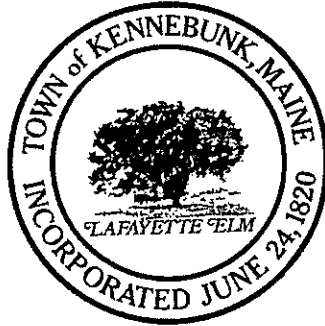


Town of Kennebunk, Maine



Planning Board

MEETING MINUTES

September 26, 2022

In Person Meeting, Town Hall, 3rd Floor, 1 Summer Street, Kennebunk

This meeting was held in person and televised on Cable TV Channel 5.
It is available for public viewing at any time at TownHallStreams.com.

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

Absent: None;

Also Attending: Brittany Howard [Town Planner], Justin Richardson [Kennebunk Kennebunkport & Wells Water District], William O'Connor [Longview Partners, LLC], Jason Vafiades [Atlantic Resources Consultants, LLC], William Ward, Jr. [Select Board Liaison], and Sally Carpenter [Select Board].

1. **Call to Order:** Chair and presiding officer C. MacClinchy called the meeting to order at 7:00pm on September 26, 2022. The meeting was held in person and five voting members were present: C. MacClinchy, J. Vance, R. Smith, D. Smith, and R. Metcalf.

2. Agenda Items

a. Continued — Special Exception — 165 High Street — Map 61 Lot 01

B. Howard re-introduced this application from Sylvain and Maxime Theriault to fill 192 square feet of Priority III wetland. The zoning, Howard noted, is (1) Branch Brook Aquifer Protection Zone A & B, (2) Shoreland Overlay District, and (3) Resource Protection

District. The proposed fill, Howard added, would afford the applicants access to uplands for the construction of a single-family house.

Howard reported that the applicants had revised their plan to show lot boundaries and an easement through Lot "A" for access to the proposed leach field.

W. O'Connor, representing the applicants, provided additional information about the changes that had been made to this plan in response to prior Board comments. E. Trainer thanked him for the changes, but noted that the Board's specific mandate regarding this application was to make a determination about the proposed 192 square feet of wetland fill. Trainer asked to see the memo from the Kennebunk Kennebunkport and Wells Water District ["KKW" or "Water District"] on the matter.

R. Smith concurred with Trainer about the Board's narrow charge. The specific focus of the Planning Board, R. Smith said, was to look at the wetland crossing, mindful of the possible impact on water safety and quality. He said that the Water District's memo on the subject contained a number of recommendations which he would have liked to see. "That expert opinion," R. Smith said, "is important." He noted that some of Water District's recommendations had been incorporated by the applicants in their plan. Some had not per B. Howard's memo.

R. Metcalf asked to hear from the Water District directly, but also suggested that any public hearing on the application be limited to new information rather than rehash "previous comments".

At this point, Justin Richardson of the Water District took the podium. He cited the Water District's several concerns about this project: (1) the pressure line to the leach field would run uphill and represents a potential leak risk; (2) the delineation of the wetlands is, according to the Water District, "problematic"; (3) the Town's Ordinance limits "development" on wetland properties, but the term appears to have somewhat different meanings in different Kennebunk Zones; and (4) a number of "boiler-plate" restrictions are typically recorded in a project plan as well as the property deed, but not all restrictions were incorporated by the applicant.

R. Metcalf asked which of the Water District's recommendations had and had not been incorporated into the applicants' plan. J. Richardson responded by citing "the typical restrictions" which the KKW was recommending: (1) there should be no use of heating oil and no above ground or below ground heating oil storage on the property; (2) no livestock or kennels on the property should be allowed; and (3) there should be periodic testing by the KKW.

R. Smith asked if such limitations were enforced on other properties. J. Richardson said "some of these restrictions" were in place for about 40 properties – but all of them were in Wells. B. Howard observed that Kennebunk has more stringent Ordinance limitations than Wells and, consequently, some of the limitations recommended by the Water District are already requirements stipulated in Kennebunk's Ordinance.

D. Smith asked how many houses presently exist in the “BBB” Zone, but J. Richardson nor B. Howard could answer. D. Smith then expressed general concern about this project’s proximity to Branch Brook. He posed questions about the number of people served by KKW’s water supply and about the primary sources of it. J. Richardson responded that “about 65% of the total supply” comes from Branch Brook. The district serves approximately 30,000 year round residents and up to 100,000 in the summer.

“The aquifer”, D. Smith then stated, “represents an estimated \$1 million natural filtration system”. It is vital that this important filtration mechanism be protected, D. Smith said. He also voiced concern that tree removal for the project could impact water supply in some adverse fashion. He asked J. Richardson what tree-removal restrictions the KKW would like to see. Richardson responded that limits regarding tree clearing were already embedded in Kennebunk’s Ordinance, but the KKW nevertheless had impact concerns.

D. Smith then asked if the KKW’s sundry concerns had, in whole or part, been neutralized or addressed by the changes made to this plan. J. Richardson replied that “we’d like no development on the property whatsoever”, but he acknowledged that, in his [Richardson’s] view, the applicants had met most of the KKW’s recommendations – “particularly if they embedded in the deed the limitations cited in the plan”.

J. Vance posed questions about the sizes of Lots A and B and whether they could be reconfigured in any way to avoid the 192 sq. ft. fill. W. O’Connor explained that the proposed configuration was the only way of keeping both lots conforming. J. Vance then asked if electric power would be needed to operate the pump moving waste to the leach field, and W. O’Connor answered in the affirmative. If electric power is lost, O’Connor said, the pump would not work and waste movement would be interrupted.

J. Vance then posed questions about the property’s setbacks, but B. Howard interjected that setback requirements would be enforced in the building permit process. Board members reiterated that the Planning Board’s focus was on the wetland crossing.

D. Kiley asked if building the road on Lot A would constitute “development” and he cited Ordinance language prohibiting “development”. Discussion on the topic ensued, with Board members agreed that the Code Officer reviewed the project with regards to zoning which is why this application is before the Board. The Board was provided a memo regarding development in this zone from the Code Officer.

R. Metcalf asked if a generator would be needed for the waste pump, and W. O’Connor stated that one would be useful. D. Smith and R. Metcalf consequently suggested that having a propane generator and “maintaining it well” should be conditions of approval. Other Board members did not comment.

C. MacClinchy then opened a public hearing and invited public comments and questions. W. Ward, Jr. observed that this public hearing had not been advertised. However,

B. Howard explained that additional advertising was not necessary since ads and abutter notices had been used for the previous hearing and was continued to a date certain.

C. MacClinchy commented that members of the public had expressed concerns about the potential adverse impact of this project on wetlands and water quality. However, he again emphasized that the Board's mandate was to determine whether this proposal for wetland fill met the Town's Ordinance specifications. MacClinchy added that he was not inclined to require all of the limitations proposed by the KKW as such limitations had not been imposed on other Kennebunk property owners. "I would not want to impose some of these limits in perpetuity", MacClinchy said. The applicants, he added, had already agreed to some, but not all of them.

R. Metcalf stated that (a) the KKW limitations with which the applicants agreed and (b) the limitations already stipulated in the Town's Ordinance should be itemized in both the plan and deed. The applicants, he opined, should specifically consider the KKW's recommendations "on a goodwill basis", but not take them as fixed conditions of approval. Kennebunk's Code Officers, Metcalf added, would determine if the plan meets the Town's requirements and limitations during the permitting process.

D. Kiley concurred, but asked voting members to nevertheless be mindful of the potential risk to water safety. E. Trainer agreed, stating that he had "personal concern" as well.

R. Smith remarked that the fundamental question before the Board was actually this: Did the proposed wetland crossing conform to the requirements stipulated in the Town's Ordinance? R. Smith opined that this project, in his view, did meet Ordinance requirements. However, R. Smith also was of the view that prohibiting the installation of an underground fuel tank should be a requirement set forth clearly in the plan and deed.

There being no other Board or public comment, Board members proceeded to Findings of Fact.

**Town Of Kennebunk
Planning Board
Special Exception
FINDINGS OF FACT & CONDITIONS OF APPROVAL**

1. Property Owner: Sylvain Theriault & Maxime Theriault
2. Site Location: 165 High Street, in the Branch Brook Aquifer Protection District Zone A & B, Resource Protection District, Shoreland Overlay
3. Assessor's Map: 64 Lot: 01 (parent parcel)
4. Description of proposed use: Special Exception and Permit to Fill and Grade in the Shoreland Zone – the installation of a driveway to access uplands with a 192 sq. ft. fill and a temporary 38 sq. ft.

wetland disturbance and restoration for the installation of a wastewater effluent line.

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:
- (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: With conditions as noted at the end of the document.
- (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:
 - (c) will conserve visual points of access to waters as viewed from public facilities;
Met: X Not Met: Not Applicable:
with the following conditions or comments
 - (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: These standards are not applicable because the development/impact is not occurring within the Resource Protection District on the property.

- (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;
 Met: X Not Met: Not Applicable:
 with the following conditions or comments:
 - (b) the proposed use will meet all applicable performance standards;
 Met: X Not Met: Not Applicable:
 with the following conditions or comments:
 - (c) the proposed use will not create the risk of bacterial or viral contamination of ground-water in Zone A.;
 Met: X Not Met: Not Applicable:
 with the following conditions or comments: With conditions as noted at the end of the document.
 - (d) the proposed use does not involve uses or activities which could cause a violation of the performance standard for pollution levels;
 Met: X Not Met: Not Applicable:
 with the following conditions or comments:
 - (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;
 Met: X Not Met: Not Applicable:
 with the following conditions or comments: The plan goes into detail about the installation and maintenance requirements of the various control measures and it is the responsibly of the homeowner to see that those measures are maintained/met.
 - (f) the use will not involve disposal of solid waste, hazardous materials or leachable materials (other than specifically allowed by Ordinance); and
 Met: X Not Met: Not Applicable:
 with the following conditions or comments: With conditions as noted at the end of the document.
 - (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: X Not Met: Not Applicable:
 with the following conditions or comments: With conditions as noted at the end of the document.
- (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: The application is not for the installation of a Telecommunications Facilities.

6. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 10, Section 3-G Roads, Driveways and Parking Areas of the Kennebunk Zoning Ordinance and determined:

(1) Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.

Met: Not Met: Not Applicable:

with the following conditions or comments:

(2) New roads and driveways are prohibited in a Resource Protection District, except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

Met: Not Met: Not Applicable:

with the following conditions or comments: The driveway is not located within the RP District.

(3) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical:

Met: Not Met: Not Applicable:

with the following conditions or comments:

(4) Road and driveway grades shall be no greater than ten (10) percent, except for short segments of less than two hundred (200) feet.

Met: Not Met: Not Applicable:

with the following conditions or comments:

(5) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip:

Met: Not Met: Not Applicable:

with the following conditions or comments:

(6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient column or heat to erode the road, driveway or ditch.

Met: Not Met: Not Applicable:

with the following conditions or comments:

(7) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis To assure effective functioning.

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

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

Approves:

Approves with conditions: X (4-1)

- All restrictions in Article 8 Section 2, Branch Brook Aquifer Protection District, shall be adhered and a note to this effect shall be added to the plan and deed.
- The note on the plan regarding herbicides and pesticides shall be cited in the deed.
- The note on the plan regarding fuels and petroleum-based products shall be cited in the deed.
- The septic system is to be cleaned after the first three [3] years, and once every two [2] years after. This requirement shall also be cited in the deed and on the plan. The documentation regarding disposal system installation notes provided by the applicant be added to the deed.

Denies:

Conditions:

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 ONE (1) YEAR OF THE DATE ON WHICH THE PERMIT IS GRANTED, AND IF THE EXTERIOR WORK OR CHANGE IS NOT SUBSTANTIALLY COMPLETED WITHIN EIGHTEEN (18) MONTHS OF THE DATE GRANTED.**

Board members next summarized the conditions of approval which they had identified, discussed, and agreed upon:

- (1) All zoning restrictions cited in Ordinance Article 8 Section 2 shall be adhered to;
- (2) All plan notes — to include language on organic pesticides, herbicides, and fertilizers — should also be included in the deed;
- (3) No underground fuel storage tanks shall be permitted, and this proviso should likewise be cited in the plan and deed; and,
- (4) The septic system is to be cleaned (a) after the first three [3] years, and (b) thereafter once every two [2] years, and this requirement shall also be cited in the deed as well as the plan. The documentation regarding disposal system installation notes provided by the applicant be added to the deed.

The Board then took up the following motion.

Motion: **Move that the Town of Kennebunk Planning Board approve the Findings of Fact and application for the installation of a driveway to access uplands with a 192 sq. ft. fill and a temporary 38 sq. ft. wetland disturbance and restoration for the installation of a wastewater effluent line for 165 High Street, in Branch Brook Aquifer Protection Zone A and B, the Shoreland Overlay District, and the Resource Protection District, owners Sylvain and Maxime Theriault, with the conditions noted above.**

Moved: R. Metcalf

Second: R. Smith

Vote: **Show of hands vote, 4 in favor, 1 opposed [R. Smith]; the motion passed.**

b. Public Hearing — Special Exception — 30 and 40 Cat Mousam Road — Map 54 Lot 31 and Map 55 Lot 38.

B. Howard next re-introduced the application of Kyle and Casey Jorgensen for authorization to demolish and reconstruct structures at 30 and 40 Cat Mousam Road. Since the Board's last hearing of this application, Howard said, the Fire Chief had expressed concerns about emergency access. The plan was subsequently amended to address those concerns. The applicants specifically provided for a turnaround area, Howard said.

Based on input from the Tax Assessor and Fire Chief, Howard said, the applicants also need to apply for updated addresses which comply with prevailing 911 standards. Howard also noted that the garage at 30 Cat Mousam is being demolished and the cubic area is being added to the first floor of the house.

Kyle Jorgensen, owner and applicant, then addressed the Board. He explained that he is demolishing the garage and will add a "hammerhead" to facilitate Fire Department access. Board members commended the changes.

J. Vance inquired about the culvert cited in the plan, and K. Jorgensen explained that he had thus far found one culvert on his property and has not been able to find the outlet. It will not be removed, but will periodically be inspected and maintained.

D. Smith asked if 40 Cat Mousam would have public sewer access, and K. Jorgensen replied that the connection is already in place. R. Smith asked if the Fire Chief had approved the hammerhead, and Mr. Jorgensen answered in the affirmative and a copy of the email was provide to the Board as part of their memo. E. Trainer commended the applicant for the "conscientiousness" and forethought of his plan.

C. MacClinchy then formally opened a public hearing and solicited public comments and questions. There being none, he subsequently closed the public hearing. Mac-Clinchy then informed that Board that he would abstain from voting on this application as he had not attended the previous hearing on it. The Board proceeded to Findings of Fact.

**Town Of Kennebunk
Planning Board
Special Exception
FINDINGS OF FACT & CONDITIONS OF APPROVAL**

1. Property Owner: Kyle and Casey Jorgensen
2. Site Location: 30 & 40 Cat Mousam, in the Village Residential District, Resource Protection District, and Shoreland Overlay
3. Assessor's Map: 54 Lot: 31 and Map: 55 Lot: 38
4. Description of proposed use: Special Exception regarding proposed building locations conforming to all shoreland setback requirements to the greatest practical extent as determined by the Planning Board.
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:

- (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:
- (c) will conserve visual points of access to waters as viewed from public facilities;
Met: X Not Met: Not Applicable:
with the following conditions or comments:
- (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:

(a) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

Met: X Not Met: Not Applicable:

with the following conditions or comments: The structure will be built outside RP District but they are doing work within the district to prep and prepare the site.

(b) The lot on which the structure is proposed is a lot of record, having been established and recorded in the York County Registry of Deeds prior to the effective date of this amendment, (6/15/94).

Met: X Not Met: Not Applicable:

with the following conditions or comments:

(c) There shall be only one dwelling located on such lot of record.

Met: X Not Met: Not Applicable:

with the following conditions or comments:

(d) The proposed location of all buildings, sewage disposal systems and other improvements are:

(i) Located on natural ground slopes of less than twenty (20) percent; and

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

- (ii) Located outside the floodway of the 100-year floodplain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodways Maps and Flood Insurance Rate Maps; all buildings including basements, are in conformance with the Town's Flood Plain Ordinance, (see Section 4-5 of Kennebunk town Ordinances).

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be ½ the width of the 100-year floodplain. For purposes of this subparagraph, "floodway" means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot in height and "velocity zone" means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.

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

- (e) The total ground floor area including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

Met: X Not Met: Not Applicable:
with the following conditions or comments: The building will be outside of the RP

District.

- (f) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a waterbody, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet in horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to moderate value and high value wetlands.

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

- (9) If located in the Branch Brook Aquifer Protection District the proposed use:
Met: Not Met: Not Applicable: X

with the following conditions or comments: The property is not located in the Branch 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: X

with the following conditions or comments: The application is not for the installation of a Telecommunications Facilities.

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

Approves:

Approves with conditions: X (4-0-1)

- The applicant shall apply to the Assessing Department for an updated address that adheres to 911 guidelines.
- Only certified organic fertilizers, pesticides, herbicides, and insecticides are to be used. This statement shall be added to the plan and deed.
- Invasive species are to be removed in accordance with DEP standards.

Denies:

Conditions:

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 ONE (1) YEAR OF THE DATE ON WHICH THE PERMIT IS GRANTED, AND IF THE EXTERIOR WORK OR CHANGE IS NOT SUBSTANTIALLY COMPLETED WITHIN EIGHTEEN (18) MONTHS OF THE DATE GRANTED.**

Board members then summarized the conditions of approval to be cited in the plan and deeds:

- (1) Applicant is to apply to the Tax Assessment Office to change the addresses to conform with 911 standards;
- (2) Any invasive plant and/or tree species are to be removed in accordance with prevailing DEP standards; and,
- (3) Only certified organic fertilizers, pesticides, and insecticides are to be used.

Motion: **Move that the Town of Kennebunk Planning Board approve the Findings of Fact and application of Kyle and Casey Jorgensen for 30 and 40 Cat Mousam Road, Map 54 Lot 31 and Map 55 Lot 38, for Special Exception.**

Moved: D. Smith

Second: R. Smith

Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [C. MacClinchy as he had not attended a prior meeting on the application]; the motion passed.**

c. Final Plan – Multi-Family Project – 44 York Street – Map 54 Lot 129.

B. Howard then re-introduced the application of Pete and Katie Gay for authorization to create 12 residential units – two triplexes and three duplexes – on 1.36 acres at 44 York Street. There is an existing office/apartment structure on the site.

The application, Howard said, was before the Board for final review. She noted that the drainage improvements within the Day Street right of way should be a condition of approval that was discussed as part of the preliminary review.

B. Howard noted that the applicants had provided an updated landscaping plan, had added privacy fencing and screening to their plan for Units #1 and 2, and had likewise supplied a "Declaration of Restrictive Covenants" regarding affordable housing.

Jason Vafiades, representing the applicants, then addressed the Board. He stated that he had met in person with several abutters who had expressed concerns about the development. In response to their feedback, the applicants are adding fencing and landscaping meant to afford privacy and stop light intrusion. The applicants will also install a culvert near Day Street for better drainage.

J. Vance thanked J. Vafiades for the "good changes" made to this plan, and R. Metcalf and E. Trainer concurred. D. Smith questioned the location drainage study points, and J. Vafiades provided the information.

R. Metcalf asked if the Fire Department had agreed with the revised access way, and J. Vafiades responded in the affirmative. Metcalf also questioned the use of Serbian spruce trees near abutters. He urged Vafiades and the applicants to consult with thier

landscape architect for recommendations of taller, fuller trees and plants. R. Smith concurred.

Alluding to the Board's site walk on the property, J. Vance remarked that there were a lot of invasive plants and trees located there. Vance suggested that a plan was needed to eradicate the plants and contain their spread in ways that conform to DEP guidelines.

The Board then discussed the need for another public hearing and informally concluded that another would not be needed as there had been no material change of the plan since the last hearing. However, the Board also noted that the plan for this project should be modified to recognize that there would actually be 13 [and not 12] residential units – one in the existing structure [to be one of the three “affordable” units] plus the 12 new ones [two of which would also be “affordable”]. Members then proceeded to Findings of Fact.

Town of Kennebunk Planning Board

FINDINGS OF FACT AND CONDITIONS OF APPROVAL

FINAL SUBDIVISION PLAN OF: Kennebunk Village Townhomes Subdivision Name

1. Property Owner: Pedro and Kathryn Gay has shown legal interest in the property by deed.
2. Site Location: 44 York Street
3. Size and # of lots/units: 1.44 acres – 12 new residential units and an existing building comprised of office space and 1 residential unit (3 affordable)
4. Zoning District (s): York Street Mixed Residential & Commercial Use (MRCU)
5. Assessor's Map: 54 Lot: 129
6. Applicant: Jason Vafiades (Atlantic Resource Consultants, LLC)
7. INFORMATION REVIEWED BY PLANNING BOARD:
 - Staff reviews (Engineer, Fire Chief, Planner, Code Enforcement Officer) X
 - Conservation Commission: X
 - State/Federal Reviews: N/A
 - Sketch: 5/10/2021
 - Site Walk: 5/22/19/2021
 - Preliminary Meeting: 4/25/2022
 - Completeness Meeting: 6/24/2022
 - Public Hearing: 7/25/2022

WAIVERS:

The Planning Board granted the following waivers on 7/25/2022

- a. Zoning Article 10 Section 9.D.1 – Unobstructed Parking Spaces
- b. Zoning Article 10 Section 10.C – Town Street Design Standards
- c. Zoning Article 11 Section 6.B.3 – Design Review
- d. Zoning Article 11, Section 6.B.3.C – High Intensity Soil Survey
- e. Zoning Article 11 Section 8.6.e – Driveway Width
- f. Zoning Article 10 Section C.10.D.3 - 50-Foot Perimeter Buffer Requirement

APPROVED BY: _____ DATE: _____

8. The Kennebunk Planning Board has reviewed the above noted development utilizing the Kennebunk Standards for Reviewing Land Subdivisions and the Kennebunk Zoning Ordinance. Based upon the application and materials submitted in support of the application, together with the evidence submitted at the public hearing on the application, the Planning Board makes the following findings with respect to the standards of Title 30-A § 4404 and Article 11, Section 8 of the Zoning Ordinance Guidelines listed below:

A. M.R.S.A. 30-A §4404

- 1. **Pollution.** Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above the sea level and its relation to the floodplains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers

Rationale for negative determination: _____

- 2. **Sufficient water.** Has sufficient water available for the reasonably foreseeable needs of the subdivision.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers:

The Board received a sign off from Kennebunk, Kennebunkport, and Wells Water District saying they can serve the project.

Rationale for negative determination: _____

3. **Municipal water supply.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers:

As noted in #2 above.

Rationale for negative determination: _____

4. **Erosion.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers

Rationale for negative determination: _____

5. **Traffic.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed, and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of the Town, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers:

The project is not outside the urban compact area.

Rationale for negative determination: _____

6. **Sewage disposal.** Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on Town services if they are utilized.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers

Municipal service will be utilized for sewage disposal and the Board received a sign off from the sewer district stating they have capacity for the project.

Rationale for negative determination: _____

7. **Municipal solid waste disposal.** Will not cause unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers

Rationale for negative determination: _____

8. **Aesthetic, cultural and natural values.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

9. **Conformity with local ordinances and plans.** Is in conformance with the duly adopted subdivision regulation, comprehensive plan, and zoning ordinance of the Town of Kennebunk.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

10. **Financial and technical capacity.** The sub divider has adequate financial and technical capacity to meet the standards of these regulations.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

11. **Surface waters; outstanding river segments.** Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Standard is met _____, not met _____, N/A X , met with following conditions and or waivers _____

Rationale for negative determination: _____

12. **Ground water.** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

13. **Flood areas.** The sub divider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures in the subdivision shall be constructed with their lowest floor, including the basement, at least two feet above the 100-year flood elevation.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers This project is not located in a flood zone.

Rationale for negative determination: _____

14. **Stormwater.** The proposed subdivision will provide for adequate storm water management.
- Standard is met X , not met _____, N/A _____, met with following conditions and or waivers: With the condition as noted at the end of the document regarding Day Street.
- Rationale for negative determination: _____
15. **River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.
- Standard is met X , not met _____, N/A _____, met with following conditions and or waivers: No rivers, streams, or brooks are on the property.
- Rationale for negative determination: _____
16. **Freshwater wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
- Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____
- Rationale for negative determination: _____
17. **Spaghetti-lots prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of these lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.
- Standard is met _____, not met _____, N/A X , met with following conditions and or waivers _____
- Rationale for negative determination: _____
18. **Lake phosphorous concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
- Standard is met _____, not met _____, N/A X , met with following conditions and/or waivers _____
- Rationale for negative determination: _____
19. **Impact on adjoining municipalities.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
- Standard is met _____, not met _____, N/A X , met with following conditions and or waivers _____
- Rationale for negative determination: _____

20. **Lands subject to liquidation harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, Section 8869, Subsection 14.

Standard is met _____, not met _____, N/A X, met with following conditions and or waivers _____

Rationale for negative determination: _____

B. Article 11, Section 8 (As applicable for multi-family and non-residential subdivisions)

1. The plan preserves the natural landscape insofar as practical and adequately uses the natural features of the site and/or new landscaping to define, soften, and screen the impacts of development.

Standard is met X, not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

2. For a nonresidential project, effective buffers are maintained or created between it and adjoining residential properties and residential zoning districts.

Standard is met X, not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

3. Filling, excavation and earth moving activity is carried out in a way that keeps erosion and sedimentation to a minimum.

Standard is met X, not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

4. Adequate provision has been made for surface drainage, so that removal of storm waters will not have an unreasonably adverse effect on neighboring properties, downstream water quality, soil erosion, or the public storm drainage system.

Standard is met X, not met _____, N/A _____, met with following conditions and or waivers: With the condition as noted at the end of the document regarding Day Street.

Rationale for negative determination: _____

5. Adequate provision has been made for water supply and sewage disposal.

Standard is met X, not met _____, N/A _____, met with following conditions and or waivers: The Board received sign off letters from the utility companies stating they can serve the project.

Rationale for negative determination: _____

6. The site plan provides for safe access to and egress from public and private streets, with adequate parking and internal circulation.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

7. Vehicular access to the site will be on roads which have adequate capacity to accommodate any additional traffic generated by the development.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers _____

Rationale for negative determination: _____

8. The site plan provides for safe pedestrian circulation, both on-site and off-site.

Standard is met X , not met _____, N/A _____, met with following conditions and/or waivers _____

Rationale for negative determination: _____

9. Exterior lighting does not adversely affect neighboring properties or streets.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers: Steps have been taken to reduce the impacts on neighboring properties with the installation of screening and vegetation to shield light trespass on abutters that are most effected. _____

Rationale for negative determination: _____

10. Electrical and telephone utility lines and components serving the site will be placed in a manner that is not hazardous or unsightly.

Standard is met X , not met _____, N/A _____, met with following conditions and or waivers: Utilities will be located underground. _____

Rationale for negative determination: _____

***** Based on the above noted findings, the Kennebunk Planning Board votes to**

 approve,

X approve with the conditions noted above, or (5-0)

1. The applicant will consult with the Public Works Department regarding their proposed drainage improvements within the Day Street right-of-way.
2. The applicant shall remove and manage the invasive species on the property in accordance with DEP guidelines.
3. Consult with the projects landscaping architect to ensure that the trees to be installed will grow tall enough to shield the second story windows.
4. The emergency vehicle access gate shall be cleared of snow and any obstructions. No parking signs and lot striping shall be added to the plan.
5. Engage a certified arborist to check on any damage done to the abutter tree roots as a result of site work and, if damage occurs, remove and replace the damaged trees.

6. Only certified organic fertilizers, pesticides, herbicides, and insecticides are to be used on the property.

 deny
the Final Plan Application of

Kennebunk Village Townhomes
Subdivision Name

****All projects are required to have a preconstruction meeting prior to commencing work onsite. A performance guarantee is also required prior to the preconstruction meeting. ****

The Board also summarized its conditions of approval. The applicants, it concluded, should be specifically required to:

1. The applicant will consult with the Public Works Department regarding their proposed drainage improvements within the Day Street right-of-way.
2. The applicant shall remove and manage the invasive species on the property in accordance with DEP guidelines.
3. Consult with the projects landscaping architect to ensure that the trees to be installed will grow tall enough to shield the second story windows.
4. The emergency vehicle access gate shall be cleared of snow and any obstructions. No parking signs and lot striping shall be added to the plan.
5. Engage a certified arborist to check on any damage done to the abutter tree roots as a result of site work and, if damage occurs, remove and replace the damaged trees.
6. Only certified organic fertilizers, pesticides, herbicides, and insecticides are to be used on the property.

Motion: **Move that the Town of Kennebunk Planning Board approve the Findings of Fact, conditions of approval, and final subdivision plan for 44 York Street, owners Pedro and Katie Gay, for 13 residential units (of which 3 are “affordable”), Map 54 Lot 129, as conditioned.**

Moved: D. Smith

Second: R. Metcalf

Vote: **Show of hands vote, 5 in favor, none opposed; the motion passed.**

3. Approval of Meeting Minutes

C. MacClinchy then led the Board in a page-by-page review of the Minutes of its meeting of September 12, 2022. A number of errors were identified and corrected.

Motion: **Move that the Town of Kennebunk Planning Board approve the Minutes of its meeting of September 12, 2022 as corrected.**

Moved: D. Smith

Second: R. Metcalf

Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [R. Smith had not attended the prior meeting]; the motion carried.**

4. Other Business

- a. **Election of Officers:** Members then proceeded to elect Board Officers for the period ending July 1, 2023.

Motion: **To nominate Christopher MacClinchy as Chair of the Planning Board**
Moved: R. Smith
Second: D. Smith
Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [C Mac-Clinchy]; the motion passed.**

Motion: **To nominate Richard Smith as Vice Chair of the Planning Board**
Moved: D. Smith
Second: R. Metcalf
Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [R. Smith]; the motion passed.**

Motion: **To nominate David Smith as Secretary of the Planning Board**
Moved: R. Metcalf
Second: J. Vance
Vote: **Show of hands vote, 5 in favor, none opposed; the motion passed.**

- b. **Other Business**


B. Howard informed members that there would be no meeting of the Planning Board on Monday, October 10, 2022 as it is a federal holiday.

- 5. Adjournment:** There being no further business, the Chair adjourned the meeting at 9:37pm.

Motion: **Move that the Planning Board of the Town of Kennebunk adjourn this meeting.**
Moved: D. Smith
Second: R. Smith
Vote: **Show-of-hands vote, 5 votes in favor, none opposed; the motion carried.**

Respectfully submitted by
J. Schlagheck, Clerk

Adopted by the Planning Board in its Meeting of October 24, 2022

Signed by:  10/29/22

PLANNING BOARD

