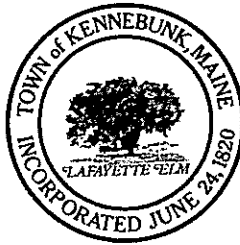


Town of Kennebunk, Maine



Planning Board

MEETING MINUTES

March 8, 2021

Zoom Teleconference Meeting, Kennebunk

Present: Chris MacClinchy [Chair], Richard Smith [Vice Chair], Robert Metcalf [Member], Janice Vance [Member], Edward Trainer [Alternate], Brittany Howard [Staff Liaison], William Ward Jr. [Select Board Liaison]

Absent: David Smith [Member], Stephanie Seiders [Alternate]

Also Attending: Lisa Vickers [Atlantic Environmental], Durward Parkinson [Bergen Parkinson Attorneys],

1. Call to Order: Chairman and presiding officer C. MacClinchy called the meeting to order at 7:00pm on March 8, 2021 via Zoom teleconferencing under the Governor's COVID-19 Executive Order and by request of the Town's Select Board. He noted that Stephanie Seiders had resigned from the Board, and went on record thanking Seiders for her service. C. MacClinchy designated E. Trainer as a voting member in place of D. Smith for the purpose of today's meeting.

2. Old Business

(1) Public Hearing – Special Exception & Permit to Fill and Grade in Shoreland Zone: 23 Tideview Terrace – Map 70 Lot 7 – Dock Application

B. Howard reminded the Board that applicant seeks authorization to build a seasonal dock on the Mousam River. During the virtual site walk Board Members raised a number of concerns: location of existing path, location of winter storage, helix location in proximity to the riverbank, as well as the material of the proposed dock and pier. Howard then introduced L. Vickers, representing applicants John and Janet Weston.

L. Vickers confirmed that the proposed dock would be cedar and aluminum. The pier, ramp, and dock will be seasonal and stored in the uplands in the winter. An existing

path will provide access to the dock. Requisite sign-offs, Vickers reported, have been obtained from the DEP and the U.S. Army Corps of Engineers.

Board members severally thanked Vickers for the thorough application [R. Smith, J. Vance, E. Trainer, and R. Metcalf]. R. Smith observed that the findings of fact should mention that no mechanized equipment will be used to install or remove the dock.

There being no other Board questions or comments, C. MacClinchy formally opened a public hearing to abutters and the public at large. With no public comments forthcoming, however, MacClinchy closed the public hearing and moved to findings of fact.

**Town Of Kennebunk
Planning Board
Special Exception
FINDINGS OF FACT**

1. Property Owner: John & Janet Weston
2. Site Location: 23 Tideview Terrace, in the Suburban Residential, Resource Protection, & Shoreland Overlay
3. Assessor's Map: 70 Lots: 7
4. Description of proposed use: Special Exception – installation of a seasonal dock.
 - First Meeting: January 11, 2021
 - Virtual Site Walk: January 30, 2021
 - Public Hearing: March 8, 2021
5. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 7, Special Exceptions, of the Kennebunk Zoning Ordinance and determined:
 - (1) The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;

Met: X Not Met: Not Applicable:
with the following conditions or comments: This is a dock application, it will have no impact on vehicular or pedestrian traffic.

- (2) The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (3) The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (4) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (5) The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (6) The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties; and

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (7) If located in the Shoreland Area Overlay District, the proposed use:

- (a) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (b) will conserve Shoreland vegetation;

Met: X Not Met: Not Applicable:
with the following conditions or comments: This application complies with all regulations set forth by the Town and the Maine DEP for Shoreland vegetation conservation.

(c) will conserve visual points of access to waters as viewed from public facilities; (d) will conserve actual points of access to waters;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

(e) will conserve the town's Open Space Plan priority areas;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

(f) will avoid problems associated with flood plain development and use;

Met: X Not Met: Not Applicable:
with the following conditions or comments:

(g) will protect archaeological and historic resources as designated in the comprehensive plan and State Historic Pres. Office; and

Met: X Not Met: Not Applicable:
with the following conditions or comments:

(h) will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

(8) If located in the Resource Protection District, the following additional standards are met for any residential use proposed:

Met: Not Met: Not Applicable: X
with the following conditions or comments: This section of the ordinance pertains to constructing a residential structure, the project before the Board is for the installation of a dock.

(9) If located in the Branch Brook Aquifer Protection District the proposed use: (a) the proposed use meets the specific requirements set forth in this Ordinance and will be in compliance

with all applicable state and federal laws; (b) the proposed use will meet all applicable performance standards; (c) the proposed use will not create the risk of bacterial or viral contamination of groundwater in Zone A.; (d) the proposed use does not involve uses or activities which could cause a violation of the performance standard for pollution levels; (e) any control measures proposed to prevent adverse impacts on water quality are adequate and reliable, considering the threat to water quality which would result if control measures failed; (f) the use will not involve disposal of solid waste, hazardous materials or leachable materials (other than specifically allowed by Ordinance); and (g) oil, fuel, and other petroleum products stored on-site will be properly contained so as to prevent contamination of the groundwater from leaks or spills.

Met: Not Met: Not Applicable:
with the following conditions or comments: The property is not located in the Brach Brook Aquifer Protection District.

- (10) For Special Exception requests regarding Telecommunications Facilities the Board has considered the following additional issues in making its decision:

Met: Not Met: Not Applicable:
with the following conditions or comments:

6. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 10, Section 3-E Piers, Docks, Wharves, Breakwaters, etc. of the Kennebunk Zoning Ordinance and determined:

- (1) Any new permanent, temporary, or material expansion or alteration of a pier, dock, wharf, bridge, or other structure or use extending over or below the normal high water line of a water body or within a wetland shall require a building permit; a permit from the Department of Environmental Protection (DEP); Permits may also be required from the Army Corps of Engineers if located in navigable waters. Any Kennebunk River related application, a copy of the application shall be forwarded to the Kennebunk River Committee and Harbormaster for review and comment; which shall be made part of the Planning Board's record.

Met: Not Met: Not Applicable:
with the following conditions or comments: We have sign off from the Maine DEP and Army Corps of Engineers. The dock is located on the Mousam River. The applicant will still need to obtain a building permit.

(2) Additional Standards

- (a) The area is not located within the Wildlife Habitat of species considered endangered or threatened by Maine Department of Inland Fisheries and Wildlife or US Fish and Wildlife Service

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (b) Piers, docks, wharves, walkways, ramps and floats constructed to meet standards for Appurtenant Structures as set forth in FEMA 55. The area of a float or floats shall not exceed 200 sf.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (c) Minimum 60' of shore frontage.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (d) No portion of a pier or float shall be located within 25 feet of a property line.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (e) Appropriate pile installation techniques utilized. Ramp, walkway, pier at least 1 foot above the ground. Deck boards shall be a maximum of 6 inches in width and spaced ½ inch apart. Paint, stains, and waterproofing shall not be applied. Stairs no wider than 4 feet.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (f) Structure shall not interfere with existing natural beach areas, nor impede legitimate passage.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (g) Minimize adverse effects on fisheries

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (h) No larger than necessary. A noncommercial ramp pier, walkway, dock or wharf, shall not be wider than four feet. Pairs of pilings or supports shall not be closer than 10 feet.

Met: X Not Met: Not Applicable:
with the following conditions or comments:

- (i) Lighting to illuminate walkways, ramps and floats only and must meet private outdoor lighting standards.

Met: X Not Met: Not Applicable:

with the following conditions or comments: No lighting has been proposed or approved.

- (j) No new structure built on, over or abutting a pier, dock or other structure extending beyond the high waterline of a water body unless the structure requires direct access to the water body or wetland as an operational necessity.

Met: X Not Met: Not Applicable:

with the following conditions or comments: This is a dock application and as such it is for the express purpose of accessing water.

- (k) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible and a permit from DEP is obtained.

Met: X Not Met: Not Applicable:

with the following conditions or comments: This is a seasonal pier and dock. The dock, pier, and ramp will all be removed in the off season and stored in an upland area as shown on the plan.

- (l) No existing structures built on, over or abutting a pier, dock, wharf extending beyond the normal high waterline of a water body or within a wetland shall be converted to residential dwelling units in any district.

Met: X Not Met: Not Applicable:

with the following conditions or comments: No other structures are proposed.

- (m) Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

Met: X Not Met: Not Applicable:

with the following conditions or comments:

- (n) Any pier, walkway, dock or wharf, including ramps and floats, shall be no longer than a total length of 100 feet nor extend more than 1/5 of the way across a body of water.

Met: X Not Met: Not Applicable:

with the following conditions or comments:

- (o) Off-season storage of temporary floats, ramps or walkways must be on upland areas so as to not damage marine or freshwater vegetation. All stored items must be properly and safely secured so as not to become a wind or wave borne hazard in a severe storm or hurricane

Met: X Not Met: Not Applicable:

with the following conditions or comments: The applicant has noted the location of storage in an upland area on the applicant's property.

Based upon the above noted findings, the Kennebunk Planning Board votes the following:

Approves:

Approves with conditions: X (5-0)

Denies:

Conditions:

1. The floats and ramp will be removed by October 15th and installed no earlier than April 15th of any year.
2. No mechanized equipment will be used to install or remove the dock.
3. No lighting has been approved. Any request for lighting would require returning to the Planning Board for review and approval.

APPROVED BY: _____ DATE: _____

****PLEASE NOTE THAT AFTER PLANNING BOARD APPROVAL, THE APPLICANT MUST RECEIVE A CHANGE OF USE PERMIT AND/OR BUILDING PERMIT FROM THE BUILDING INSPECTOR BEFORE BEGINNING WORK AT THE SITE.**

A PERMIT GRANTED BY THE PLANNING BOARD UNDER THE PROVISIONS OF THIS ARTICLE (7) SHALL EXPIRE IF THE WORK OR CHANGE INVOLVED IS NOT COMMENCED WITHIN SIX (6) MONTHS OF THE DATE ON WHICH THE PERMIT IS GRANTED, AND IF THE EXTERIOR WORK OR CHANGE IS NOT SUBSTANTIALLY COMPLETED WITHIN ONE (1) YEAR OF THE DATE GRANTED.**

Moved: R. Metcalf moved that the Town of Kennebunk Planning Board, Special Exception, Findings of Facts; Property Owners John & Janet Weston; Site Location 23 Tideview Terrace, in the Suburban Residential, Resource Protection, & Shoreland Overlay; Assessor's Map: 70 Lot: 7; Description of proposed use: Special Exception – installation of a seasonal dock. The Kennebunk Planning Board has reviewed the above noted proposal in accordance with the Kennebunk Zoning Ordinance and finds the application approved with the following conditions:

1. The floats and ramp will be removed by October 15th and installed no earlier than April 15th of any year.
2. No mechanized equipment will be used to install or remove the dock.
3. No lighting has been approved. Any request for lighting would require returning to the Planning Board for review and approval.

Second: R. Smith

Vote: Motion carried with 5 votes in favor, none opposed.

C. MacClinchy then initiated a discussion of lighting in general, questioning whether it might be advisable to amend the Town's ordinance on the topic. Board members J. Vance, R. Smith, and R. Metcalf opined that it would be best to look at lighting applications on a case by case basis, leaving the ordinance as is.

3. New Business

(1) Proposed Zoning District Boundary Change – Map 45 Lot 64 – Industrial Zone to Suburban Residential

B. Howard offered a preliminary overview: Applicant is before the Board for review of a proposed district boundary change under Article 13. There will have to be a public hearing on this proposal.

The lot in question, Howard noted, is in the Industrial Zone and Historic Preservation Overlay. Applicant seeks to create a lot closer to Summer Street and change the Suburban Residential Zone (SR) boundary to incorporate the new lot. The SR Zone would then run along the new property line to the railroad trail and back to Summer Street. There would be no change to the HP overlay.

D. Parkinson, legal counsel representing the applicants, showed and explained a diagram of the area. Applicants, he stated, seek to create two lots on the Spadone

parcel: lot #1 would fold into Suburban Residential, and lot #2 would continue to be in the Industrial Zone.

R. Smith questioned whether the proposed residential site would be on Town sewer and water. D. Parkinson responded yes on water, but did not know if sewer service extended to the area. Parkinson also acknowledged that applicants had yet to investigate the “buildability” of a residence on the space. R. Smith gave the Board the background on why the parcels were zoned Industrial, they were used for coal and other train related functions.

J. Vance questioned the dimensions and topography of the land. D. Parkinson stated that the land will be 41,963 square feet net of the gravel drive and affirmed that the land is flat.

R. Metcalf posed questions about the lot frontage. Parkinson stated that the property will back onto the “track-side” of the parcel and reiterated that two lots would be created. Metcalf also questioned how the right-of-way will be defined, and Parkinson read the definition of the permissible right-of-way stipulated in the property deed.

R. Metcalf also called on B. Howard to check with the Town’s attorney to see if this lot creation is similar to 17 Rosewood and would not be creating a third lot. Metcalf also asked D. Parkinson to check with the Sewer District as regards sewer access.

C. MacClinchy observed that he originally envisioned this lot as possible parking space for people wanting to use the train as well as space for storing train equipment. He also noted the disadvantage of building a house close to train tracks.

D. Parkinson countered that the use of the space for parking is not particularly viable. It is also not suitable for industrial development, he said, due to its proximity to the Historic District.

Board members severally concluded that a site walk would not be needed [J. Vance, E. Trainer, R. Smith], but voiced the need to organize a public hearing in conjunction with the Planning Board’s April 12th meeting as a next step. C. MacClinchy noted that, if approved, the proposal would also have to go before the Select Board for that body’s ruling on the zoning change. MacClinchy thanked D. Parkinson for his helpful participation.

4. Approval of Meeting Minutes

(1) Minutes of February 22, 2020

C. MacClinchy led the Board in a page-by-page review of the February 22nd minutes. Several errors were identified. The meeting clerk noted them and amended the minutes accordingly.

Motion: J. Vance moved that the Town of Kennebunk Planning Board approve the minutes of 02/22/2021 as corrected.
Second: R. Smith
Vote: Motion carried with 5 votes in favor, none opposed.

5. Other Business

(1) Policy on In-Person Site Walks

C. MacClinchy questioned Town and State policy regarding in-person site walks. B. Howard explained that, due to the pandemic, site walks are only taking place on "virtual" basis. However, some easing of the policy is likely as more of the public is vaccinated. Howard will keep Board members apprised if the site-walk policy changes.

(2) Policy on In-Person Meetings

R. Smith also raised questions about the Town's policy regarding future in-person board meetings and public hearings. B. Howard re-iterated that in-person meetings are still being avoided due to the pandemic. However, some easing of that restriction is likely. Howard will keep Board members informed if and when the policy changes.

(3) West Kennebunk Workshop

C. MacClinchy observed that the group is on track for a March 29th workshop on housing development in West Kennebunk. While the Board had initially entertained the idea of a joint workshop at which both the proposed Kingsland and Calesa subdivisions could be discussed severally, the applicants, he stated, have voiced preference for "single" hearings only.

5. Adjournment: There being no further business, the Chairman adjourned the meeting at 8:15pm

Motion: E. Trainer moved to adjourn.


Second: R. Smith

Vote: Motion carried with 5 votes in favor, none against.

Respectfully Submitted,
J. Schlagheck

Adopted by the Planning Board in the meeting

of 3/22/21,
(Date of Meeting)

Signed by , Chair
/ Planning Board

