

Kennebunkport Planning Board
June 3, 2015 ~ 7:00 PM
Kennebunkport Village Fire Station, 6 Elm Street

A regular meeting of the Planning Board was held on Wednesday, June 3rd, 2015. The meeting convened at 7:00 pm in the Kennebunkport Village Fire Station.

Members Present: Mr. David Kling (Chair), Greg Reid, John Hathaway, Helen Conaty, Peter Fellenz, Thomas Boak, Ray Hilwig

Approval of Minutes: A motion was made to approve the minutes from the May 20th, 2015 Planning Board meeting. The motion was seconded and the vote was unanimous.

Items:

1. 150301 Andrew Buckley / Darren Fickett, Authorized Agent – Site Plan Review – Finding of Facts – for approval to install a 96 square foot floating dock system. [6 Oak Street, identified as Assessor's Tax Map 9, Block 001 Lot 9 in the Village Residential Zone.]

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

2. 150402 Cheryl Ritchie / Albert Frick Associates, Inc., Authorized Agent – Site Plan Review – Public Hearing – for approval to install an 18' wide gravel access drive to serve future residential dwellings. [New Biddeford Road, identified as Assessor's Tax Map 41, Block 002 Lot 8D in the Goose Rocks Zone.]

Mr. Kling introduced the Agenda item.

Mr. James Logan of Albert Frick Associates addressed the Board noting there is an error on the Agenda in that the access drive is 20 feet wide not 18 feet. Mr. Logan explained the slight change in the road width leads to a slight change to the base fill which will require 2,013 square feet of fill.

Mr. Kling opened the Public Hearing. There were no comments or questions from the public. Mr. Kling closed the Public Hearing.

Ms. Conaty made a motion to approve the Application. Mr. Fellenz 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 June 17th, 2015.

3. Claire Julian / Touchstone Subdivision – Minor Subdivision Revision – Public Hearing - for approval to revise the designated "house site and limit of clearing" for Lot #4, as indicated on the Approved Subdivision Final Plan signed by the Planning Board on August 10, 1988. The building area proposed by the Applicant's architect, will meet all building setback requirements. [Lot #4, Touchstone Drive, Assessor's Tax Map 8, Block 003, Lot 01J in the Village Residential Zone.]

Mr. Kling introduced the Agenda item.

Ms. Claire Julian addressed the Board explaining the proposed house to be built will be further away from the wetlands and within all setback requirements.

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

Mr. Fellenz made a motion to approve the Application as presented. Ms. Conaty seconded the motion and the vote was unanimous. Mr. Kling was assigned as Case Manager to prepare the Findings of Fact to be read at the next Planning Board meeting.

4. 150403 Cape Arundel Golf Course/ Pinkham & Greer, Authorized Agent – Site Plan Review –Public Hearing – for approval to renovate an existing maintenance building, add a 4,320 square foot maintenance & storage building, add a 704 square foot covered stockpile area and a 224 square foot Snack Shack to the 12th hole restrooms. [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 of Pinkham & Greer addressed the Board and gave a brief explanation of the three separate projects that comprise this Application: one is adding a maintenance building, constructing a wash down pad next to the pump house and renovating the snack shack to upgrade the bathrooms so they are ADA compliant.

Mr. Reid asked how they were going to treat the runoff from the maintenance shed. Mr. Greer explained there is an underground catch basin tank with a submerged outlet that catches all of the grit when washing the equipment on the pad. Mr. Greer added on the other side there is a wet pond that filters the site as well. Mr. Greer also showed the Board some aerial views of the proposed facilities highlighting the landscaping improvements to screen the maintenance shed from the street view.

There were no further questions from the Board members.

Mr. Kling opened the Public Hearing.

Ms. Nina Perlmutter of 13 Locke Street addressed the Board stating she does not have any issues with the proposed Application. Ms. Perlmutter expressed her concerns as a direct abutter to the golf course she has found litter from golfers on her property and had several occasions where golfers have relieved themselves on her property rather than use the restrooms near the shack. Ms. Perlmutter suggested the Planning Board should not approve this Application without insisting restrooms be installed along the course near the cemetery to avoid golfers from urinating on her property.

Mr. Kling responded that this is an existing problem that should be addressed directly by the Golf Club.

Mr. Stuart Barwise addressed the Board acknowledging Ms. Perlmutter's complaint and stated this is more of a behavior issue rather than something directly related to the Application. Mr. Barwise agreed the Golf Club would install trash bins at every tee box and they were exploring suitable sites along the course to put other restroom facilities.

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

Mr. Hathaway made a motion to approve the Application. Mr. Reid seconded the motion and the vote was unanimous. Mr. Reid was assigned as Case Manager to prepare the Findings of Fact to be read at the next meeting.

5. 150401 Kennebunkport Conservation Trust / Sebago Technics, Authorized Agent – Site Plan Review – Public Hearing – for approval to construct a new educational, scientific and nature interpretation center with associated site improvements consisting of parking, walkways, landscape and site lighting. [8 Mill Lane, identified as Assessor's Tax Map 09, Block 01, Lot 12 in the Village Residential Zone.]

Mr. Kling introduced the Agenda item stating this is a Public Hearing where the Application was deemed complete at the last meeting.

Mr. Kling noted receipt of the following correspondence:

- Supplemental submission from the Applicant dated May 27th, 2015
- Supplemental plans received tonight by the Board members
- Letter from Murray Plumb & Murray making several comments regarding the plan
- Packet of letters and documents from Susan Graham including letters from abutters that predates the current Application
- Letter from Orin Frink dated May 15, 2015
- Letter from Nina Perlmutter dated May 31, 2015
- Package of material from Susan Graham with a number of different pieces of information.

Mr. Kling offered his opinion that the letters from abutters that predate the Application cannot be considered and are deemed irrelevant since this Application has substantially changed.

Mr. Durward Parkinson along with Steve Doe, Ralph Austin, Tom Bradbury, Doug Butler, Lisa Lenahan, Leia Lowrey and other Kennebunkport Board of Trustees, addressed the Board.

Noting that this Application may take a few hours and the meeting will most likely stretch until 10 pm, Mr. Kling suggested the Applicant contemplate continuing the Public Hearing until the next Planning Board meeting.

Mr. Steve Doe of Sebago Technics gave a brief overview of the Application utilizing enlarged site plans of the proposed grist mill building, the parking area and surrounding landscaping. Mr. Doe explained the parking lot has been reconfigured with a full turn around to accommodate emergency vehicles and school buses.

Referring to the enlarged Site Plan, Mr. Kling asked if the kayak platform would be accessed the same way it is today. Mr. Doe replied yes, there is a walkway along the edge of the property that crosses the lawn to the launch area in its present location.

Mr. Doe also noted the landscaping is similar to the previous Application with a buffer along the north side to be enhanced with evergreens, deciduous trees and shrubbery. Mr. Doe also shared with the Board and the audience, simulations from enhanced photos of views from the water, and on site from Mill Lane.

Mr. Kling asked Mr. Doe to speak about their supplemental submission. Mr. Doe explained the detailed dam drawings were done at the request of the abutters and are the actual working drawings from the engineers. Mr. Doe also noted the submission included letters from the DEP, a sound pressure level report from Doug Butler, a KKW Water District Letter of Availability and approval from the Army Corps of Engineers on the updated plan. A letter of approval from Fire Chief and Sewer Supt. Allan Moir would be forthcoming, Mr. Doe explained.

Mr. Kling asked the Applicant to summarize the proposed hours of operation of the mill. Mr. Parkinson stated that information is in the initial materials submitted under Section 8 Rules and Education. The regular hours open to the public would be 9am to 5 pm with no more than 5 days a week from May thru October, Mr. Parkinson stated. The grinding of grain will be limited between the hours of 8 am and 6 pm when tides permit, Mr. Parkinson explained adding their analysis of appropriate tidal conditions indicate that the window for grinding will most likely be 2-3 times per week in a 3-4 hour cycle. Mr. Kling questioned if the cycle meant the grinding itself will last 3-4 hours. Mr. Parkinson agreed with Mr. Kling's assessment.

Mr. Fellenz stated the Applicant's earliest stipulation is the general facility will be open Monday thru Friday. Mr. Parkinson clarified he stated the facility would be open 5 days per week but not necessarily Monday thru Friday.

Mr. Kling asked how often the mill would be operated early in the morning according to the tide cycle. Mr. Parkinson responded in the month of June it could be about 6 times according to the tides.

Mr. Kevin Durkin of Heritage Restorations addressed the Board on behalf of the Applicant stating the proposed mill is an 18th century pre-industrial mill with an undershot wheel.

Mr. Parkinson asked the Board for permission to show a brief video of an operating grist mill. Mr. John Bannon, Attorney for a number of neighbors of this project noted his objection to the Board on viewing the video as he has not been provided adequate notice in order to prepare a rebuttal to this expert testimony.

Mr. Kling asked the Board members for their opinion on allowing the Applicant to share the video. Mr. Reid responded this is the informational part of the Applicant's presentation and did not think it should be an issue as both the Board and the audience was viewing it for the first time. Mr. Kling assured Mr. Bannon he will be given time to respond to the Applicant's presentation. Mr. Bannon reiterated as long as the Chair and Board agree to continue the Public Hearing to allow him adequate time to review this new information and respond to this testimony.

With the Planning Board members in agreement, Mr. Kling ruled to allow this information to be presented.

Mr. Durkin showed a video of a working grist mill in Texas called the Teeter Grist Mill commenting the proposed Perkins Mill will be an exact reproduction using original 18th century materials.

Mr. Jim Kistler also of Heritage Restorations addressed the Board explaining the proposed grist mill is designed as close as possible to what was originally at the Perkins Mill noting there will be modern improvements with regards to safety, noise, and dust mitigation including a filtered exhaust system. Mr. Kistler further explained the mill stones are set on their own foundation that is isolated from the building which will aid in absorbing the vibrations of the mill. This proposal is for an undershot water wheel which is quieter than an overshot wheel as there will be reduced splashing of the water.

Mr. Kling asked if the mill the Applicant is proposing is of the same mechanical design as the mill in the video. Mr. Kistler responded yes it is the same design.

Mr. Reid asked what the decibel level is of the mill in the video. Mr. Kistler replied it is approximately 65 decibels.

Mr. Hathaway asked the Applicant if they knew what the zoning was of the mill shown in the video. Mr. Durkin replied he did not know the zoning in Texas. Mr. Parkinson offered Mr. Ralph Austin could speak about zoning issues of the Perkins Mill site.

Mr. Hathaway asked if the Applicant planned to move an old mill to the site. Mr. Durkin responded they are planning to build a replica from original materials from other 18th century buildings using the same stone types and same species of woods.

Mr. Reid asked if the proposed mill uses a horizontal stone. Mr. Durkin replied yes, the pre-industrial mills of that time were mostly all horizontally spinning.

Mr. Fellenz offered that one of the reasons that grist mills went out of use was a problem with back filling and asked the Applicant if they had any concern about silting and the effect it could have on vegetation and animal life. Mr. Kistler replied he can't address that issue but he believes this tide mill would silt up a lot less with the tide going in and out as opposed to a stream or river mill. Mr. Fellenz then asked if there was any way to eliminate even minimal silting. Mr. Kistler responded he did not have an answer. Mr. Doug Butler explained in response to Mr. Fellenz's concern that the dam gate will be retracted into the upper section whenever the mill is not in use which would be most of the time thus allowing the water to flow freely as it normally would. The gate would only be lowered to capture the water flow only when the mill would be operated.

As Project Manager for the Kennebunkport Conservation Trust, Mr. Butler gave a brief presentation on a sound study he conducted at mills in Massachusetts and New Hampshire. Mr. Butler's findings were as followed:

Location	Sound readings at 25 ft. distance
Mill grinding	57 – 63 DBA
Mill grinding	76 – 77 DBC
Ambient noise of Mill Lane Neighborhood	59 DBA
Ambient noise of Mill Lane Neighborhood	69 DBC

DBA Scale = sounds the human ear can hear

DBC Scale = low frequency sounds

Mr. Butler further explained that you subtract 6 decibels for every doubling of the distance. For example, the DBC reading of 76 – 77 for the mill grinding at 25 feet would 70-71 DBC at 50 feet, Mr. Butler stated. There is a Hurst frame the proposed mill will sit on which keeps the mill equipment separate from the building around it so if there is any low frequency vibration it will be minimized, Mr. Butler added. Mr. Butler concluded his presentation offering his opinion that the ambient sounds of the neighborhood would mask any sounds coming from the mill.

Mr. Kling asked if the Hurst frame was something they planned all along. Mr. Butler replied yes. Mr. Durkin added the mills they looked at from 1760 had Hurst frames as a way of dampening the sound.

Mr. Ralph Austin took the podium to address any legal questions the Board may have. Mr. Austin gave a brief response to some of the major points in Attorney John Bannon's letter submitted on May 27th, 2015. Some of the items Mr. Austin discussed were:

1. Mr. Bannon suggested the Applicant has not provided sufficient information for the Board to review.
 - Mr. Austin stressed the Applicant is no longer proposing an educational center but simply asking permission to build a working grist mill and have provided more information than required which is sufficient for the Board to review.
2. It was suggested by Mr. Bannon the Applicant concentrated more attention to the property's neighbors Ms. White and Mr. Coon while ignoring the wishes of others in the neighborhood.
 - Mr. Austin replied they have listened to all of the residents and heard their concerns and tried to accommodate them as best as possible. Mr. Austin admitted special attention has been granted to the concerns of Ms. White and Mr. Coon as they are direct abutters to the property and will be more greatly impacted by this proposal.
3. Mr. Bannon claimed the grist mill is an industrial or manufacturing use of the property which is not allowed in the zone.
 - Mr. Austin responded that the production of flour is a limited by-product in the use of the mill and is a secondary purpose to the educational aspects of the running of the mill.
4. The Application is for a non-residential facility for educational, scientific, or nature interpretation purposes which is permitted in the Resource Protection zone.
 - Mr. Austin replied this Application is for a grist mill only and have removed the education center from the proposal.

After listening to this point, Mr. Fellenz asked if the Agenda was incorrect. Mr. Gilliam indicated to Mr. Austin that the Agenda will be amended to correctly state the nature of this Application.

Mr. Austin continued his presentation, expounding on the issue that the boathouse currently on the property is the principal structure and that this proposed mill would be an accessory structure. When the Trust asked for permission to provide electricity to the boathouse and install bathrooms, Mr. Austin explained, the boathouse was recognized as a museum and granted a permit for a Class C assembly for public use. Mr. Austin concluded his presentation by submitting copies of his memo along with past permits issued by the Code Enforcement Office.

Mr. Kling asked if all or part of the boathouse structure extend over the normal high water mark. Mr. Doe demonstrated on the enlarged site plan and responded the majority of the building extends out over the normal high water mark.

Mr. Kling pointed out there is a provision in the Land Use Ordinance, Article 4.17.A.3 which states: “A building or structure built on or over a pier, dock, wharf or other structure extending beyond the normal high water mark of a body of water or within a wetland, which was in existence on May 12, 1985, and which contained a principal use which was not water dependent on that date, may be used for any other use which is allowed in the underlying zone, except a residential use.” Mr. Kling asked the Applicant to find out what the boathouse was being used for prior to May of 1985. Mr. Parkinson agreed to investigate and report back to the Planning Board.

Mr. Hathaway asked the Applicant if they specified the mill would be open 5 days a week but not Monday through Friday. Mr. Parkinson replied they did not specify which days but were flexible and would specify no Sundays if that were requested.

Mr. Boak stated the public hours of the mill were stated in the Application as 9:00 am to 5:00 pm, but the mill grinding hours were listed at 8:00 am to 6:00 pm. Mr. Doe explained the extended hours for the mill is to allow the operators to come in earlier to set up to begin grinding. Mr. Boak suggested they coordinate the times. Mr. Parkinson agreed to alter the grinding hours to be from 9:00 am to 5:00 pm.

Mr. Hathaway noted the mill noise is one source and wondered what other noise would be created in the neighborhood by visitors and traffic to the site. Mr. Austin responded there is a note in the Application that tour busses will not be allowed at the site, only school buses and the in-town trolley bus.

Mr. Kling opened the Public Hearing and invited abutters or their representative to speak to the Board.

Mr. John Bannon addressed the Board to present his legal overview of the project on behalf of his clients. Mr. Bannon submitted a copy of his statement to the Board and the Applicant and argued against the Chair's ruling to not admit into the record those letters from Susan Graham that pre-dated the Application. Mr. Kling acknowledged Mr. Bannon's objection but cited the fact that this Application has changed so significantly the arguments made in them are mostly irrelevant. Mr. Kling agreed to ask town counsel for their opinion on the matter, adding those folks will still have an opportunity to voice their opinion at the Public Hearing.

Mr. Reid asked Mr. Bannon if it was the wish of his clients that nothing should be done with this property and it should left as it is. Mr. Bannon responded his clients believe the present levels of use of this property are as intensive as it should be and that no further development should be permitted.

Mr. Bannon delivered his lengthy presentation based on the memo he submitted to the Board. Some of the issues discussed were:

- The proposed use of the mill and the boathouse are still not permitted uses of the property
- Both of the structures encroach on the setbacks
- On this site both the grist mill and the boathouse will be principal structures
- This project fails to conserve historic resources
- None of the proposed uses for the boathouse or grist mill constitute permitted uses under the meaning of Section 4.15.b.3 “Activities and Land Uses Requiring approval from the Planning Board: Structures accessory to permitted uses, but not the accompanying principal structures.”
- There is no Certificate of Occupancy issued in the town's records that grants a permitted use for the boathouse
- To use the boathouse as a public building and education center is not permitted in the Resource Protection zone
- The Application does not fit the definition of a water dependent use and according to Article 4.17 of the Land Use Ordinance a non-water dependent use would not be permitted
- One applicable provision missing from the Land Use Ordinance, Article 10.10.B.1.e is reason for denial by the Planning Board
- It can be shown the noise level of the mill will disturb the neighborhood's peaceful enjoyment of their property.

Ms. Conaty asked Mr. Austin to explain the Certificate of Occupancy Mr. Bannon referenced. Mr. Austin responded there was no formal Certificate of Occupancy issued but on the building permit the Code Officer signed off for occupancy on the right hand corner. Mr. Bannon argued a Certificate of Occupancy has to state what the use is for the building which means the boathouse was not granted a permit for any particular use. Citing Article 4.15.B of the Land Use Ordinance, Mr. Kling stated that by definition when a permit is issued it is for a permitted use. Mr. Bannon argued that assumption implies a use to a building that was never granted approval.

Mr. Fellenz questioned Mr. Bannon's argument that the grist mill would not serve as an educational purpose adding that the operational use of the boathouse has been for some educational purposes to the school children who come there for a lesson on the town's history.

Mr. Kling invited other abutters to address the Board.

Ms. Jennifer Stuart, direct abutter to the grist mill property addressed the Board stating the neighborhood is strongly and firmly against this proposal.

Mr. Jim Tardiff, abutter, of 8 West Street addressed the Board and provided enlarged images of the grist mill property. Mr. Tardiff complained of people visiting the grist mill site and walking onto his property to fish or gain access to the water. Mr. Tardiff also noted on a recent holiday weekend there were 25 cars parked in the parking lot. Mr. Tardiff's concern is if the land is not being supervised now, it won't be supervised in the future.

Mr. Kling commented that this Application would not change any law enforcement issues Mr. Tardiff was experiencing.

Mr. Kling asked Mr. Tardiff how often that parking lot fills up like that. Mr. Tardiff replied it happens once in a while. If this Application is approved, Mr. Tardiff stated he will ask the town for a tax abatement as the grist mill will decrease his property value.

Ms. Susan Graham of 12 Oak Street addressed the Board to state she does not support or welcome this proposal. Ms. Graham read a prepared statement, copies of which she submitted to the Board and the Applicant. Ms. Graham cited comparisons with the proposed mill and the Guilford mill in Virginia she visited recently.

Mr. Parkinson asked the Board if Mr. Durkin could address Ms. Graham's comparisons about the Guilford Mill and the Application. Mr. Kling asked the Applicant to submit his comments in writing to the Board.

Due to the late hour, Mr. Fellenz made a motion to continue the Public Hearing at the next Planning Board meeting on June 17, 2015. Ms. Conaty seconded the motion and the vote was unanimous.

The Board members discussed possible questions to submit to town counsel for clarification and guidance. Mr. Kling stated he would like town counsel's opinion on the admittance of the abutter's letters predating the Application, the use of the boathouse as a principal structure with the grist mill being an accessory structure and the existence of the boathouse prior to 1985.

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