

**Kennebunkport Planning Board  
September 18th, 2013 ~ 7:00 PM  
Village Fire Station, 32 North Street**

A regular meeting of the Planning Board was held on Wednesday, September 18th, 2013. The meeting convened at 7:00 p.m. in the North Street Fire Station.

Members Present: Mr. David Kling (Chair), Leo Famolare, Gordon Ayer, John Hathaway, Peter Fellenz, Helen Conaty  
Mr. Fellenz has voting privileges due to Mr. Reid's absence.

Mr. Kling introduced Mr. John Fraser, Interim Town Manager to the Board and the audience.

Approval of Minutes: Mr. Fellenz made a motion to approve the minutes from the September 4th, 2013 Planning Board meeting. Mr. Famolare seconded the motion and the vote was unanimous.

Items:

**1) 130702 Diane Cullen, - Site Plan – Public Hearing** – for approval to reconstruct a portion of driveway with semi-impervious material to account for additional lot coverage not previously approved. This correction will restore lot coverage to its 2010 status. [37 Pier Road, identified as Assessor's Tax Map 30, Block 001, Lot 10 in the Cape Porpoise East Zone.]

Mr. Kling introduced the Agenda item noting this Application is a correction to restore the lot coverage to its 2010 status.

Attorney Darwood Parkinson along with Mr. Leon Blood, Surveyor, addressed the Board stating this proposal is to reduce the impervious surface within the 75foot setback.

Mr. Kling asked the Applicant to provide a review for the Board of what was on the site prior to the construction and what is being proposed now. Mr. Blood addressed the Board and gave a brief history of the property stating he has prepared some charts to explain the lot coverage. Mr. Blood explained there is a 155 sq. ft. difference between the 2010 plan and 2013. Mr. Blood provided each Board member with pictures of the property showing work done in 2010 and 2011.

Mr. Ayer asked if the granite shown in the 2010 pictures was used to make the granite stairway. Mr. Blood replied he did not believe it was but that granite was included in calculating the 155 sq. ft. difference.

Mr. Kling opened the Public Hearing.

Attorney Ralph Austin, representing John Piasecki addressed the Board stating his client is not opposing this Application. Mr. Austin explained his client does not think the Applicant is including the work done in 2011 with the current proposal. Attorney Austin concluded his presentation by stating his client wants to make sure the Ordinance is being followed and the property is developed as it should be.

Mr. Kling closed the Public Hearing.

Several members of the Board deliberated with Mr. Werner Gilliam about the actual lot calculations in relation to the 75 foot setback. Mr. Gilliam informed the Board he would work with the Applicant to make a clear determination of the property's pre-construction status verifying what is on-site is reduced and demonstrating that the lot coverage is reduced from the 75 foot setback. Mr. Gilliam said he would provide the Board with a memo on his findings.

Mr. Famolare made a motion to approve the Application subject to Code Enforcement verification of the lot coverage calculations. Mr. Ayer seconded the motion and the vote was unanimous. Mr. Famolare was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

**2) 130801 Terrapin Landscaping, Inc. – Site Plan Review – Public Hearing** – for approval to relocate an existing landscaping business and to change the use of the new location from "lobster and seafood processing plant" to "landscaping equipment warehouse". [184 Beachwood Avenue, Assessor's Map 24, Block 001, Lot 14A in the Farm and Forest Zone.]

Mr. Kling introduced the Agenda item. Mr. Michael Corsie addressed the Board and summarized his Application stating he is proposing to change the property from a seafood processing plant to a landscaping equipment warehouse.

In response to a letter submitted by an abutter Mr. Corsie explained there would not be any hazardous materials, pesticides or fertilizers stored on the property as he doesn't use those products. Mr. Corsie continued that he uses a licensed contractor to apply any pesticides or fertilizers at his clients' locations. Mr. Corsie requested that any other conditions in effect for the seafood processing plant be excluded as it does not apply to his business.

Mr. Kling asked Mr. Corsie about his remedy for the abutter's request for a fence between the two properties. Mr. Corsie responded he would install an evergreen privacy screen to block out the neighbor's view of his trucks.

Mr. Ayer is recused from voting on this Application. Ms. Conaty will have voting privileges for this Application.

Mr. Kling opened the Public Hearing.

Mr. Bill Bartlett of 182 Beachwood Avenue addressed the Board and noted his approval of Mr. Corsie planting trees to screen the view from his property. Mr. Bartlett raised his concern in not establishing set hours for the Applicant's business. Mr. Corsie replied he and his crew would be on the property in the morning to load the trucks and return just before dark to unload and park the trucks. Due to the seasonal nature of his business having set hours of operation is not realistic, Mr. Corsie explained.

Mr. Ross Merrow and Ms. Carol Elkington, current neighbors of the Applicant on Whitten Hill Road addressed the Board to express their support of this Applicant. Mr. Merrow and Ms. Elkington both stated Mr. Corsie is a thoughtful and courteous neighbor and has never had an issue with Mr. Corsie or the operation of his business.

Mr. Kling closed the Public Hearing.

Mr. Hathaway made a motion to approve the Application on condition the Applicant closes on the purchase of the property and that the existing conditions of the fish processing plant do not apply. Mr. Fellenz seconded the motion and the vote was unanimous.

**3) The Ledges at Ocean Avenue, LLC - Public Hearing** – for approval to connect the lots to public sewer. [Washburn Drive, identified as Assessor's Tax Map 20, Block 004, Lots 03B – 03H and 03J – 03M in the Village Residential Zone.]

Mr. Kling introduced the Agenda item. Mr. Steve Doe of Sebago Technics addressed the Board stating at the last meeting there was a discussion about capacity and engineering of the sewer line and it is his understanding that the sewer was tested and approved by the Sewer Department but the town does not want to take ownership of the line. Mr. Doe further explained there will be a minimum of a 20 ft. easement to the line and a 40 ft. construction easement that would follow the line both granted to the Town. It was also recommended, Mr. Doe explained, that generators be a requirement for each home and the Applicant has agreed to that as a condition of approval.

Mr. Kling summarized the Board's consensus that a letter be submitted to the Board of Selectmen by the Planning Board recommending a penalty be assigned to the Applicant for installing the sewer line without prior knowledge or consent from the Town. Attorney Ralph Austin, representing The Ledges, respectfully requested a penalty not be assigned as it was KRE that installed the sewer line and The Ledges at Ocean Avenue only developed the lots.

Mr. Kling opened the Public Hearing.

Mr. Ben Midgley, of 17 Rocky Pasture Lane, addressed the Board asking if something goes wrong with the line who is responsible. Mr. Doe replied it would be the responsibility of the home owners and the owners of the land.

Mr. Kling closed the Public Hearing.

Mr. Kling summarized the following conditions:

1. KRE Associates is to grant an easement to the Town
2. Residents of The Ledges must have backup generators installed
3. The Board will make a formal recommendation to not accept ownership of the sewer line by the Town
4. The Board would write a letter to the Selectmen suggesting a review of the permitting process

Mr. Kling made a motion to approve the Application with those conditions as noted. Mr. Ayer seconded the motion and the vote was unanimous. Mr. Kling was assigned as Case Manager and will prepare the Findings of Fact to be read at the October 2<sup>nd</sup>, 2013 Planning Board meeting.

**4) 130802 Town of Kennebunkport / Silas Perkins Park** – Site Plan Review – **Public Hearing** – for approval to make landscaping improvements to the property. [Ocean Avenue, Assessor's Map 10, Block 001, Lot 04 in the Riverfront Zone.]

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

Mr. Werner Gilliam, representing the Town of Kennebunkport gave a brief summary of the proposed improvements to be made to this municipally owned park located in the Riverfront Zone. In terms of providing an opinion in relation to the Ordinance, Mr. Gilliam explained under the Shoreland guidelines it is allowed to have a path granting access to the water that is not subject to setback requirements and can be up to 6 feet in width.

Mr. Kling asked for some guidelines concerning ADA requirements. Mr. Gilliam explained the ADA is a reaction regulation that is primarily complaint-driven and where the Town has provided general access to this area it will be compliant with ADA rules.

Mr. Kling opened the Public Hearing.

Mr. David James addressed the Board stating that Laudholm Farm has had a stone dust pathway for years and it is stable and does not wash away.

Mr. Kling closed the Public Hearing.

Mr. Famolare voiced his opinion that he thinks the park is fine the way it is and feels these changes are unnecessary and costly.

Mr. Hathaway made a motion the Board not approve this Application. Mr. Famolare seconded the motion.

Mr. Gilliam noted that the Board has jurisdiction of the improvements of the project but it does not have any jurisdiction to the improvements of the Right of Way or to place benches. This Application is before the Board because a park is listed as a conditional use in the Ordinance, Mr. Gilliam explained.

After much discussion regarding walkway widths and surfaces, Mr. Hathaway, Mr. Famolare, and Mr. Ayer voted in favor of the motion. Mr. Kling and Mr. Fellenz voted in opposition of the motion. The motion passed and the Application is denied. Mr. Gilliam reminded the Board they would need to develop a Findings of Fact to support their denial noting that aesthetics are not a legitimate reason for denial.

Mr. Ayer made a motion to reconsider the Board's vote on this Application. Mr. Kling seconded the motion. Mr. Kling, Mr. Famolare, Mr. Ayer, and Mr. Fellenz voted in favor of the motion. Mr. Hathaway opposed the motion. The motion passed.

Mr. Gilliam and the Board members discussed specific items to be altered regarding the proposed improvements including removing the cobblestones, reducing the width of the walkway and using a type of grass pavers.

Mr. Hathaway made a motion the Board delay review of this Application until the end of November. Mr. Ayer seconded the motion and the vote was unanimous.

**5) 130601 Kennebunkport Conservation Trust-Grist Mill Museum/ Sebago Technics, Authorized Agent – Site Plan – Continued Review** – for approval to re-construct the Grist Mill Museum and Learning Center, which will include an undershot waterwheel. [8 Mill Lane, Assessor's Tax Map 09, Block 001, Lot 12 in the Village Residential Zone.]

Mr. Kling introduced the Agenda item noting the Public Hearing on this Application was closed at the last meeting and since then the Applicant has submitted a revised plan. Mr. Kling also noted receipt of a letter from Town Counsel dated September 17<sup>th</sup>, 2013.

Mr. Darwood Parkinson, representing the Kennebunkport Conservation Trust addressed the Board stating based on discussions from the last meeting they have made some significant changes to the project.

Mr. Ayer questioned whether the Board could procedurally address the revision or should the Applicant submit a new Application. Mr. Kling stated this is a revised Application. Mr. Parkinson acknowledged they understand there should be another Public Hearing to discuss these revisions. Town Counsel, Amy Tchao consented to allow the Applicant to present a condensed version of the revisions submitted.

Mr. Steve Doe addressed the Board and presented the following revisions:

- Footprint of the building is reduced by 999 sq. ft.
- Only 2 bathrooms in the building
- No kitchen in the building, only a small break room
- Parking spaces were reduced based on the smaller building size
- A large portion of the previous landscaping has been eliminated
- The impervious surface has been scaled to the 20% required
- Will be no wedding receptions allowed, no indoor/outdoor music and all events will be supervised by the Trust.

Mr. Fellenz asked if the smaller building proposed would still obstruct the view from the road. Mr. Doe replied if you are coming down Mill Lane you will still have a view of the water.

Mr. Ayer asked what the dimensions of the building are, how many stories and how high the buildings are. Mr. Doe responded the dimensions are 26x26 and 40x40, 2 stories under 30 feet high. Mr. Ayer cited Article 5.11.b.14 which states "Except in the riverfront and Dock Square Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high waterline of a body of water or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure."

Attorney Tchao addressed the Board to explain her letter submitted to the Board demonstrating there are two lines important to consider regarding this Application: the 100 year Flood line which designates the Resource Protection Zone, and the Shoreland Zone which is the 75 ft. setback line. Ms. Tchao gave a lengthy explanation of her letter highlighting the following:

- Since the former Grist Mill burned to the ground in 1994, there is no grandfathered building as such any new structure would be subject to the current regulations unless it is a functionally water dependent use.
- There cannot be two principle institutional uses on this lot according to the ordinance
- Question whether this will be operated as a museum as defined in the Land Use Ordinance as "A non-profit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in incidental retail sales of items related to its principal purpose".
- A Museum is a conditional use in the Village Residential Zone

In summary, Ms. Tchao charged the Planning Board with determining if the proposed use is functionally water dependent, and does it fit the definition of a non-residential facility.

Based on Attorney Tchao's presentation, Mr. Kling asked the Applicant to consider the suggestions made and provide their revised plans to the Board in time for the Planning Board's November meeting.

**6) 130803 Cape Arundel Golf Club / Pinkham & Greer, Authorized Agent** – Site Plan Review – **Initial Review** – for approval to do shoreline stabilization due to extensive erosion issues in various locations on the property. [19 River Road, identified as Assessor's Tax Map 12, Block 001, Lot 13 in the Village Residential Zone.]

Mr. Kling introduced the Agenda item. Mr. Tom Greer addressed the Board and gave a brief presentation of the project outlining three sections that is in need of stabilization due to erosion. Mr. Greer mentioned they would like to add a fourth area on the river that needs some stabilization as well and have already contacted the Maine DEP regarding that project.

Mr. Greer stated he would submit an amended Application to the Planning Board to include that fourth area on the property to be improved.

Mr. Ayer made a motion to find the Application complete subject to receipt of the future amendments and other approvals previously mentioned. Mr. Hathaway seconded the motion and the vote was unanimous.

**7) ~~130804 David & Jennifer Eaton/Peterson Design Group, Authorized Agent~~** – Site Plan Review – **Initial Review** – for approval to ~~revise a previously approved site plan by reducing lot coverage with an exchange of a previously approved 352 square foot stone patio with a 199.5 square foot deck. [225 Kings Highway, identified as Assessor's Tax Map 34, Block 001, Lot 09 in the Goose Rocks Zone.]~~ **Moved to the October 2nd Planning Board Agenda.**

#### **OTHER BUSINESS:**

Mr. Kling read the Findings of Fact for Terrapin Landscaping into the record. Mr. Fellenz made a motion to approve said Findings. 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