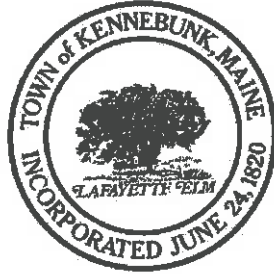


# Town of Kennebunk, Maine



## Zoning Board of Appeals

### HEARING MINUTES

March 30, 2023

In-Person Meeting, Town Hall, Kennebunk

This meeting was held in person at Town Hall, Room 301, 3<sup>rd</sup> Floor, 1 Summer St., Kennebunk. It was televised live on Cable TV Channel 5 and streamed on *TownHallStreams.com*, where it is available for viewing at any time.

- 1. Call to Order:** Chair and presiding officer Leah Rachin called the meeting to order at 6:30pm. The session took place in person at Town Hall. There were three Board members in attendance:

**Present:** Leah Rachin [Chair], Stephen Sayers [Vice Chair], and Wayne Berry [Member];

**Absent:** James Atwood [Member], and Paul Brinnel [Alternate],

**Recused:** Jon Sevigny [Member] as he was the appellant; and,

**Also Present:** Christopher Osterrieder [Director, Community Development], Karen Winton [Deputy Director, Community Development], Brian Paul [Code Enforcement Officer], Frank Kunkel [Code Enforcement Officer], Benjamin T. McCall [Jensen Baird], James Katsiaficas [Perkins Thomson], and Matthew Williams [Hodson & Ayer].

The meeting was televised live on Cable TV Channel 5 and is available for public viewing at any time at [www.TownHallStreams.com](http://www.TownHallStreams.com).

- 2. Continued Applications**

**Type of Appeal:** Administrative Appeal – Article 6 Section 2.A.

**Applicant:** Jonathan M. Sevigny

**Address:** 17 and 21 Longwood Drive

**Nature of Appeal:** Appeal of the issuance of Certificates of Occupancy for 17 and 21 Longwood Drive.

L. Rachin reminded the Board and public that this was a continuance. At the Zoning Board of Appeals' previous March 6, 2023 meeting, appellant Jonathan Sevigny contested the Town's issuance of Certificates of Occupancy for 17 and 21 Longwood Drive. Mr. Sevigny cited three reasons for his appeal: (1) **drainage run-off** from 17 and 21 Longwood onto the appellant's property, neighbors' properties, and street was allegedly occurring in violation of the Town's requirement for adequate and approved grading and drainage — hence, in Mr. Sevigny view, the Certificates should not have been granted; (2) the developer's **illegal removal of trees** had not been remedied as the required number of replacement trees, stipulated by the Town, had not been completely planted; and (3) a **handrail violation** should have likewise precluded the issuance of Certificates of Occupancy, J. Sevigny said, as the rear decks of 17 and 21 Longwood did not have handrails as required by Ordinance.

Rachin also reminded all parties that the Board had formally opened and later closed a Public Hearing at its March 6<sup>th</sup>, 2023 meeting. At the March 6<sup>th</sup> meeting, as well, Attorney J. Katsiaficas volunteered to provide a "draft decision" based on the evidence and testimonies of the March 6<sup>th</sup> meeting. The Chair asked if the appellant and his legal representative had the opportunity to read J. Katsiaficas's draft. The appellant responded in the affirmative.

At approximately 6:34pm, Rachin took the Board into a 10-minute recess. Review of Draft Findings ensued. At 6:42pm, L. Rachin reconvened the meeting, and observed that Board members were largely in agreement with Mr. Katsiaficas's write-up.

L. Rachin asked if the appellant or his attorney had any procedural concerns. Mr. Sevigny began to contest the facts cited in the Katsiaficas document, but L. Rachin called for procedure-only comments. "The submission of facts is over," L. Rachin stated, "and the Board has already reached Findings of Fact."

J. Sevigny contested Mr. Katsiaficas's summary. He [J. Sevigny] asked if he could appeal the decision at a later time due to factual discrepancies. L. Rachin responded in the affirmative, stating that an appeal would be possible. S. Sayers then asked B. Paul to confirm whether the Map was 42 or 62. K. Winton confirmed that the Map number was 42 [Edited – after the meeting staff cross-checked with the Assessing office and consulted E-911 records to discover an error in the software for Code Enforcement had in fact mis-labeled the lot number. The correct lot number is 62, and records have been corrected].

L. Rachin proceeded to take up the Findings of Fact drafted by J. Katsiaficas and dated March 30, 2023.

K. Winton suggested that the Findings be amended as the complete text describes today's meeting was a "hybrid" one, permitting in-person as well as "Zoom" or teleconferencing participation. That was not the case. Tonight's meeting was in-person only. Board members concurred and agreed to the revision.

L. Rachin then asked for a vote by the Board on the accuracy of the Findings of Fact. However, J. Sevigny again contested them. "There are blatant errors all through this [the Findings of Fact]," Mr. Sevigny alleged. J. Katsiaficas suggested that the applicant identify specific errors. J. Sevigny proceeded to cite the following:

- **Findings of Fact #5:** According to Mr. Sevigny, there was "never a single grading plan" submitted to the Town Engineer as cited as fact. There was a "driveway plan", but never a grading plan, J. Sevigny said.

L. Rachin responded that the Code Enforcement Officer had testified that a plan had been submitted which met Town requirements.

- **Findings of Fact #6:** J. Sevigny stated that the developer of 17 and 21 Longwood supposedly applied for and received building permits in accordance with Article 4 Section 2 of the Town's Ordinance. "But there was not a drainage plan," the appellant stated, "...and there was no plot plan and no actual footprint of coverages within the file." J. Katsiaficas observed that his commentary was meant to be a "procedural statement", but could be revised to instead state that "building permits were obtained as required by Article 4 Section 2." L. Rachin asked that the revision be made. "The building permits were approved," J. Sevigny countered, "but they were not in accordance with Article 4 Section 2."

- **Findings of Fact #9:** According to this particular Finding, J. Sevigny observed, the Code Enforcement Officer visited the site on several occasions and did not notice any material deviation from the approved building permits or the Planning Board's approval. However, "part of the Planning Board's approval," J. Sevigny stated, "was the drainage plan...and on these visits they [the Code Enforcement Officer] noticed that the road was flooded." This," Mr. Sevigny said, "was a violation of the permits issued."

- **Findings of Fact #3:** According to J. Sevigny, Mr. Katsiaficas's draft erroneously references Planning Board Findings of Fact #14. It should, Sevigny said, instead cite Planning Board Findings of Fact #4 [erosion] as well as #14 [storm-water]. Zoning Board members briefly discussed the matter, and concluded that both numbers [#4 and #14] were a matter of record.

Overall, Board members did not agree with Mr. Sevigny's claim of "blatant errors", deeming them to instead be "interpretations" in the main.

In response to questions by S. Sayers, B. McCall, an attorney representing Code Enforcement, confirmed that the missing deck handrails at 17 and 21 Longwood had been installed since the Board's last meeting. That, L. Rachin observed, made Mr. Sevigny's third point moot. Rachin asked if Board members had other concerns or questions. W. Berry asked for confirmation of what constituted a "drainage plan". Without providing a definition of the term, *per se*, J. Katsiaficas responded that, in

Kennebunk's division of labor, it was the Town Engineer's responsibility to review and approve the drainage plans submitted.

B. McCall then proposed amending Findings of Fact #5 to state that the developer had submitted a single drainage plan for Lot 21 Longwood Drive. S. Sayers reminded all parties that Code Enforcement Officer B. Paul had testified at the prior March 6<sup>th</sup>, 2023 meeting that the developer's single drainage plan had been deemed satisfactory by him [B. Paul] for both lots. B. Paul, who was present, re-confirmed that testimony. Board members agreed with R. McCall's proposed revision.

J. Sevigny contested this. He said that issuing two building permits based on only one drainage plan was not what the Ordinance required. Board members did not agree given B. Paul's March 6<sup>th</sup> explanation.

There being no other comments, the Board proceed to entertain the following motion.

**Motion: Move to approve the Findings of Fact as amended.**

**Moved: S. Sayers**

**Second: W. Berry**

**Vote: Show-of-hands vote. 3 votes in favor, none opposed; the motion carried.**

L. Rachin next called on the Board to take up the following Conclusions of Law also drafted by J. Katsiaficas and dated March 30, 2023.

J. Katsiaficas spoke briefly of the timing and jurisdiction conclusions embedded in this draft. "It is beyond the competence of this Board," Katsiaficas said, "to seek to undermine some other permit." The time for Mr. Sevigny to object to the building permits, Katsiaficas stated, was at the time of their issue or, indeed, earlier at the time of the Town's acceptance of the site plan. This Board could only opine on the merit of the Certificates of Occupancy, the attorney stated, and they were predicated on the meeting earlier approvals or permits.

The Board then briefly discussed Conclusion of Law #8. It addressed the appellant's allegation that the property owner of 17 and 21 Longwood created a public nuisance (water runoff). "This Board does not have jurisdiction over private nuisances," L. Rachin said. Fellow Board members concurred.

S. Sayers expressed sympathy for home-owners experiencing damage or nuisance caused by neighbors. He cited his own experience with a neighbor who had caused damage to him. But Mr. Sayers said that he had not appealed the neighbor's building permit in a timely manner.

W. Berry commented on Conclusion of Law #7, observing that the court case cited by the appellant did not apply to the issue at hand. "Our job is to determine if the CEO erred," L. Rachin added, "so I agree with paragraph 8." Both S. Sayers and W. Berry concurred.

L. Rachin then summarized the Board's conclusions, noting that they matched those cited in Mr. Katsiaficas's draft. Rachin stated that the legal essence of the case was as follows: "This Board is not a substitute for appealing the earlier building permits or the Planning Board decision." As for the tree removal issue, Rachin said that was an enforcement matter, and not a matter for the Board's ruling or review. The other Board members concurred with both remarks.

The appellant then asked for the Board's reaction to the different legal rulings he had submitted. Board members did not agree that the cases cited were precedents for changing their views.

The issue of the handrails, L. Rachin continued, was moot because the handrails had now been installed. L. Rachin asked if J. Sevigny wished to withdraw that objection, but he did not. W. Berry observed that "Mr. Sevigny was correct about the handrails when he filed his objection — but, yes, the point is now moot."

Discussion ensued about the issuance of the Certificates of Occupancy and about the relief sought. Board members agree that the fundamental legal issue was as L. Rachin had stated. "While the Board has the jurisdiction to hear the appeal, it does not have jurisdiction to grant [the] relief requested [i.e. overturning the Certificates of Occupancy] for all of the facts thus far cited," Rachin stated.

J. Sevigny continued to question these determinations. He likewise attempted to refute several points which the Board had accepted as fact. L. Rachin repeated that the Findings of Fact had been concluded and were based on testimony and evidence. Mr. Sevigny, she said, had the right to appeal if he disagreed with this Board's Findings.

**Motion: Move that the Zoning Board of Appeals ratify the Conclusions of Law as amended and that this appeal is denied.**

Moved: S. Sayers

Second: W. Berry

**Vote: Show-of-hands vote. 3 votes in favor, none opposed; the motion carried.**

Final decision and findings attached.

### **3. New Applications**

There were none.

### **4. Old Business**

L. Rachin next observed that Town Charter Article 2 Section 3.11 (2) stipulates that a Board member shall forfeit his or her post by failing to attend three [3] consecutive meetings or more than 25% of meetings in a six [6]-month period. James Atwood, Rachin said, had not attended meetings or responded to emails, telephone calls, or

postal mail for more than 12 months. Board members therefore took up the following motion:

**Motion:** Move that the Zoning Board of Appeals request the Town of Kennebunk's Select Board to declare that James Atwood has forfeited his post pursuant to Article 2 Section 3.11 (2) (d) of the Charter and to appoint a new member.

Moved: S. Sayers

Second: W. Berry

**Vote:** Show-of-hands vote. 3 votes in favor, none opposed; the motion carried.

#### 5. Minutes of Prior Meetings

L. Rachin next led members in a review of the minutes of the Board's March 6, 2023 meeting. Several errors were identified and corrected.

**Motion:** Move to approve the minutes of the Board's meeting of March 6, 2023 as amended.

Moved: W. Berry

Second: S. Sayers

**Vote:** Show-of-hands vote. 3 votes in favor, none opposed; the motion carried.

#### 6. Adjournment

There being no other business, L. Rachin adjourned the meeting at 7:41pm.

**Motion:** Move to adjourn the meeting.

Moved: S. Sayers

Second: W. Berry

**Vote:** Show-of-hands vote. 3 votes in favor, none opposed; the motion carried.

Respectfully submitted by,  
J. Schlagheck

Adopted by the Board on April 18, 2023

DATE

Signed by:

  
\_\_\_\_\_  
ZONING BOARD OF APPEALS

**KENNEBUNK BOARD OF APPEALS  
ADMINISTRATIVE APPEAL DECISION**

**I. BACKGROUND INFORMATION**

- A. Applicant/Appellant Name: Jon Sevigny
- B. Applicant/Appellant Address: 15 Longwood Drive, Kennebunk Maine 04043
- C. Address of Property for which appeal is made: 17 & 21 Longwood Drive (the “Property”)
- D. Property Owner: Centore Group LLC
- E. Tax Map 39, Lots 62 & 63
- F. Zoning District: Village Residential
- G. Decision appealed:
  - a. Code Enforcement Officer   X
  - b. Site Plan Review Board
  - c. Planning Board
  - d. Historic Preservation Commission
- H. Relief sought: Revocation of Certificates of Occupancy issued by Code Enforcement Officer for 17 & 21 Longwood Drive.

**II. HEARING AND DECISION**

The Zoning Board of Appeals (“ZBA” or “Board”) heard and acted upon this Administrative Appeal (the “Appeal”) at its meeting on March 30, 2023, with notice to the public. Present were Chair Leah Rachin, Vice Chair Stephen Sayers, and Member Wayne Berry. Also present were Applicant Jon Sevigny (“Applicant” or “Appellant”); Code Enforcement Officers Brian Paul (“CEO Paul”) and Frank Kunkel (“CEO Kunkel”, together, the “CEOs”); Benjamin T. McCall, Esq., legal counsel for the CEOs; and legal counsel for the ZBA, James N. Katsiaficas, Esq.

The ZBA opened the Public Hearing on March 6, 2023, and heard from Matthew Williams, Esq. for Centore Group LLC, Applicant Sevigny, Attorney McCall, and CEO Paul, as well as from members of the public Sheila O’Donnell, Leslie Lindgren, and Laura Sevigny.

Following the public hearing and rebuttal by the parties on March 6, 2023, the ZBA closed the public hearing and entered deliberation, which was continued until March 30, 2023.

After making and voting upon several motions regarding the Appeal, the ZBA voted to affirm the CEOs' issuance of the Certificates of Occupancy as to the Applicant's first two arguments, and found the third argument moot based on information received at the March 30 hearing.

The ZBA voted to deny the Appeal with a unanimous vote of 3-0.

### **Findings of Fact**

Based upon documents and testimony received at the hearing, the ZBA finds as follows:

1. Centore Group LLC ("Property Owner") owns the Property located at 17 & 21 Longwood Drive, Kennebunk, Maine. The Property was re-subdivided in 2021 into the existing lots, which are shown on Tax Map 39, Lots 62 & 63. Located on the Property are two single-family homes, which Mr. Centore constructed between 2021 and 2022.

2. The Property is located in the Town's Village Residential zoning district. Under Article 8, Section 7.B.3. of the Town of Kennebunk Zoning Ordinance ("Zoning Ordinance"), this district permits single and two-family dwellings.

3. The Property received re-subdivision review by the Planning Board, which it granted on August 9, 2021. The Planning Board determined in Finding of Facts numbers 4 and 14 that the re-subdivision, including the Property, would provide for adequate stormwater management, and its approval contains a condition of approval stating: "A grading and drainage plan shall be submitted, reviewed and approved by the Town Engineer prior to the issuance of a building permit, with the intent that the development of this parcel will not adversely affect the surrounding neighborhood."

4. The Applicant did not appeal the re-subdivision approval, as permitted by Article 8.9 of the "Town of Kennebunk Planning Board Standards for Reviewing Land Subdivisions" (the "Subdivision Regulations").

5. The Property Owner submitted a single grading and drainage plan for #21 Longwood Drive (Tax Map 39, Lot 63). The Town Engineer reviewed this plan, after which the CEO issued the building permits.

6. The Property Owner applied for and received building permits as required by Article 4, Section 2 of the Zoning Ordinance.

7. During the public hearing before the ZBA, the Applicant disputed whether the plan submitted was sufficient to constitute a grading and drainage plan. However, the Applicant did not appeal the issuance of the Property Owner's building permits, as permitted by Article 6, Section 3 of the Town's Zoning Ordinance.

8. The Property Owner's contractor improperly removed vegetation – approximately 88 trees – from the Property. The Town has been negotiating a resolution of this ordinance violation as an enforcement matter.



9. The CEO visited the Property on multiple occasions during construction, which included inspection of the houses' foundations, footings, framing, and electrical and plumbing installations, among other things. The CEO did not notice any material deviation from the approved building permits or Planning Board approval.

10. CEO Kunkel issued a Certificate of Occupancy for each dwelling on the Property.

11. The Applicant has appealed the Certificates of Occupancy (the "Certificates") issued by the CEO.

### Conclusions of Law

On the basis of the documents and testimony offered and its findings above, the ZBA concludes as follows:

1. Notice. Notice of this Appeal and hearing was provided by publication in a newspaper of general circulation and by mail to the list of abutters and owners of property located within 500 feet of the Property supplied by Applicant.

2. Aggrieved Persons. Applicant, as the person who filed the application for appeal from the Decision of CEO Kunkel issuing the Certificates for the Property, is an "aggrieved" person who may file an administrative appeal under Article 6, Section 3 of the Zoning Ordinance.

3. Timeliness of Appeal. The Applicant's Appeal was filed on February 8, 2023, within 30 days of CEO Kunkel's January 11, 2023 issuance of the Certificates for the Property (the "Decision"); therefore, the Applicant's appeal is timely under Article 6, Section 3.A of the Zoning Ordinance.

4. Jurisdiction. Under Article 4, Section 4 B. 1. of the Zoning Ordinance, the ZBA has jurisdiction "To hear and decide administrative appeals where it is alleged there is an error in any order, decision or ruling made by the Code Enforcement Officer in the enforcement of this Ordinance." Article 6, Section 2.A. Here, Applicant's appeal alleges that the CEOs erred in issuing the Certificates, and so the ZBA has jurisdiction to hear this appeal.

5. Nature of Hearing. The Board of Appeals determines that under the Zoning Ordinance, it conducts a *de novo* review of an administrative appeal from the decision of the Code Enforcement Officer, because Article 6, Section 3 contemplates the receipt of evidence and taking of testimony, because there was no prior administrative hearing, and because the Zoning Ordinance does not otherwise establish an appellate review process. (See 30-A M.R.S. §2691(3)(C); *Stewart v. Town of Sedgewick*, 2000 ME 157, ¶7, ¶8 at n. 4, 757 A.2d 773, 776 (2000) "unless the municipal ordinance explicitly directs otherwise, a Board must conduct a hearing *de novo*," but where it acts in an appellate capacity, it ordinarily does so only when the applicant had an opportunity for a hearing or other administrative due process before another party or board.)

6. Applicant raises three core issues in this Appeal as requiring the Board of Appeals to revoke the Certificates:

(1) Stormwater runoff allegedly flows from the Property onto the Applicant's property and ponds in violation of Maine law regarding the alteration of surface water (17 M.R.S. §2808);

(2) The Property Owner's alleged failure to sufficiently replant trees on the Property that were removed prior to construction; and

(3) A lack of handrails on exterior staircases on the Properties allegedly violates the 2015 IRC Code.

7. At the outset, Attorney McCall observes that while the CEOs' issuance of Certificates of Occupancy may be appealed to the Board of Appeals under Art. 6, § 2(A) (the Board may "hear and decide administrative appeals where it is alleged there is an error in any order or decision or ruling made by the Code Enforcement Officer in the enforcement of this Ordinance."), the Maine Supreme Judicial Court has held that such appeals cannot be used to substitute for an appeal from the underlying permit. *Defosses v. City of Saco*, 2015 ME 151, ¶ 23, n.14, 128 A.3d 648, *citing Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 13, 788 A.2d 598. The abutter may only challenge whether "the permittee has meaningfully exceeded the authority contained in the [building] permit, or [has] otherwise violated conditions of the permit ... ." *Id.*

8. As to the first issue of stormwater runoff -- that under 17 M.R.S. § 2808, the Property Owner has used his land in a way that unreasonably alters the flow of surface water and has interfered with the reasonable use of the Applicant's land creating a private nuisance -- Attorney McCall asserts that:

- issuance of the Certificates does not involve analysis of stormwater, drainage, and runoff issues so that the Certificates are not subject to review by the Board of Appeals;
- the Planning Board conducted an analysis of surface water flow, drainage, and storm water runoff during subdivision review, and the Applicant failed to appeal the Planning Board's subdivision decision; and
- a municipal zoning case is not the proper forum for a private nuisance claim such as the Applicant's, *citing Tomasino v. Town of Casco*, 2020 ME 96, ¶ 8, 237 A.3d 175 ("[A] municipal zoning case is not the proper forum for a private property dispute between neighbors . . .").

Based upon the testimony of CEO Paul that issuance of the building permits and the Certificates related only to compliance with Maine's Uniform Building and Energy Code ("MUBEC") and other pertinent codes, and not to analysis of surface water flow, and based upon the ordinance provisions and case law cited, the Board of Appeals concludes that on this issue, the Appeal is being used as a substitute for an appeal from the underlying subdivision approval, which Applicant did not appeal, and that the Board of Appeals has no authority to hear and decide private property and nuisance claims. The Applicant is not raising an argument as to this issue that "the permittee has meaningfully exceeded the authority contained in the [building] permit, or [has] otherwise violated conditions of

the permit.”

Moreover, to the extent Applicant argues before the Board of Appeals that the grading and drainage plan submitted in support of the building permit application was insufficient and inadequate to comply with the re-subdivision stormwater conditional of approval, Applicant failed to appeal from the issuance of the building permit, and this Appeal cannot be used as a substitute for such an appeal.

Therefore, the Board of Appeals affirms the CEOs’ issuance of the Certificates with regard to Applicant’s stormwater, drainage, and runoff arguments.

9. As to the second issue, regarding the replanting of trees that had been removed from the Property, the Town regards the removal of trees as a violation of ordinances, but the Certificates issued by the CEOs are not related to such issue. CEO Paul testified that Town has issued a notice of violation to the Property Owner related to the replanting of trees on the Property, and that the Town and Property Owner are working on a resolution of this matter. Attorney McCall states that the Board of Appeals does not have jurisdiction to provide further enforcement action, nor does the Applicant, and cites *Herrle v. Town of Waterboro*, 2001 ME 1, ¶ 11, 763 A.2d 1159 for the proposition that private citizens do not have the authority to initiate land use enforcement proceedings; this is a matter entrusted to the discretion of the municipal executive body.

Based upon the testimony of the CEO regarding the status of ongoing enforcement efforts regarding the removal of trees and upon the case law regarding the discretion to enforce municipal ordinances, the Board of Appeals concludes that on this issue, the issuance of the Certificates does not involve or implicate the Property Owner’s removal of trees or their replanting. The Applicant is not raising an argument as to this issue that “the permittee has meaningfully exceeded the authority contained in the [building] permit, or [has] otherwise violated conditions of the permit.” Moreover, the cases cited by Applicant in support of this argument (*Richert v. South Portland*, 1999 ME 179, 740 A.2d 1000 and *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063) both involve appeals from CEO enforcement decisions. This Appeal is from the issuance of the Certificates of Occupancy – not from a CEO enforcement or nonenforcement decision, therefore, the Board of Appeals determines that ZBA does not have the jurisdiction to grant the relief requested as it pertains to the tree replanting issue.

10. As to the third issue, Attorney McCall concedes that this issue, regarding the requirement of handrails, is a proper subject for appeal of the Certificates to the Board of Appeals. The Certificates are issued by the CEO in accordance and compliance with MUBEC, which has standards requiring certain handrails. The CEOs recognize that the handrails should have been installed, and would have no objection to reissuing the Certificates with the condition that handrails be installed. Therefore the Board concludes that the CEOs did err in approving the Certificates, however, based on testimony received at the March 30, 2023 hearing that the handrails have been properly installed, this grounds of appeal has been rendered moot and we make no conclusion in that regard.

11. Wherefore, by motion made by Sayers, seconded by Berry and approved by a vote of 3 in favor (Sayers, Berry, Rachin) and 0 opposed, the Zoning Board of Appeals:


- a. affirms the CEOs’ issuance of the Certificates with regard to the first and second “core

11. Wherefore, by motion made by Sayers, seconded by Berry and approved by a vote of 3 in favor (Sayers, Berry, Rachin) and 0 opposed, the Zoning Board of Appeals:

- a. affirms the CEOs' issuance of the Certificates with regard to the first and second "core issues" of the Applicant's Appeal (stormwater runoff onto the Applicant's property and the Property Owner's replanting trees on the Property); and finds that while the Board has jurisdiction to hear the appeal it does not have jurisdiction to grant the relief requested.
- b. as to the third "core issue" of the Appeal (lack of handrail required by MUBEC), the Board determines the issue is moot due to the representations received on March 30, 2023 that the handrails have been installed per the applicable codes.
- c. adopts this Decision (and Findings of Fact and Conclusions of Law) as amended on March 30, 2023; and
- d. authorizes the Chair to sign this Decision.

Dated: March 30, 2023

Kennebunk Zoning Board of Appeals



By: Leah Rachin, Chair

**Appeal notice:** Parties aggrieved by this decision may appeal it to Superior Court within 45 days from the date of the vote on the decision pursuant to 30-A M.R.S.A. §§ 2691 and 4353 and Rule 80B of the Maine Rules of Civil Procedure. Any request for reconsideration of this decision must be filed with the Town within 10 days of the date of the vote on this decision.