

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

A regular meeting of the Planning Board was held on Wednesday, March 6, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. David Kling (Chair), Leo Famolare, Greg Reid, Peter Fellenz, Helen Conaty  
Mr. Fellenz and Ms. Conaty will have voting privileges at this meeting.

Approval of Minutes: Mr. Fellenz made a motion to approve the minutes from the February 20th, 2013 Planning Board meeting. Mr. Famolare seconded the motion and the vote was unanimous.

Items:

**1) 130103 Boughton Hotel Corp, d/b/a The Colony Hotel – Site Plan Review – Findings of Fact** – 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.] *Peter Fellenz, Case Manager*

Mr. Fellenz 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.

**2) 130104 Hidden Pond, Phase II, Earth / Sebago Technics, Authorized Agent – Site Plan Review – Findings of Fact** – 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.] *David Kling, Case Manager*

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

**3) The Ledges at Ocean Avenue - Lot #8 / Sebago Technics, Authorized Agent – Public Hearing** - 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 the Application was voted complete at the last Planning Board meeting.

Mr. Steve Doe of Sebago Technics representing The Ledges at Ocean Avenue addressed the Board stating this Application proposes to relocate the septic system to a new site and move the reserve septic system to the formerly indicated primary location.

There were no further questions from the Board. 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 for The Ledges at Ocean Avenue for the relocation of the septic system. Mr. Famolare seconded the motion and the vote was unanimous. Mr. Kling will prepare a memorandum of the Planning Board's decision for the Board members to sign for recordation.

**4) 130202 Arthur Holdsworth and Susan Applegate / Didonato Architects, Authorized Agent – Site Plan Review – Public Hearing**– for approval to remove a one-story single family dwelling as well as attached deck and replace them with a new two story single family dwelling which will be relocated closer to Westerly and Northerly setbacks, as well as remove paved driveway and replace with grass pavers. [11 Belvidere Avenue, identified as Assessor's Tax Map 35, Block 21, Lot 13 in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item noting this Application was voted complete at the last meeting.

Mr. Joe Didonato representing the Applicants addressed the Board stating the property is located in the Goose Rocks Zone but is not in the Shoreland Zone or Flood Zone. Both the lot and the cottage are non-conforming, Mr. Didonato stated.

Mr. Didonato summarized the Application noting the following:

- Lot is 3,123 sq. ft.
- Existing lot coverage is 850 sq. ft. which equates to 27.3% of lot coverage including decks
- Existing cottage is a 24'x24' ranch
- Rear deck is 13'x12' with a corner of the deck only 4 ½ ft. from the lot line
- Propose to remove existing cottage and deck and replace with 1,216 sq. ft. new cottage
- New cottage will meet both left and rear setbacks
- Existing driveway will be removed and replaced with grass pavers
- New parking area will be increased to accommodate 2 cars
- Non-conforming area will be reduced by 50% to 132 sq. ft.

Mr. Kling asked Mr. Werner Gilliam if he has reviewed the Applicant's calculations. Mr. Gilliam explained the 30% expansion calculations are related to those portions of the structure that are non-conforming due to the setbacks. Mr. Gilliam added he had no issue with the calculations provided by the Applicant.

Mr. Reid questioned the Applicant as to why he pursued this course of reconstruction rather than make the new structure completely conforming. Mr. Didonato responded if they were to make the building completely conforming the width of the new building would be 19 1/2 feet which is not enough to create a comfortable living space.

Mr. Kling opened the Public Hearing. There were no abutters or members of the public in attendance. Mr. Kling closed the Public Hearing.

Mr. Famolare made a motion to approve the Application. Mr. Fellenz seconded the motion and the vote was unanimous. Mr. Famolare will prepare the Findings of Fact to be read at the next Planning Board meeting.

**5) 130201 KPT Ventures d/b/a The Cape Arundel Inn / John Einsiedler, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to remove a window, replace it with a door and metal egress stairs on the east side of the building in the back. [208 Ocean Avenue, identified as Assessor's Tax Map 07, Block 012, Lot 04 in the Cape Arundel Zone.]

Mr. Kling introduced the Agenda item and asked Mr. John Einsiedler to verify the correct address for the Applicant. Mr. Einsiedler addressed the Board stating KPT Ventures mailing address is in Louisville, KY.

Mr. Einsiedler asked to divide this Application into 2 sections: first is for an egress stair from the second floor and the second to remove and replace an existing stairwell from the dining room.

Mr. Einsiedler explained after meeting with the Code Enforcement Officer, they decided to add an exterior egress stair from an existing window and hallway and exiting out to the rear parking lot. Mr. Kling asked if this stairwell is necessary to make the building compliant. Mr. Einsiedler replied from a fire and safety standpoint this is to get the building up to code.

Mr. Einsiedler further explained the second part of the Application is to reconstruct an existing stairway out of the dining area which currently does not have a platform or handrails. Mr. Einsiedler demonstrated the stair connects to the restaurant and lobby which is more for an internal benefit for the Inn.

Mr. Reid questioned the benefits of reconstructing the stairwell to the dining area when there is an opportunity to make the building more ADA compliant. Mr. Einsiedler responded it is more for emergency purposes as a second means of egress.

Mr. Kling asked Mr. Gilliam if there was a possibility for the Applicant to increase the lot coverage slightly in an attempt to become more ADA compliant. Mr. Gilliam replied there are a number of potential options that could be looked at; however it is up to the Applicant to look at other locations for the ADA compliance. Mr. Kling suggested the Applicant take Mr. Gilliam's suggestion and come back to the Planning Board with all of the calculations.

Mr. Reid asked if this Application can be amended to just include the fire escape in section one. The Board and the Applicant agreed to amend this Application to only include the exterior egress stairs.

Mr. Fellenz made a motion to find the Application complete. Mr. Famolare seconded the motion and the vote was unanimous.

**6) ~~130203 Thomas & Carol St. Germain~~** – Site Plan Review – **Initial Review** – for approval to remove and re-construct a retaining wall in a different location, rebuild a retaining wall with new material, install and reduce driveway and build a walkway. [~~10 Ward Road Extension, identified as Assessor's Tax Map 21, Block 011, Lot 28 in the Cape Porpoise West Zone.~~] **Removed from Agenda at the request of the Applicant. Will appear on the April 3<sup>rd</sup> Agenda.**

Mr. Gilliam informed the Board they will be receiving shortly a revised site plan with revised calculations for their review before the April 3<sup>rd</sup> meeting.

**7) 130204 Robert T. Murphy / Walsh Engineering, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to reconstruct a seawall that was built under approval of the Planning Board on January 18, 2012 but has since eroded. [115 Marshall Point Road, identified as Assessor's Tax Map 31, Block 003, Lot 07 in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item. Mr. Bill Walsh of Walsh Engineering addressed the Board stating the Board did approve this project roughly one year ago. In that process, the Murphy's were told by the DEP the correct stone size for the seawall should be 3 feet and smaller. Mr. Walsh explained the wall was built last March and by April the wall was beginning to wash out. Mr. Walsh showed photos of the walkway that has been washed out by the water that has come up over the seawall due to the storm events of the past year. Walsh Engineering did the calculations that the rock size should be a minimum of 5 feet in diameter up to 8 feet, Mr. Walsh explained. The new seawall would be higher than before, concluded Mr. Walsh.

Mr. Reid asked how the new wall would be constructed. Mr. Walsh explained they would excavate a trench, put some geotextile fabric in with some riprap and then stack the rocks 2 stones high on that.

Mr. Kling asked where the boulders would come from. Mr. Walsh replied the rocks are from a quarry, most likely from one in South Portland, Maine.

Mr. Reid asked what they would do with the excavated material. Mr. Walsh responded it would be left on the beach.

Mr. Fellenz asked if there is a precedent that Mr. Walsh's remedy will work. Mr. Walsh replied the precedence is the Army Corps of Engineers' manual in which there are mathematical calculations to come up with the rock size taking into account the wave size.

Mr. Walsh added they have applied for a Permit By Rule and expect to hear from the DEP very shortly. Mr. Kling offered his reluctance in scheduling a Public Hearing without receipt of the DEP permit.

Mr. Reid made a motion to find the Application complete pending receipt of the DEP permit. Mr. Famolare seconded the motion and the vote was unanimous. Mr. Kling explained the Public Hearing will be scheduled for the April 3<sup>rd</sup> or April 17<sup>th</sup> Planning Board meeting depending on receipt of the DEP permit.

### **Other Business:**

#### **1) Public Hearing -** to discuss revisions to the Town of Kennebunkport Subdivision Regulations.

Mr. Kling stated Town Counsel has reviewed the proposed changes to the Subdivision Regulations and had one suggestion with respect to Article 13 on Page 65. Mr. Gilliam provided a guideline as to the changes/deletions in the Subdivision Regulations. Mr. Gilliam read the new language for Article 13.1 Types of Guarantees which states: *"With submittal of the application for final plan approval, the applicant shall provide a specific list of infrastructure and other costs for required improvements that are to be covered by a performance guarantee for review by the Planning Board. At the time of final plan approval, the Planning Board, with input from the Town Manager and Town Engineer and/or other applicable agent, shall approve, or approve with required modification, the list of infrastructure elements and other improvement costs that must be covered by a performance guarantee. Following final plan approval, no permits of any kind may be issued nor may any lots be sold until after receipt by the Town Manager, confirmed in writing to the Planning Board, of one of the following performance guarantees for an amount adequate to cover not less than 125% of the total estimated costs of infrastructure elements and required improvements specified by the Planning Board, taking into account the timing and time-span of the construction schedule (including any approved phasing under Section 13.6 below, if applicable) and the inflation rate for construction costs:"*. Mr. Gilliam summarized that the Planning Board's duty is to identify all relevant items that need to be in the Performance Guarantee at the final plan approval process and after final approval has been granted the responsibility falls to the Town Manager and Town Engineer.

Mr. Kling opened the Public Hearing. There were no members of the public present. Mr. Kling closed the Public Hearing.

Mr. Reid made a motion to approve the proposed changes to the Subdivision Regulations. Mr. Fellenz seconded the motion and the vote was unanimous.

#### **2) Kennebunkport Memorial Post 153 (American Legion)–** Request permission to replace ADA ramp (permission to issue permit for reconstruction without full site plan.)

Mr. Gilliam gave a brief summary of the proposal by David Graham on behalf of the American Legion Post 153 to replace an ADA ramp. Mr. Gilliam asked the Board for permission to oversee the project and grant the necessary permits without requiring a formal site plan review.

Mr. Reid made a motion to approve Mr. Gilliam's request. Mr. Famolare seconded the motion and the vote was unanimous.

#### **3) Permission to issue permits related to storm damage repair without full site plan review.**

Mr. Gilliam explained the Town Office has received numerous phone calls over the past few weeks regarding storm damage specifically at Marshall Point and along Goose Rocks Beach. Mr. Gilliam asked the Planning Board for permission to issue permits in relation to the clean-up of said damage as long as the necessary permits are received from the Maine DEP in areas of protective habitats and that the amount of material moved is less than 100 yards.

Mr. Fellenz made a motion to authorize the Town Planner to work with beachfront residents and grant approval for immediate action to restore seawall rocks and other remediation as needed. Mr. Kling seconded the motion and the vote was unanimous.

Referring to a discussion at a previous Planning Board meeting, Mr. Kling noted in the Board's Rules and Procedures there is no specific reference stating a previously denied Application can not appear before the Board at another meeting to present new information. Mr. Reid agreed with Mr. Kling's interpretation that if there are changes to a previously denied Application, the Board can consider those changes. Mr. Gilliam suggested in that instance, the board run through the Application checklist to see if it meets the Planning Board's Criteria for Decision.

Mr. Kling suggested the Board review this process at a future time when there is not an Application pertaining to this discussion on the Agenda. Mr. Gilliam suggested the Board hold a workshop after any applicable Applications have been considered.

**Adjournment:** A motion was made to adjourn, it was seconded and the vote was unanimous.  
**Submitted by:** Patricia Saunders, Planning Board Recording Secretary