

Kennebunkport Planning Board
July 17th, 2013 ~ 7:00 PM
Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, July 17, 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, John Hathaway, Gordon Ayer, Peter Fellenz, Helen Conaty

Approval of Minutes: Mr. Reid made a motion to approve the minutes from the June 19th, 2013 Planning Board meeting. Mr. Famolare seconded the motion and the vote was unanimous.

Items:

1) 130602 Stephen P. Chase – Site Plan – Public Hearing – for approval to remove an existing cottage and replace it with a new cottage and garage at 7 Hayward Drive, identified as Assessor's Tax Map 35, Block 003, Lot 10 in the Cape Porpoise West Zone.

Mr. Kling introduced the Agenda item. Mr. Bob Anuszcwski, representing the Applicant addressed the Board stating the proposal is to remove the existing cottage and build another cottage to bring it out of the flood plain. Mr. Anuszcwski also stated the new cottage would be approximately 1,800 sq. ft. with a small retaining wall roughly 25" high on the rear 75 ft. setback.

Mr. Kling opened the Public Hearing.

Mr. Bill Nickerson addressed the Board to state his approval of the project.

Mr. Tom Gallagan, an abutter addressed the Board and asked where the retaining wall be located. Mr. Anuszcwski showed Mr. Gallagan and the public where on the map the retaining wall would be built. Mr. Gallagan expressed concern the work would aggravate an existing drainage problem. Mr. Anuszcwski responded he would be sensitive to their drainage issues and communicate with the abutters throughout the construction process.

Mr. Kling asked Mr. Werner Gilliam if he had any issues with this Application. Mr. Gilliam responded he had no issue with the Applicant providing a garage driveway access on Cleaves Road. In terms of the drainage issue, Mr. Gilliam suggested the Board require a Lines & Grades Plan showing positive drainage towards Beaver Creek be provided as a condition upon approval.

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

Mr. Reid made a motion to approve this Application subject to receipt of a Lines & Grade drawing. Mr. Famolare seconded the motion and the vote was unanimous. Mr. Fellenz was assigned as the Case Manager to prepare the Findings of Fact to be read at the next meeting on August 7th, 2013

2) 130601 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan – Public Hearing – for approval to re-construct the Grist Mill Museum and Learning Center, which will include an undershot waterwheel. The property is located at 8 Mill Lane, identified as Assessor's Tax Map 09, Block 001, Lot 12 in the Village Residential Zone.

Mr. Kling introduced the Agenda item noting receipt of the following items:

- June 20, 2013 letter from KKW Water District stating there is adequate water supply
- June 3, 2013 letter from Applicant noting several changes in reference to comments made about the parking
- Letter from Attorney John Gannon raising some issues in reference to the Land Use Ordinance and this Application.

Mr. Kling divulged his past involvement with Conservation Trust activities along with Mr. Fellenz's admission of similar involvement.

Mr. Ayer acknowledged that he and his wife are trustees of the Virginia Hodges Summers Foundation that have contributed substantially to the Trust in the past. All admissions of past involvement with the Trust posed no concerns of conflict of interest among the Board members and the Applicant.

Mr. Tom Bradbury addressed the Board and gave a brief presentation about the Trust and its work. Mr. Bradbury announced that a member of the community has given the Trust the funds necessary to build and endow the Grist Mill Museum to replace a piece of our history that was missing. Mr. Bradbury asked the Board for approval on this Application because they "consider the rebuilding of the grist mill as a gift we'd like to give to our town."

Mr. Steve Doe of Sebago Technics addressed the Board to present the permitting process they have been through along with the considerable studies performed on the site. Mr. Doe stated they have received permits from the Maine Department of Environmental Protection, Department of Marine Resources, Department of Inland Fisheries and Wildlife, Maine Historical Preservation Commission, Maine Indian Tribes, Army Corps of Engineers, New England Fisheries and Wildlife, the Kennebunk River Committee and the Board of Selectmen. Mr. Doe explained the rebuilt grist mill will be roughly 5,000 sq. ft. including a 2nd floor and located in the same location as the original grist mill but moved 4 ½ feet inland to accommodate the water wheel. Using several enlarged plans and drawings, Mr. Doe

explained the parking area and access to the proposed building. Mr. Doe then provided a brief explanation of how the mill itself would be operated.

Attorney Darwood Parkinson representing the Trust presented his client's position that this Application is a permitted use as a museum and is not an industrial use. Mr. Parkinson also noted this Application is indeed functionally water dependent.

Mr. Kling asked the Board if they had any questions for the Applicant before he opened the Public Hearing.

Ms. Conaty asked if parking would be prohibited on Mill Lane. Mr. Parkinson replied that Mill Lane is a town road and parking is prohibited.

Mr. Reid stated the Applicant's object for this project is to replicate the old grist mill and asked how this compares in size to the original grist mill prior to the restaurant. Mr. Kling asked how the Applicant calculated the existing lot coverage and what could they do to reduce the size of this project to meet the standard of 20%. Mr. Steve Simcock, Project Manager addressed the Board in response stating they chose to match the size of the building as it was in 1965. Mr. Doe added they analyzed lot coverage as all the land in the highest tide. Mr. Kling asked Mr. Gilliam if he has verified the Applicant's calculations. Mr. Gilliam replied he has reviewed several different iterations and reminded the Board past precedent is those that are over lot coverage either maintain that amount or the Board can request a reduction.

Mr. Kling asked what additional buffering would be along the property and immediate abutters. Mr. Doe responded they would plan a combination of deciduous and evergreen trees, adding there currently is a vegetative buffer.

Mr. Kling asked if the Applicant had an analysis done on the amount of vehicular traffic. Mr. Doe responded the DEP reviewed this and indicated it was not a significant factor. Mr. Doe added there may be a school bus occasionally. Mr. Kling asked if there were any outdoor classes considered. Mr. Doe directed the Board to the large lawn area on the site plan and indicated a small observation area on the river where school children could gather.

Mr. Famolare reminded the Applicant that the building on this property burned down 20 years ago and offered his opinion to preserve the lifestyle that has been the same for the past 20 years.

Mr. Ayer stated his opinion that the town isn't renowned for the grist mill but by our long shipbuilding heritage. Mr. Ayer also cautioned that the aisle width is not 24 feet in accordance with the Land Use Ordinance.

Mr. Reid asked Mr. Bradbury why the boathouse shouldn't be used for a museum of historical artifacts. Mr. Bradbury responded the primary reason is the boathouse is not climate controlled or provides sufficient security for such artifacts.

Mr. Kling opened the Public Hearing.

Ms. Allyson Daniels of 4 West Street abutting the Applicant addressed the Board. Ms. Daniels expressed her concern on the size of the proposed building and the speculation that large events including weddings would be held on the site which could potentially entail 100-200 people gathering.

Ms. Jennifer Stuart, a direct abutter to the grist mill parking lot, addressed the Board to share her opposition to this project. Ms. Stuart gave a brief history of her involvement with the Conservation Trust and her arrival to the town in 1947. Ms. Stuart was very concerned a row of Canadian hemlocks were to be taken down for this project. Mr. Doe reassured Ms. Stuart and the Board they did not intend to remove that row of hemlocks.

Mr. Jim Tardiff of 8 West Street addressed the Board and questioned the reasonableness of building a structure to hold weddings and evening events that have nothing to do with the education of the town's youth.

Attorney John Bannon, representing a list of abutters gave a lengthy presentation arguing the following points:

- This Application is not a permitted use in the Village Residential zone.
- Building a fully functional tidal-powered grain mill is an industrial use.
- Manufacturing and industrial uses are only permitted in the Free Enterprise and Farm & Forest zones.
- The Clark Boathouse is not an accessory structure to the proposed building; it is the only structure on the property.
- The proposed building is not in any way accessory or complementary to the boathouse.
- The grist mill is water dependent but that does not mean anything attached to it is water dependent.
- The DEP states that a structure located next to the water for convenience does not constitute necessity.
- The risk of amplified noise being heard outside the building is unavoidable.

Mr. Bannon cited the following definitions for clarification:

- Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.
- Manufacturing: The making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing.

Mr. David James, 17 North Street and a trustee of the Kennebunkport Conservation Trust addressed the Board in support of this proposal and agrees with Mr. Kling that the proposal must abide by all state, federal and municipal ordinances.

Mr. Lyman Page addressed the Board stating his opinion that he is in favor of the project for educational reasons and preserving the history of the town but believes it is in violation of land use and environmental laws.

Ms. Lora McGrath addressed the Board stating it is a wide and incorrect assumption that the Trust owns the marsh behind the Clark boathouse. Ms. McGrath stated that area is privately owned by herself and a few other private citizens. Ms. McGrath also stated that she is troubled by this project and feels it does not fit in a residential zone.

Ms. Susan Graham of 20 Oak Street addressed the Board to state her opposition to the project. Ms. Graham stressed that having an open lot this close to the center of town that provides public access to the water is a better use for the residents and visitors than the proposed project. Ms. Graham added that even if no structures are approved she has been told the Trust plans to host events on the site and want to point out some adverse impacts the neighbors would face such as loud amplified music, parking, port-a-potties, and excessive alcohol use.

Mr. Kling tried to summarize some of the abutters' and public's concerns as: (1) events, (2) the scope and scale of the building, and (3) whether this is permissible under the Ordinance. Mr. Kling added he would like the Board to get a legal opinion on the permissibility of this type of project under our Ordinance. The Board officially requested that Town Counsel render an opinion on the ordinance issues raised.

Due to the late hour Mr. Kling asked the Board to consider continuing the Public Hearing to the next meeting. Mr. Ayer made a motion to continue the Public Hearing. Mr. Reid seconded the motion. The Board voted 2 to 3. The motion did not pass.

Mr. Kling closed the Public Hearing. Mr. Parkinson objected to the closing of the Public Hearing as there were members of the audience who wished to address the Board but did not.

Mr. Hathaway made a motion to reopen the Public Hearing. Mr. Ayer seconded the motion and the motion passed.

Mr. Brandon Gillard addressed the Board in support of the Trust stating the Trust does not need to hold large functions or host groups at the proposed site in order to sustain itself. Mr. Gillard explained the Trust is very fortunate to have generous donors that pay for the maintenance of the facilities. In closing Mr. Gillard stated the object of the Grist Mill project is to provide an educational facility for the children of the town.

Ms. Susan Edwards addressed the Board and read a letter from Bud Warren of the Tide Mill Institute into the record. A list of mill museums in the U.S. and Canada in support of this project can be found at their website at www.tidemillinstitute.org , Ms. Edwards concluded.

Ms. Jill Page of Oak Street addressed the Board to state her concern with the construction to take place on Mill Lane and feel this small area cannot handle any more development.

Mr. Scott Dombrowski of 3 Pier Road addressed the Board in support of the project.

Mr. Kling closed the Public Hearing. Mr. Ayer made a motion to defer further review of this Application until the next meeting. On behalf of the Kennebunkport Conservation Trust, Mr. Parkinson agreed with this motion. Mr. Famolare seconded the motion and the vote was unanimous.

3) Lakeside 19, LLC /Ocean Sound Subdivision/ Albert Frick Associates, Inc., Authorized Agent, for approval to revise a previously approved three-lot subdivision off Ocean Avenue, to create a four-lot subdivision. [Ocean Sound Lane, identified as Assessor's Tax Map 20, Block 004, Lots 1A, 1B, 1C and 1D, in the Cape Arundel Zone.]

Mr. Kling introduced the Agenda item. Mr. Famolare recused himself from this review.

Mr. Jim Logan of Albert Frick Associates addressed the Board stating this amended subdivision plan is to include lot 4 in the subdivision along with amended on-site septic locations. Mr. Logan stated they have included a stormwater management plan with the Application and conducted water well testing with yields reported as 2 gal./min. Mr. Logan also stated they have included a letter from Kevin Dunbar stating there is adequate water on the site and would be suitable once treated and chlorinated. Mr. Logan stated they also submitted some fire suppression details and have submitted their application to the DEP.

Mr. Reid expressed some concerns about the water quality. Mr. Logan responded that he has spoken with Kevin Dunbar and Mr. Dunbar feels strongly that if you have an adequate quantity of water, which there is in this instance; it can be treated for quality.

Mr. Ayer made a motion to find the Application complete. Mr. Reid seconded the motion and the vote was unanimous.

4) CDMK, LLC Properties/ Mitchell & Associates, Authorized Agent –Request for extension of second re-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, as stipulated by a joint remand by the York County Superior Court. [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 and asked town counsel, Amy Tchao to summarize her letter submitted on July 8th 2013.

Attorney Tchao addressed the Board and summarized her letter previously submitted. Ms. Tchao explained at length the history of the Application and the Planning Board's approvals for extension as it relates to the Subdivision Regulations and the Land Use Ordinance. Ms.

Tchao clarified for the Board that under the current Ordinance the subdivision approval has not yet lapsed, and the multiplex approval has not technically lapsed because the appeal puts a suspension on the time restraint.

Mr. Kling acknowledged the Board's receipt of a draft copy of a performance bond from the Eastern States Insurance Company and asked if that met the town's standards. Mr. Larry Mead responded that if it were to be the actual bond, it meets the needs of getting the first phase of the project completed.

Mr. Kling summarized that the requested action is for the Board to approve the extension under this remand. Mr. Ayer made a motion the Board grant the extension as previously applied for and consider the 180 limitation expiring on September 12, 2013. Mr. Famolare seconded the motion and the vote was unanimous.

Other Business: Final approval of changes to the Planning Board Rules and Regulations.

Mr. Hathaway nominated Mr. David Kling as chairman of the Planning Board. Mr. Famolare seconded the motion and the vote was unanimous.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary