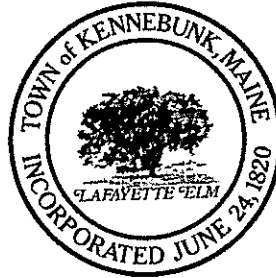


Town of Kennebunk, Maine



Planning Board MEETING MINUTES April 11, 2022 Zoom Teleconferencing Meeting

Present: Chris MacClinchy [Chair], Richard Smith [Vice Chair], David Smith [Secretary], Robert Metcalf [Member], Janice Vance [Member], Edward Trainer [Alternate]; and Dan Kiley [Alternate];

Absent: None;

Also Attending: Brittany Howard [Town Planner], Christopher Osterrieder [Town Engineer], Natalie Burns [Town Attorney], Langdon Thaxter [Norman, Hanson, and DeTroy], Durward Parkinson [Bergen Parkinson Attorneys], and Jason Vafiades [Atlantic Resource Consultants]

1. Call to Order: Chair and presiding officer C. MacClinchy called the meeting to order at 7:01pm on April 11, 2022 via Zoom teleconferencing in keeping with the Board's "Remote Meeting Policy" for COVID safety. C. MacClinchy initiated the session with a synopsis of the meeting's procedural sequence.

D. Smith then recused himself from the first two hearings — namely, the applications for (1) the "Pilot House" [Agenda Item #2A], (2) the "Wetland Mitigation Ordinance" [Agenda Item #2B], and (3) the public hearing for "Kingsmeadow" [Agenda Item #2C] — because he had not attended the prior Board meetings when those applications were previously heard. The Chair therefore elevated E. Trainer, an alternate member, to voting status for the purpose of considering those two applications.

2. Agenda Items

a. Public Hearing — Contract Zone Proposal — "Pilot House" — 2-4 Harbor Lane — Map 88 Lots 11 & 12

B. Howard reminded the Board that applicant and owner Kyick Holdings LLC sought a Contract Zone to alter the locations of the buildings, ship, and parking of the "Pilot House" restaurant in the Lower Village.

The Board, Howard said, had conducted a site walk on March 25, 2022. Members had asked the applicant to provide an updated, amended plan and Contract Zone narrative. Both had been submitted, Howard affirmed.

Langdon Thaxter, legal counsel representing the applicants, re-iterated that this application primarily entailed "setback adjustments", but no change of use. Public rest rooms are being added, he said, as well as "water catch basins" for better stormwater drainage.

Kylie Raymond, an owner of the Pilot House, highlighted the benefits which the proposal would allegedly bring: better parking, better drainage, better access to the wharf for maritime customers, improved traffic flow, and new restroom facilities for the public. The restaurant-ship "Spirit of Massachusetts", currently docked on the river, would be drydocked in a massive cradle. Aerial diagrams were displayed showing the new restaurant, parking, catch basin, and dry-docked ship locations.

R. Smith professed the view that this proposal "is a plus for the community" by improving parking, site functionality, and drainage quality. He asked if the Town Engineer had reviewed and agreed with the drainage plan. C. Osterrieder replied that the plan was "reasonable", but required more detail and maintenance particulars.

R. Smith also asked the Town Attorney to comment on the proposed Contract Zone language, and N. Burns replied that the overall language was acceptable. However, Burns reminded the Board and public that the State Department of Environment Protection ["DEP"] would also have to opine. N. Burns likewise suggested that the applicants should provide "additional narrative" expanding on their rationale for the proposed setback changes. That additional information, Burns said, would be helpful for the DEP and, possibly, Kennebunk voters if this proposal were to move forward. Burns also asked that one Ordinance citation made in the plan be corrected.

In response to questions by D. Kiley, owner Kylie Raymond affirmed that the restaurant's storage containers would be shifted "slightly back", approximately 16 feet from the parking area.

E. Trainer expressed the view that the revised plan and overall proposal were "a real improvement". However, he reminded Board members and the public at large that the Site Plan Review Board as well as the DEP had responsibility of reviewing the proposal in greater detail. Detailed drainage, structural, and parking reviews, he said, were not the purview of the Planning Board. J. Vance and R. Metcalf concurred.

J. Vance and D. Smith proposed corrections to sundry notes of the plan [Note #10 and several misspellings]. D. Smith further observed that widening the river by drydocking the ship "was a plus".

The Chair then formally opened a public hearing and solicited public comments and questions.

Public commentators John Bryan, Cynthia Wood, Shannon Dant, Ben Lyons, Rick Taranto, James Warwick, Jim Grolean, and Jo-Anne O'Connor individually voiced "strong support" for the proposal. However, two commentators voiced concerns.

Public commentator Derrick Wittner stated he was “opposed to the project in its present form”. There should be further, careful, and a more thorough review of this proposal, he stated, because (1) the setback changes were too radical; (2) the proposed two-story structure was “too much”; and (3) more parking will attract even more traffic to an area that is already highly congested.

Durward Parkinson, an attorney representing the owner of the abutting “Clam Shack” and former “Ports of Italy” restaurants, called for further study and discernment as well. Mr. Parkinson specifically voiced these concerns:

- (1) Board members appeared to have made a favorable decision about the proposal, he asserted, before all the facts were in and before the public had expressed its views;
- (2) Permitting reduced setbacks would be a bad precedent and encourage other building owners on the river to seek similar exceptions;
- (3) The proposed parking is inadequate for the restaurant, dry-docked ship, marina, and charter boat users. Mr. Parkinson called on the Board to “count the number of charter passengers and other water users” when ascertaining what parking is required;
- (4) The dry-docked ship could become a permanent land structure and should be structurally vetted;
- (5) The dry-docked ship will “impede the scenic vista”, and the public “needs to know what that dry-docked ship would look like on land in height and scale”. Mr. Parkinson called for “3-D, architectural rendering” before the proposal is judged by the Planning Board; and,
- (5) Claims of “grandfathered rights”, Mr. Parkinson said, should be “carefully reviewed and proven”.

D. Parkinson called for a “more deliberate, cautious review”. He urged the Planning Board to avoid making a precipitous decision about this application.

C. MacClinchy kept the public hearing open and asked Board members for their reactions and comments.

R. Smith stated that business owners should not be penalized for trying to make parking and drainage improvements if they do not cause abutters or the community harm. He echoed E. Trainer that, even if the Contract Zone is favorably considered, applicants still have to pass more detailed reviews by the DEP and Site Plan Review Board. The Planning Board’s mandate, R. Smith stated, is narrower — to decide whether or not to forward this petition to the Select Board.

C. MacClinchy observed that a Code Enforcement Officer had already “signed off” on the number of parking places based on the regulations currently in place as well as the grandfathering authorized by Town authorities in the past. C. Osterrieder affirmed that the number of parking spaces being used by the “Pilot House” had originally been approved by the Site Plan Review Board in 2016. As regards future parking, the number of

parking places is also a matter for the Site Plan Review Board to determine, both C. Osterrieder and N. Burns asserted.

E. Trainer concurred, reiterating that it was the Planning Board's mandate to weigh the merits of a Contract Zone, not the number of parking spaces required.

J. Vance and R. Metcalf responded to the assertions made by Mr. Parkinson as well, observing that the Planning Board had already had multiple hearings on this proposal. The Planning Board, each one concluded, was weighing the merits of this petition with due diligence. "A lot of the questions raised tonight," R. Metcalf re-iterated, "will be addressed by the DEP and Site Plan Review Board."

C. MacClinchy observed that the "opponent of this proposal [the owner of the "Clam Shack"] happens to enjoy 5-foot and zero setbacks, himself".

At 8:16pm C. MacClinchy closed the public hearing and members took up the following motion.

Motion: Move that the Planning Board of the Town of Kennebunk pass on to the Select Board with a positive recommendation the Contract Zone proposal for the "Pilot House", Kyick Holdings, 2-4 Harbor Lane, Map 99 Lots 11 and 12.

Moved: R. Metcalf

Second: R. Smith

Vote: Roll call vote, 5 in favor [R. Metcalf, R. Smith, J. Vance, E. Trainer, and C. MacClinchy], none opposed; the motion carried.

b. Public Hearing – Wetland Mitigation Ordinance

B. Howard next introduced the proposal to create an additional article in the Town's Zoning Ordinance to be entitled "Article 15: Wetland Mitigation". The language, Howard said, would be a tool to help guide evaluations of local applications to alter wetlands. The wording had been discussed at length by the Board in prior sessions.

Fundamentally, Howard said, this amendment seeks to mitigate wetland impact in two ways: (1) preserve uplands, and (2) require the payment of a deterrence or conservation fee. The fee, Howard said, would specifically be used to conserve land within Kennebunk.

Howard advised members and the public that the proposed language had been reviewed the Town's legal counsel as well as by this Board. It was modeled on Maine's Natural Resources Protection Act ["NRPA"], the State's primary tool for protecting natural resources. The amendment dovetails, Howard said, with the resource protection goals of Kennebunk's long-term Comprehensive Plan.

C. Osterrieder, Town Engineer, stated that the proposed language mirrors State guidelines, but reduces the mitigation threshold from 1,500 feet to 500 feet. He explained that the guidelines would apply to businesses, residences, as well as the Town, itself.

R. Smith asked if the Town Attorney had any issue with the language, and N. Burns responded in the negative. N. Burns noted that this amendment would apply to builders of affordable housing, as well.

E. Trainer voiced the view that the proposed language was the “good product” of extensive Board, Conservation Commission, and legal reviews. J. Vance and R. Metcalf concurred.

C. MacClinchy opened a public hearing and invited comments. Jen Shack, the Chair of Kennebunk’s Conservation Commission, thanked the Board for its collaboration.

There being no other public comment by computer or telephone, B. Howard next read the questions and comments of an email into the record. How would the mitigation fee be computed, and C. Osterrieder explained the calculation. It would be based on square footage and land value. Osterrieder re-iterated that the fee would be payable by the Town and commercial applicants as well as residential ones. How was the 500-foot threshold ascertained? C. Osterrieder replied that it was based on State guidelines tailored to the Town’s smaller scale. When would the language take effect, and C. Osterrieder responded that it would take effect 30 days after voter approval.

At 8:30pm, C. MacClinchy closed the public hearing.

Motion: Move that the Planning Board of the Town of Kennebunk pass on to the Select Board the proposed Wetland Mitigation language with a positive recommendation

Moved: R. Metcalf

Second: R. Smith

Vote: Roll call vote, 5 in favor [R. Metcalf, R. Smith, J. Vance, E. Trainer, and C. MacClinchy], none opposed; the motion carried.

c. Public Hearing — Subdivision Review — “Kingsmeadow” — Downing Road — Map 30 Lot 41

B. Howard then introduced this application for the creation of 8 residential lots on 58.8 acres. The Board had heard details about the project at a prior session.

Howard reported that she had received written comments from a number of departments or agencies about the project since the Board’s last hearing. Howard provided copies of these memos from (1) the Town Engineer; (2) Conservation Commission; (3) Police Department; (4) Fire Department; and (5) Public Services Department.

In response to Fire Department comments, Howard said, the applicant agreed to either equip homes with residential sprinkler systems or install a cistern. The final choice, Howard stated, should be shown in the plan and approved by the Fire Department.

Jason Vafiades, representing the applicant, highlighted the sundry changes to the plan that had been made to address past Planning Board comments and concerns. The project will preserve an extensive amount of free land, which land, Vafiades said, "could be donated to the Land Trust".

Vafiades also showed aerial diagrams of the property, its roadway, and the locations of the eight lots. He briefly reviewed the density bonuses being used. The homes constructed on these lots, Vafiades said, will use public power and a shared septic system.

In response to Board concerns, Vafiades said, the applicant had changed the property lines away from wetland setbacks and will post signs directing homeowners to avoid intrusions on "buffer land".

R. Smith thanked the representative for changing the lot lines. For the publics and Board's benefit, Smith asked how the number of lots was determined. J. Vafiades offered a step-by-step explanation of the calculation: (1) this is a cluster subdivision, he said; (2) the total lot size is 58.8 acres which consequently permits 5 lots; (3) applicant then deducted the right-of-way portion and made other deductions, arriving at 40.68 net residential acres; (4) in the RC Zone, he said, that net amount is to be divided by 5 acres, thereby permitting 8 lots; and (5) the applicant also merits bonuses for green building, protecting un-used land, etc.

These sundry factors and density bonuses, Vafiades said, result in applicant's right to have 8.26 lots in total.

E. Trainer also thanked the applicant for revising the lot lines away from wetlands. J. Vance inquired about the shared septic system, and Vafiades explained that each house would have a small septic tank with a low-pressure pump moving waste to a larger shared tank. All tanks, shared and individual, would be cleaned from time to time on a pre-set schedule. The cleaning requirement and schedule will be set forth in homeowners' documentation.

J. Vance also inquired whether homeowners would be responsible for periodically mowing the unused pasture land on either side of the entry road, and Vafiades agreed to discuss the matter with the applicant and consider including such guidelines in Homeowner Association documents as well. Likewise, J. Vance noted some discrepancies in the net lot sizes reported in the plan. J. Vafiades agreed to correct them.

In response to questions by D. Smith, J. Vafiades made a "commitment" that the open, unbuilt space would be preserved, and he re-iterated that the applicant is considering the donation of that land to the Land Trust.

C. MacClinchy then opened a public hearing. Abutter Jamie Witkus asked if the shared septic tank would (1) abut her property, and (2) be maintained by the Home Owners' Association. J. Vafiades answered both questions in the affirmative.

Another abutter, Nick Bush, repeated the concerns he had cited in emails to Board members. Mr. Bush asserted that (1) the project would have a negative impact on road traffic and safety; (2) the project would particularly move subdivision traffic in the direction of

his residence, and diminish his driveway safety and window views; and (3) the density bonuses for "open spaces" and "visual corridor preservation" do not conform with Ordinance requirements.

Mr. Bush cited Police studies of the volumes and speed of traffic on the Downing Road. The intersection of this subdivision's entryway, he asserted, would make that road "80 times more dangerous". Exiting traffic from the subdivision would likewise face Mr. Bush's property head on, detracting from the good visual experience and safety he currently enjoys.

J. Vafiades responded that the applicant had purposefully moved the subdivision's proposed entry road 85 feet, added a curve, and will include trees along the entry roadway precisely to avoid causing Mr. Bush visual or other harm. The subdivision's entryway will not directly face Mr. Bush's driveway. Adding an intersection, Vafiades added, actually tends to reduce traffic speeds according to numerous traffic studies.

J. Vafiades also defended the "spirit" of the density bonus calculations. The fact that applicant is willing to preserve a large amount of free land, Vafiades said, is an important benefit for the community and ample justification for the "open space" bonus.

R. Smith inquired about the trees to be planted in the cul-de-sac ["river birch"] and about snow removal. J. Vafiades responded that snow would simply be pushed into the ditches bordering the entry road. E. Trainer asked if the Fire Department had approved the proposed road and cul-de-sac, and C. Osterrieder answered in the affirmative.

D. Riley stated that he was comfortable that the Board had worked with the applicant at considerable length to mitigate the impact on abutting properties. However, J. Vance asked the applicant to provide additional detail in writing justifying the density bonus calculations one-by-one. R. Metcalf concurred with Vance.

D. Smith noted the importance of maintaining an "open-space"/open-meadow feel in West Kennebunk and complimented this project's open-space plan. C. MacClinchy added that applicant's commitment to preserving open land amply justified, in his [MacClinchy's] view, the "open space" bonus claim. The applicant, MacClinchy stated, also showed good faith in trying to mitigate any adverse impact on the Bush property.

There being no additional comment, C. MacClinchy closed the public hearing. Board members then summarized the sundry conditions or recommendations made during the session. B. Howard read them from her notes: (1) provide Homeowner Association documents which spell out maintenance requirements and the injunction on homeowners to avoid incursion on buffer lands; (2) remove Mark Steward's name and the New Hampshire survey stamp from the plan; (3) require one-year follow-up for stormwater maintenance; (4) present a "pasture mowing plan" to either leave the pasture area untended or cut it back twice a year; (5) provide a more detailed narrative explaining and justifying all density bonus calculations; (6) provide response to the Town Engineers comments (7) consider W-22 yellow road signage; (8) leave the trees on the road; (9) correct the net lot size differentials; and (10) include revision dates on the sheet set.

Motion: Move that the Planning Board of the Town of Kennebunk grant preliminary plan approval with the items and supplemental materials outlined above for the “Kingsmeadow” Subdivision, Downing Road, Map 30 Lot 41.

Moved: R. Metcalf

Second: R. Smith

Vote: Roll call vote, 5 in favor [R. Metcalf, R. Smith, J. Vance, T. Trainer, and C. MacClinchy], none opposed; the motion carried.

d. Preliminary Meeting — Multifamily Project — 44 York Street — Map 54 Lot 129

Given the late hour of the session, C. MacClinchy suggested that the Board table this Agenda item until a future meeting. Other Board members concurred. No formal vote was taken.

3. Approval of Meeting Minutes

C. MacClinchy then led the Board in a page-by-page review of the minutes of its March 28, 2022 meeting. One error was identified and corrected.

Motion: Move that the Planning Board of the Town of Kennebunk approve the minutes of its March 28, 2022 meeting as corrected.

Moved: R. Metcalf

Second: R. Smith

Vote: Voice vote, 5 votes in favor [C. MacClinchy, D. Smith, R. Smith, J. Vance, and R. Metcalf], none opposed; the motion carried.

4. Other Business

B. Howard reminded the Board that its next meeting would take place on Monday, April 25, 2022 at Town Hall. It will be an in-person meeting.

5. Adjournment: There being no further business, the Chair adjourned the meeting at 10:20pm.

Motion: Move that the Planning Board of the Town of Kennebunk adjourn this meeting.

Moved: D. Smith

Second: J. Vance

Vote: Voice vote, 5 votes in favor [C. MacClinchy, D. Smith, R. Smith, J. Vance, and R. Metcalf], none opposed; the motion carried.

Respectfully submitted,
J. Schlagheck

Adopted by the Planning Board in its Meeting
Of April 25, 2022

Signed by:



PLANNING BOARD

