

**Town of Kennebunk
Planning Board
Meeting Minutes
Monday, April 11, 2016**

Present: Chris MacClinchy – Chair, Richard Smith – Vice Chair, David Smith – Secretary, Matt Randall, Robert Metcalf, Janice Vance - Alternate

Not Present: Aleksandra Jean - Alternate

Also Attending: Judy Bernstein – Town Planner

1. Open Meeting

C. MacClinchy opened the meeting at 7:03pm. Today is Monday, April 11, 2016.

2. Approval of Minutes of Previous Meetings

Review of Minutes was held till end of meeting.

**3. Shoreland/ Special Exception Application of Bill Kramer for Replacement/
Relocation of Pier/ Dock/ Float System at 19 Florence Circle**

J. Bernstein provided a summary of this application. The applicants/ owners of the property are Linda and Bill Kramer. They are looking to build a replacement dock system on the Mousam River. The plans for the new system are in the Board packets. Also enclosed in the packet is copies of Article 10 of the Town ordinance, which is dock standards. The Board will likely want to have a site walk for this project.

Bill Kramer presented his application to the Board. There has been a dock on this property for the past 38 years, but this past winter ice tore the dock out of the shore. They are looking to replace the dock, however when they looked at putting the dock back into the same spot, it didn't make sense as it would still be in the ice flow pattern. The current plan is to move the dock by 5'. They have already applied for a permit by

rule from the DEP, because they are moving the dock. He has met with DEP twice so far, but they are not expressing any concern regarding his application.

As the Board will see in the application, Mr. Kramer is looking at a product out of SC called Dock Blocks. This product will allow him to drive his boat up onto the dock and keep it out of the Resource.

Mr. Kramer stated that he has filled out all the paperwork for this application, talked with the DEP, Army Corp, and the ME Historic Commission, and now he is presenting his application to the Kennebunk Planning Board. He thought this would be an easy process at first, as he is just looking to replace a 6' x 8' dock, but moving it has created a lot more work than he anticipated. He is doing all of this himself, as he has experience building decks and this is a similar project. This is his first time presenting to the Planning Board, and he is trying to provide as much information as possible.

J. Bernstein asked if Mr. Kramer was proposing to use Helix anchors down about 4'.

Mr. Kramer answered that yes, he has talked with Helix Systems and they have both a 4' and a 5.5' product. Given the dock that he is proposing, Helix Systems thought that just 2 anchors would be sufficient, but he wants to be sure that things are secure so his plan is calling for 4 anchors.

D. Smith noted that the plan calls for the 4' anchors. What will be done if they get refusal when auguring?

Mr. Kramer stated that there are a couple different size moorings which can be custom-made if he can't use the 4' standard product.

D. Smith asked what the plans for storage were. How will they move the ramp and float over the marsh?

Mr. Kramer answered that the property has a paved driveway which runs all the way to the river. The dock can be pulled apart and then he will set up a plastic board that he can use to pull the system out of the river.

D. Smith asked if the plastic board would protect the marsh.

Mr. Kramer answered yes.

D. Smith asked how much does he anticipate the dock to weigh.

Mr. Kramer answered between 600-700 lbs.

D. Smith asked how many sections will be involved in this system.

Mr. Kramer answered probably 3.

D. Smith clarified that the wooden dock would be permanent.

Mr. Kramer answered yes, the 6' x 8' section would be permanent and have an aluminum gangway which can be mounted to it.

D. Smith asked what kind of spacing he would use for the permanent dock.

Mr. Kramer answered he planned to use 5¼" wide planks with a ½" spacing.

D. Smith asked if he is planning to stain the dock.

Mr. Kramer answered no, but they were planning to use pressure treated wood. He also plans to have concrete around the posts to prevent leaching into the resource.

D. Smith asked if he had considered using Helix pods instead of posts for the permanent dock.

Mr. Kramer answered that he didn't know how to get the pods into that area. His plan is to use 12' x 6" x 6" posts and drive them down as far as can go so that they will be stable.

D. Smith asked if he was planning to have a railing around the whole dock.

Mr. Kramer answered that he planned for a rail around ¾ of the dock, and possibly a little at the end. He wants to be sure there is a pass through, so that he can pull the gangway up onto the dock easily.

D. Smith asked what the gangway will be made of.

Mr. Kramer answered aluminum, with a rod and bearing.

D. Smith asked how it will connect to the floating portion of the system.

Mr. Kramer answered that it will be resting on a plastic pad which will allow it to slide up and down without doing any damage to the marsh.

D. Smith asked how much travel from Highest to Lowest tide.

Mr. Kramer has calculated the change to be between 18 – 24 inches.

D. Smith asked what he estimated the weight of the gangway to be.

Mr. Kramer answered that he figures it to be between 480 – 500 lbs.

D. Smith asked if the dock is going to be in the water all the time, through all tides.

Mr. Kramer answered yes, it will be in the water from May through late September.

D. Smith asked what are the plans for securing the boat to the dock.

Mr. Kramer answered that there are 4 cleats and there is a pulley system. The product is designed to drive the boat right up on it, but he doesn't want to do that. He stated that it's just as easy to pull it up with a winch.

R. Metcalf stated that this is a very interesting kind of float-up.

Mr. Kramer agreed. The weight of this product is much less than a standard float, but that will be counteracted by having the boat on top. He continued that during a negative tide there is a possibility of bottom contact, but with the flat bottom it is less likely to do any damage.

R. Metcalf asked if the boat will be stored on the dock all the time.

Mr. Kramer answered yes.

R. Metcalf asked is the upland area stable.

Mr. Kramer answered that yes, the upland is very stable. This is a great property. He has lived in the area for 25 years and was very fortunate to be able to get this property when it went up for sale last June.

R. Metcalf requested clarification that for the permanent posts, would the applicant be using a sleeve and then concrete.

Mr. Kramer stated no, he had planned to put concrete directly around the posts.

R. Smith asked about the 4 Helix anchors being put into the river bottom. What is the composition of the bottom?

Mr. Kramer answered that it is sand.

R. Smith asked if he knew what he would hit 4' down into the bottom.

Mr. Kramer answered no, and that is his concern as well. He has not done any test borings as he wasn't sure what needs to be done for that. He plans to try both the 4' and the 5 ½' anchors. If the 4' goes in too easy, he will switch to the 5 ½'.

R. Smith asked if he planned to remove the posts from the old dock.

Mr. Kramer answered that there is only 1 left, the others came out naturally. He does intend to pull out the last post.

R. Smith asked if he thought that pulling out the post would cause any damage to the river bank.

Mr. Kramer answered that he hoped not. His plan was to try and wiggle the post and see where it goes.

C. MacClinchy suggested that if the post won't come out easily, he could just cut it flush and leave it

R. Smith asked if the float will sit on the river bottom during low tide.

Mr. Kramer answered that at low tide there is 18 – 24 inches of water. The Dock Blocks take 8" but may need more when add the boat on top. The intent is that there should not be any contact, but there will be a flat surface should contact happen.

R. Smith asked where the dock is located in relation to lot lines.

Mr. Kramer answered that there is 200' on each side between the dock and the lot lines.

M. Randall stated that most everything he wanted to ask has been touched on already. He did request a written plan for the removal of the dock at the end of the season.

Mr. Kramer stated he could add that to the packet.

M. Randall asked in regards to the 1/5th rule, could the applicant confirm the width of the river in that area.

Mr. Kramer answered that he used Google Earth to snap the lines. He did his calculations at high tide, but would be different at low tide.

M. Randall asked that when he receives his complete DEP application, would he also send that to the Planning Board.

Mr. Kramer stated he would leave the completed DEP application with the Town Planner.

J. Vance said thank you for providing so much information. She is familiar with this product, and the only vulnerability seems to be with wind. She asked if he had looked at an alternative to the Helix anchors for the two chains on the river side. In CT, they used heavy concrete blocks, which were stronger against the wind.

Mr. Kramer stated that he looked into that, but Concrete would not be easy to get into the river which is why they chose the Helix anchors.

J. Vance asked how far away from the float will the chains stick out into the water.

Mr. Kramer answered approximate 4-5 feet.

J. Vance asked if there should be anything visible to boats so that they are not hit by a prop.

Mr. Kramer answered that most boaters would not come that close to the dock as a rule. However, he does have the anchors installed at a 45° angle to be safe. This is the widest part of the river and so his biggest concern is about how shallow it will become during a negative tide.

C. MacClinchy stated that they have covered most of the questions he could possibly have at this point. He suggested finding time for a site walk. He asked when Mr. Kramer would be ready.

Mr. Kramer answered that he is ready whenever the Board is ready to be there.

Chris suggested Saturday, April 16th at 8:00 am. R. Smith was unavailable, but J. Vance, C. MacClinchy, R. Metcalf, D. Smith, and J. Bernstein would be available. M. Randall stated he would need to check.

C. MacClinchy asked about scheduling the Public Hearing on this application.

J. Bernstein stated that there is already a Public Hearing for the Howard Farm subdivision on 4/25/16.

R. Metcalf stated that he felt comfortable doing this on the 25th as well. This is not a complicated application.

C. MacClinchy confirmed that they would schedule the Public Hearing for 4/25/16, with the caveat that if there are any issues from the site walk, they would reschedule.

4. Workshop Discussion regarding Zoning Amendment Needs

Accessory Use

J. Bernstein opened this discussion by stating that the Board should determine what zoning amendments they felt needed to be addressed and/or updated. She suggested that the Board should work to clarify the definition of Accessory Use within the ordinance.

J. Bernstein stated that she has done a lot of searching through other Town ordinances looking for their definition of Accessory Use. They are all pretty much the same. Also, did a search in some of the land use websites. The information she found is included within the packets. She stated she wasn't sure that it is helpful, as it is generally all defined the same way. In terms of drive-thrus and in terms of how to make sure that the

restaurant is the principal use and not the drive thru. She wasn't sure how to define the matter within the ordinance.

R. Metcalf suggested defining it through economics. There is an example from NC that uses economics as a determination of primary v. accessory use. He stated that he felt this is what the Kennebunk ordinance needed.

J. Bernstein asked how the town would measure that.

R. Metcalf answered that they would need to create a business pro forma.

J. Bernstein asked what if the applicant didn't know the % for each use.

R. Metcalf stated then they shouldn't be in business.

M. Randall asked if this definition would be for restaurant drive-thrus or all drive-thrus.

R. Metcalf stated that it would be for all drive-thrus.

M. Randall noted that in the example of a bank drive-thru, most customers go through the drive-thru, but there is a lot of work that takes place within the building. However, he questioned how a restaurant drive-thru would be subordinate in any of the categories.

J. Bernstein suggested that it would be a calculation. There are restaurants that could have a 50/50 split in their business.

R. Metcalf stated that they would need to determine what percentage of business is generate through the drive-thru v. walk-in customers.

M. Randall suggested that they use more than just revenue. He suggested creating 4 criteria for the calculations:

- Money/ Revenue
- Number of Customers
- % of Land Use
- Number of Employees

R. Metcalf agreed that this multiple layer approach would be best, but that economics needs to be included in the calculation. He stated that it will take more looking into this matter to define it for the ordinance, but that economics would be key. He also stated that it would need to be clearly defined, as lawyers will all have different interpretations of the standards and fight through that.

J. Bernstein stated that she really thought there would be some towns with a better definition, but that just wasn't the case in her research.

C. MacClinchy stated that he liked the idea of weighing the importance of number of customers and number of employees for each use within the business.

R. Metcalf also stated that they don't want to get into an issue of approving a plan and then find out that it was changed during the course of business. He stated that they would want to have something strong enough that the applicant would need to have a real business plan to put through their application to the Board.

M. Randall agreed and suggested that they create some broad brushstrokes for measurement, and require that the applicant must meet 4 out of 5 metrics.

M. Randall also asked if they are creating a definition for all accessory uses, or specific to drive-thru windows. If looking at all accessory uses, it would be helpful to figure out what accessory uses the Board has had an issue with.

R. Metcalf cautioned that the Board must be careful how they categorize Accessory Uses. It would be prudent to look at all the types of accessor uses and define them.

M. Randall asked if there are any big issues that jump to mind.

R. Metcalf suggested that in terms of accessory use, this Board doesn't deal with a lot of retail. They may want to review this with the Site Review Board. He also suggested that as a first step they may want to call Natalie Burns, Town Attorney, to make sure that if they have a strong criteria for an acceptable economic plan, do they have the opportunity to make that standard work. It doesn't make sense to put in too much work on this matter if can't get the change approved.

M. Randall asked if he was questioning the Boards ability to define an accessory use.

R. Metcalf clarified that he wanted to ask Natalie Burns if the Board could define an acceptable economic plan for use in determining accessory use.

Keeping of Horses

J. Bernstein stated that she still can't find any ordinance regarding a keeping of horse standard. Whatever issue that led to this standard was before her time as Town Planner. The ordinance currently allows for a maximum of 4 horses on a property. The issue with this is that the standard was intended for the Village zones (high density) and was not meant for the Rural zones. At the time this ordinance was written, the Rural zones were listed under agricultural standards and not residential standards. When the

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ordinance was rewritten, the rural zones were listed within the ordinance and nothing was done to update the [zoning provisions].

R. Smith stated he liked J. Bernstein's suggestion that in a rural zone there should be no maximum as long as they meet all other standards within the ordinance regarding land space, etc.

C. MacClinchy suggested that they also strike the line in the ordinance referring to "above ½ acre portion", as they don't understand what that is referring to.

J. Bernstein agreed, she thought that this was likely a typo or a piece of a sentence that was left over from the template.

M. Randall suggested that they make this a conforming law.

J. Bernstein stated that her concern was that the Board doesn't do that for any other performance standards. She continued to confirm that the Board is suggesting that they will continue to require land owners to meet the first part of the standard, but will strike the maximum number of horses for Rural zones. She stated that she will redraft this ordinance.

J. Bernstein did continue as there had been a question regarding a buffer requirement.

D. Smith stated yes, he had suggested a buffer requirement for manure. The current standards include a buffer for Resource Protection, but not any buffer for neighboring properties.

R. Metcalf noted that there is a set of standards for the State of Maine. Does this ordinance comply with those requirements?

M. Randall suggested that a line be added which states that the property must meet all state standards for keeping of livestock.

J. Bernstein noted that she found one Town which had language in their ordinance which stated that storage of manure would not be within 200' of neighbor.

J. Bernstein asked the question whether this ordinance should be expanded to include other large animals, such as llamas, cows, miniature horses, etc.

M. Randall suggested that if the ordinance wasn't broken for those, don't worry about it at this time.

J. Vance agreed. She asked if there had been any complaints about other livestock issues.

J. Bernstein stated not that she was aware of.

C. MacClinchy asked if there were any other zoning issues which the Board would like to discuss.

There was no answer from the other members of the Board.

5. Other Old/ New Business

There were no new meeting minutes to review at this meeting.

April 25, 2016 meeting

Public hearing – Howard Farm subdivision

Public hearing – Kramer dock

J. Bernstein stated that a couple of people have told her that they will be filing applications, but she doesn't have anything yet. She also reminded the Board that there is the contract zone for the cell tower that has yet to have a complete application filed.

C. MacClinchy noted that they could also have some guidance for the next policy meeting.

J. Bernstein stated that she had left everyone a copy of the Survey for the Comp. Plan committee. The deadline for submitting answers is April 15th, 2016.

6. Adjournment

D. Smith moved to adjourn the meeting at 8:47 pm.

R. Smith seconded the motion.

Vote was 5/0 approval.

Meeting was adjourned at 8:47 pm.

Respectfully submitted by Lynne Capitan.

Signature Page

C/om C., chair *5/9/16*

Richard Smith

[Signature]

Walter Powell

Signature

Date