

Kennebunkport Planning Board
April 2nd, 2014 ~ 7:00 PM
Village Fire Station, 32 North Street

A regular meeting of the Planning Board was held on Wednesday, April 2nd, 2014. 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, Peter Fellenz, Helen Conaty
Mr. Fellenz will have voting privileges for this meeting.

Approval of Minutes: Mr. Ayer made a motion to approve the minutes from the March 19th, 2014 Planning Board meeting. Mr. Hathaway seconded the motion and the vote was unanimous.

Items:

1) 140301 The Boathouse at Kennebunkport, LLC / Sebago Technics, Authorized Agent – Site Plan Review – **Public Hearing** – for approval to install a 6' x 60' pre-engineered pedestrian bridge across a tidal channel between the two properties, modify pavement and add walkways at both ends of bridge. [21 Ocean Avenue & 28 Dock Square, identified as Assessor's Tax Map 11, Block 001, Lots 08 and 22 in the Dock Square Zone.]

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

- Letter from abutter objecting to the bridge
- Memo from the Lighting Committee
- Additional information from Sebago Technics dated March 28, 2014

Mr. Steve Doe addressed the Board along with Attorney Ralph Austin on behalf of the owner of The Boathouse at Kennebunkport, LLC stating the purpose of the bridge is to connect the two properties to allow guests and staff to go back and forth across the channel. Mr. Doe offered he would review each item from his letter of March 28th. The items discussed were:

- The channel is empty of water for approximately 5 hours per tide cycle.
- There are 3- 3½ hours of water for a boat to navigate under the bridge.
- Clearance under the bridge is 4.2 feet at high tide.
- The River Committee has approved this project.
- The load rating of the bridge is equivalent to a commercial floor rating and is designed for 100 lbs./sq.ft.
- There are 12 rooms and 3 suites at the Wharfside and the hotel cannot be expanded.
- Area businesses have submitted letters of support for this Application.
- At the request of the Lighting Committee the Applicant has reduced the light levels to below 1800 lumens per fixture and will be tucked underneath the handrail to shine downward.
- There is no liability to the town as it is private property.

Mr. Doe noted the Board of Selectmen had concerns about getting a barge up the channel if needed and the owners agreed, at their expense, to crane up the bridge and haul it out until the barge is out of there.

Mr. Ayer asked what rights the public would have if it is private property on both sides of the bridge. Mr. Doe replied the owners would allow the public to use it, as it would help the pedestrian flow through the village. Mr. Austin added it could certainly be a condition of approval and could incorporate that as a deed covenant.

Mr. Ayer asked if the State was involved in this project. Mr. Doe replied they expect DEP approval soon and have already received approval from the U.S. Coast Guard.

Mr. Kling asked Mr. Gilliam what DEP approval is required. Mr. Gilliam responded the DEP would be looking if any significant wildlife habitats would be impacted and if there are any coastal wetlands impacts such as pilings.

Mr. Ayer asked if this bridge was in an area susceptible to flooding. Mr. Doe responded each end of the bridge is at elevations 11.5 and 9.5 and is not in a flow zone. Mr. Gilliam confirmed the channel that the bridge would traverse is not considered a flow way.

Mr. Kling asked if the town has any authority to ensure the bridge and walkway will be maintained. Mr. Gilliam replied under the State's Life Safety Code the town has authority regarding commercial structures. If the bridge should fall into disrepair, the town would condemn it and it would have to be blocked until it was repaired and deemed safe by a professional engineer, Mr. Gilliam explained.

Mr. Famolare expressed his hesitation in approving this Application since he views the bridge as a convenience to the property owners but not necessarily a convenience to the town.

Mr. Fellenz and Mr. Kling discussed with the Applicant the possibility of painting the aluminum bridge or having a factory coating on the aluminum to make it darker and blend in more to the surrounding area. Mr. Austin assured the Board the Applicant would explore other options to avoid having a bright shiny aluminum.

Ms. Conaty offered her opinion that the liability question is an important consideration and asked if there were any discussions with Town Counsel. Mr. Austin responded he would work with Town Counsel to draft a deed restriction or covenant.

Mr. Ayer asked if the public would have access to the walkway 24/7 – 365 days. Mr. Doe agreed it would be open to the public year round, 24/7.

Mr. Kling wondered if the owner would reserve the right to limit the number of people on the bridge at any one time if it was deemed unsafe and asked if there was a code requirement that addressed that issue. Mr. Gilliam replied there are specific calculations to determine the occupant load and static load capacity. Mr. Kling suggested the Applicant reach an agreement with the town as to the maximum number of people that could be on the bridge at any one time and post a sign indicating such. Mr. Gilliam agreed the Code Enforcement Office could determine a technical standard for the bridge along with the Applicant.

Mr. Kling opened the Public Hearing.

Mr. David James addressed the Board on behalf of Chris Audley who had concerns about the clearance under the structure for kayaks and canoes and the aesthetics of the bridge to complement the character of the town. Mr. James suggested increasing the arch of the bridge similar to the bridge at the Cape Arundel Golf Course. Mr. Doe explained in order to comply with ADA standards the arch of the bridge cannot be increased without building a longer more complex ramp system at each entrance to the bridge.

Ms. Sandra Tynik owner of 18 Dock Square addressed the Board stating it is very rare to see kayakers in the channel and expressed her full support for the proposed bridge to help the flow of pedestrian traffic in the area.

Mr. Ayer asked if there could be some guarantee of the public right of access to the bridge if the ownership changes. Mr. Austin responded he thinks the guarantee of public access and private liability could all be incorporated into one document.

Mr. Kling provided a summary of the following items discussed:

- Guaranteed public access from Dock Square and Ocean Avenue
- Owner maintains responsibility for lifting bridge to allow construction barge access
- Owner will reach indemnification agreement with town for any liability that occurs as result of the bridge
- Owner will reach agreement on maximum occupancy
- Lighting will be per revised Application
- Applicant will use best efforts to achieve a darker color of the aluminum

The Board members discussed the possibility of approving the Application subject to the above conditions and the condition that the Applicant and the Town's Attorney reach an agreement about the language of the indemnity covenant.

Mr. Fellenz made a motion to grant approval subject to the conditions mentioned previously with the understanding that an indemnification agreement is being pursued and agreed upon by all parties. Mr. Kling seconded the motion. The Board members had a lengthy discussion regarding the pending motion. Mr. Fellenz withdrew his motion.

Mr. Kling made a motion to continue the Public Hearing to a subsequent meeting. Mr. Famolare seconded the motion and the motion passed. Mr. Kling, Mr. Famolare and Mr. Fellenz voted in favor of the motion. Mr. Ayer and Mr. Hathaway abstained from voting.

2) Oak Ridge Estates / Albert Frick Associates, Inc. – Preliminary Application – Continued Review - for approval to create a seven-lot subdivision off Oak Ridge Road [Oak Ridge Road, identified as Assessor's Tax Map 39, Block 001, Lot 03 in the Free Enterprise Zone.]

Mr. Kling introduced the Agenda item.

Mr. Hathaway requested a 5 minute recess. The Planning Board meeting resumed at 8:35p.m.

Mr. James Logan of Albert Frick Associates addressed the Board with a revised plan in response to conversations with the Code Enforcement Office and the previous Planning Board meetings. Mr. Logan also stated the revised plan includes the dimensions of each proposed lot along with actual road design on the boundary survey from David Hughes.

Mr. Logan explained he has a list of proposed deed restrictions and conditions from an Attorney and will submit that after they have received word of any significant wildlife habitat exists on the property.

In response to the issue of the open space area, Mr. Logan read the following statement from their Attorney: "The declaration confirms that it is the declarants intent to deed title to this area that this area is to be deeded to the homeowners association for passive recreational use to the owners of the lots in the pending subdivision as well as the owners of the lots in the previously approved subdivision of 1989".

The Board members and the Applicant had a lengthy discussion with Mr. Gilliam regarding the open space requirements and whether the Applicant's proposal met the Subdivision Regulations.

Mr. Logan also stated he has provided utility details in the revised plan and noted there will be no lighting proposed or expected other than on the individual dwellings.

Mr. Logan noted he will provide details of the large specimen trees on the property along with preliminary FEMA flood data. Mr. Logan explained they are in the process of obtaining a DEP Tier 1 permit and will provide details of any significant vernal pools if deemed so by the DEP.

Mr. Kling asked the Applicant to provide information on the homeowner association and the developer's financial and technical capability as well as a revised plan indicating each lot and the open space area as required by the Subdivision Regulations. Mr. Logan responded he would incorporate those items into a revised plan and provide the Board with a new package as soon as possible.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary