

Kennebunkport Planning Board
March 1st, 2017 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A regular meeting of the Planning Board was held on Wednesday, March 1st, 2017. The meeting convened at 7:00 p.m. in the Kennebunkport Village Fire Station.

Members Present: Mr. Peter Fellenz (Acting Chair), Tom Boak, Russ Grady, D. Scott Mahoney, Mark Messer, Nina Pearlmutter

Approval of Minutes: Mr. Grady made a motion to approve the minutes from the February 15th, 2016 Planning Board meeting. Mr. Mahoney seconded the motion and the motion passed with a vote of 4-0. Mr. Messer abstained from voting.

Mr. Grady made a motion to nominate Mr. Fellenz as Chairman of the Planning Board. Mr. Mahoney seconded the motion and the vote was unanimous.

Mr. Mahoney made a motion to nominate Mr. Grady as Vice-Chairman of the Planning Board. Mr. Messer seconded the motion and the motion passed with a vote of 4-0. Mr. Boak abstained from voting.

Items:

1. **170101 Seaside Hotel Associates, d/b/a The Nonantum Resort - Site Plan Review - Findings of Fact** - for approval to add an enclosed hallway as a route of egress from a second-floor room which will be used as occupied space. [95 Ocean Avenue, Assessor's Tax Map 8, Block 001, Lot 13 in the Riverfront Zone.] *Tom Boak, Case Manager*

Mr. Boak read the Findings of Fact into the record. Mr. Grady made a motion to approve said Findings. Mr. Mahoney seconded the motion and the motion passed with a vote of 4-0. Mr. Messer abstained from voting.

2. **170104 Linda Nash / Eco-Analysts, Inc., Authorized Agent – Site Plan Review – Public Hearing** – for approval to install a new dock consisting of an access landing, permanent pier and a seasonal ramp and float. [8 Church Street, identified as Assessor's Tax Map 11, Block 002, Lot 13 in the Village Residential, Shoreland and Resource Protection Zones.]

Mr. Fellenz introduced the Agenda item.

Mr. Bud Brown of Eco-Analysts addressed the Board stating this Application is to install a 50-foot pier with a 4-foot walk-up, a 36-foot long ramp, and a 10'x20' float that will be resting on the mudflats. Mr. Brown added the pier is well within the 1/5 rule and meets all of the conditions of the Land Use Ordinance.

Mr. Fellenz asked the Board members if they had any questions for the Applicant prior to opening the Public Hearing.

From viewing the Site Plan, Mr. Messer commented the property appears to have over 60 feet of water frontage and asked if the exact amount of frontage could be provided to the Board to be included in the Findings of Fact. Mr. Brown agreed to provide that information to the Code Enforcement Office.

Mr. Fellenz opened the Public Hearing. There were no comments or questions from the audience in attendance. Mr. Fellenz closed the Public Hearing.

Mr. Mahoney made a motion to approve the Application as presented. Mr. Boak seconded the motion and the vote was unanimous. Mr. Grady was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on March 15th, 2017.

3. **170105 Tidemark Corporation / Eco-Analysts, Inc. Authorized Agent – Site Plan Review – Public Hearing** – for approval to do a maintenance dredge to remove approximately 1,800 cubic yards of sediment to restore adequate access depths at the marina. The Applicant also is requesting approval to construct a sheet pile wall that will tie into the existing wall. [75 Ocean Avenue, identified as Assessor's Tax Map 08, Block 001, Lot 22 in the Riverfront Zone.]

Mr. Fellenz introduced the Agenda item and asked which marina this Application was for. Mr. Bud Brown of Eco-Analysts addressed the Board stating this Application is to dredge at Chicks Marina which would allow the use of the launch ramp at all tides. Mr. Brown added they expect to have the Maine DEP and Army Corps of Engineers approvals by the next Planning Board meeting.

Mr. Gilliam informed the Board that in this particular situation a dredge application does not need approval by the Kennebunkport Board of Selectmen or the Kennebunk River Committee as the proposed work falls within the boundaries of the marina.

Mr. Messer asked if the results of the sediment analysis has been reported yet. Mr. Brown replied yes and the removed material will be taken to the Cape Arundel dump site.

There were no further questions from the Board members.

Mr. Fellenz opened the Public Hearing. There were no comments or questions from the audience members. Mr. Fellenz closed the Public Hearing.

Mr. Boak made a motion to approve the Application. Mr. Mahoney seconded the motion. Mr. Grady amended the motion to add that approval is subject to receipt of the Army Corps of Engineers permit and the Maine Department of Environmental Protection permit. The Board voted unanimously in favor of the amended motion.

Mr. Gilliam instructed the Board it has been their practice to read the Findings of Fact at the next scheduled meeting and suggested including a condition in said Findings that no permits will be issued until the Maine DEP and Army Corps of Engineers approvals are received.

Mr. Mahoney was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on March 15th, 2017.

4. **170106 Robert & Dana Holland** – Site Plan Review – **Public Hearing** – for approval to remove an existing single family dwelling and foundation and replace with new in same location. [155 Wildes District Road, identified as Assessor's Tax Map 22, Block 005, Lot 22 in the Cape Porpoise West, Shoreland and Resource Protection Zones.]

Mr. Fellenz introduced the Agenda item.

Mr. Bob Holland addressed the Board stating he and his wife purchased the property last October and after careful review of the property's characteristics, determined the best option is to rebuild the house on the existing footprint with a 30% expansion in volume as allowed by the Land Use Ordinance.

Mr. Fellenz asked the Applicant if they were rebuilding on the original foundation. Mr. Holland replied they will need to replace the original foundation do to its deterioration. Mr. Gilliam added the Code Enforcement Office has no objection with the new foundation.

Mr. Messer asked why they didn't choose to relocate the house outside of the setback. Mr. Holland explained it could be possible to move the house closer to the easement but that would require blasting ledge and the Maine Department of Environmental Protection felt it best to keep the structure on the same footprint.

Mr. Fellenz opened the Public Hearing.

Mr. Lee Phillips of 156 Wildes District Road addressed the Board to voice his support of the Application.

There were no further comments or questions from the audience in attendance. Mr. Fellenz closed the Public Hearing.

Mr. Mahoney made a motion to approve the Application. Mr. Messer seconded the motion and the vote was unanimous. Mr. Fellenz was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting on March 15th, 2017.

5. **170201 Chester Homer, III / Eco-Analysts, Inc., Authorized Agent** – Site Plan Review – **Initial Review** – for approval to dredge 904 cubic yards sediment from the Kennebunk River, as well as construct a sheet pile wall along an existing failing bulkhead and reconstruct an existing failing dock. 83 Ocean Avenue, identified as Assessor's Tax Map 8, Block 001, Lot 19 in the Village Residential, Shoreland and Resource Protection Zones.]

Mr. Fellenz introduced the Agenda item.

Mr. Bud Brown of Eco-Analysts addressed the Board stating this is a 36-foot-wide piece of property with a dock that is deteriorating. Due to the unique size of the lot, Mr. Brown stated, the proposed new dock will be 117 feet long in total and has received approval from the River Committee. Mr. Brown also added they will also dredge 904 cubic yards of material to be disposed of at the Cape Arundel dump site.

Mr. Brown also stated the proposed dock will be over the 100-foot limit but it is not longer than what is currently on the property. Mr. Gilliam explained to the Board this is a unique property and encouraged the Board to view this review as a replacement of a legally non-conforming dock that does not meet the Ordinance setbacks or length requirements but it does meet the general intent of the Ordinance.

Mr. Messer asked the Applicant if they want to rebuild the dock in the exact same spot it is now. Mr. Brown replied where the dock touches the land will be the same location but will extend outward slightly different.

Mr. Messer questioned whether the Applicant needs to appear before the Zoning Board of Appeals to obtain a variance for the dock length. Mr. Gilliam explained in this instance the Applicant is not required to obtain a variance from the Zoning Board and cited Article 8.3.B.5 as reasoning which states: "Any non-conforming structure which is located less than the required setback from a lot line or the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, damaged or destroyed by more than fifty (50%) percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction or removal, and provided that such

reconstruction or replacement is in compliance with the applicable setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance.”

There was a brief discussion with the Planning Board members and Mr. Gilliam if this Application was within the purview of the Planning Board.

Mr. Grady made a motion this Application is within the jurisdiction of the Planning Board. Mr. Boak seconded the motion and the vote was unanimous.

Mr. Messer made a motion the Application is complete. Mr. Grady seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on March 15, 2017.

6. **170202 Justin & Grace Benincasa / Sandra Guay, Esquire Authorized Agent** – Site Plan Review – **Initial Review** – for approval to construct a 4’ x 30’ pier, a 3’ x 25’ seasonal ramp and a 10’ x 20’ float. [159 Wildes District Road, identified as Assessor’s Tax Map 22, Block 005, Lot 21 in the Cape Porpoise West, Shoreland and Resource Protection Zones.]

Mr. Fellenz introduced the Agenda item.

Attorney Sandra Guay addressed the Board along with Zach Taylor and gave a brief summary of the Application stating the property is 1.7 acres with approximately 1 acre in the Shoreland overland zone. Ms. Guay further explained they are asking for approval to build a 4’ x 30’ pier, a 3’ x 25’ seasonal ramp and a 10’ x 20’ float where the ramp and float will be stored in the upland during the off-season. The Applicant has received permits from the Maine Department of Environmental Protection and the Army Corps of Engineers as well as the approval of the Kennebunkport Board of Selectmen, Ms. Guay concluded.

Ms. Pearlmuter asked if the DEP saw the other 2 docks adjacent to this property before they issued the permit. Ms. Guay responded yes, the DEP looked at all three in the area.

Mr. Messer asked if the exact distance from the setback could be supplied to the Board. Mr. Taylor replied he would supply that information to the Code Enforcement Office.

Mr. Messer asked if this dock was allowed in the velocity zone and asked what data is used to make that determination. Mr. Gilliam responded the FEMA flood map is what is used to determine the velocity zone. Ms. Guay supplied each of the Board members and Mr. Gilliam with a copy of the flood map for the property. Mr. Gilliam explain the term velocity zone is sometimes confusing because it is not necessarily the current that drives the designation but it is the wave height.

There were no further questions from the Board members.

Mr. Grady made a motion the Application is complete. Mr. Mahoney seconded the motion and the vote was unanimous. A Public Hearing will be held at the next Planning Board meeting on March 15th, 2017.

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

Submitted by: Patricia Saunders, Planning Board Recording Secretary