discussion. Mr. Metcalf acknowledged that condition and reminded the Board the Applicant would not be able to do anything without having met that condition.

Mr. Ayer added this project has been delayed for 4 years and nothing has happened. Mr. Reid offered his opinion that this is not the time for this discussion as the Applicant is simply asking for an extension. Should the Applicant appear before the Board for another approval then the Board should have this discussion, Mr. Reid added.

Mr. Fellenz agreed with Mr. Ayer's opinion adding he expected by this time to receive from the Applicant some commitment from a financial institution of their capability. Mr. Kling again reminded the Board the last approval stipulated the Planning Board would be a part of the process in reviewing the performance bond.

Mr. Tom Macone addressed the Board stating the information he provided Mr. Mead was to show the financial stability of the CDMK partnership which is not information they would normally provide or wish to make public record. Mr. Macone continued that the approval process has taken 4 years due to the magnitude of the project and the court appeal which delayed the project for 18 months. Mr. Macone stated he is only asking for an extension to go into 2013 and have met with a local bank for the last part of this deal.

Mr. Kling noted in his opinion the relevant sentence for condition of approval is: "Except for Performance Bonds covering sewer development which must be approved by the Board of Selectmen all other Performance Guarantees, amount, form, term, source, and timing, must be approved in advance of issuance by the Planning Board and the Town Manager with input and recommendation from town's consulting engineer." Mr. Kling added the key thing we're talking about is enabling the Applicant to move forward to get the performance bond issued. Mr. Ayer responded the Applicant has had an approval for 4 years and it is not the fault of the Planning Board that the approval has expired.

Mr. Reid made a motion the Planning Board approve the 6 month extension. Mr. Kling seconded the motion. Mr. Reid clarified this is the first extension of the second approval for the Applicant. Mr. Kling added with the Applicant's agreement is the expectation is that within the next 6 month extension the Board will see the issuance of a Performance Guarantee.

Mr. Famolare discussed with Mr. Macone his concern that the Applicant was able to complete the project.

Mr. Kling summarized that given the sentiment of a number of the Board members, if the Board does not see and approve a Performance Bond within the next extension period it will be extremely difficult for this Board to move forward with this Application. Mr. Ayer added that if the Planning Board votes to not extend this approval, there is nothing to prevent the Applicant from resubmitting their Application.

Mr. Metcalf reminded the Board that until the Performance Guarantee is put in place nothing will happen on the property and the town is not impacted at all as the taxes are continuing to be paid on the land. Mr. Macone added that if the extension is not granted tonight what will happen is the financing they have already secured will go away because he does not have a fully approved project.

Mr. Reid asked if the DEP has granted their re-approval. Mr. Macone said he has been given a re-approval from the DEP and the Army Corps of Engineers extended their approval until 2015.

The Board members continued their debate.

Mr. Kling and Mr. Reid voted in favor of the motion to grant an extension. Mr. Famolare, Mr. Hathaway, Mr. Ayer voted against the motion. As Alternate Planning Board members, Mr. Fellenz and Ms. Conaty do not have voting privileges for this meeting. The motion failed.

Mr. Kling made a motion to adjourn. Mr. Reid seconded the motion. The motion failed to pass and the meeting continued.

Mr. Ayer expressed his opinion that the Board has heard repeatedly from the Applicant, nothing has changed and it's time the project moves forward or it doesn't move at all. Mr. Kling agreed with Mr. Ayer with respect it is time for the project to move forward but added the way the project can move forward is to allow enough time.

Mr. Famolare agreed with Mr. Ayer's opinion. Mr. Reid disagreed with Mr. Ayer adding the Applicant stated he was close to issuing a performance guarantee but with tonight's refusal of an extension they won't be able to now. Mr. Kling added it is not likely a financial institution will issue a performance bond without an approval from the town.

Mr. Kling ended any further discussion without the Applicant being present.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary