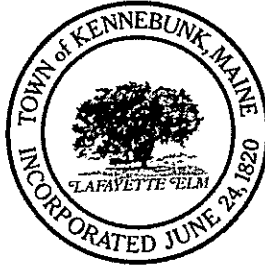


Town of Kennebunk, Maine



Site Plan Review Board

MEETING MINUTES

Thursday, May 4, 2023 Town Hall, Kennebunk, Maine

This meeting was held in person in Room 301, Town Hall, 1 Summer Street, Kennebunk. A recording of the meeting is available on the Town's website and the hearing can be viewed at any time at www.TownHallStreams.com.

Present: Gary Dugas [Chair], Jeanne Dunn [Vice Chair], Brenda Robinson [Secretary], Albert Kolff [Member], and Keith Hafer [Member],

Absent: None;

Also Attending: Brittany Howard [Town Planner], Merton Brown [Town Clerk], Henry Hess [Sebago Technics], Michele McGrady [The Shops of Morning Walk Lane] and Miriam Whitehouse [Select Board Member]

1. Call to Order: Chair and presiding officer G. Dugas called the meeting to order at 7:00pm on May 4th, 2023 at Town Hall. This was an in-person meeting. There were five voting members present: Dugas, Dunn, Robinson, Kolff, and Hafer.

2. Approval of Prior Minutes: G. Dugas then led the Board in a page-by-page review of the Minutes of the Board's meeting of April 6, 2023.

Motion: **Move to approve the Minutes of the Board's meeting of April 6, 2023 as presented.**

Moved: B. Robinson

Second: J. Dunn

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

3. Agenda Items

a. Public Hearing — 135 Port Road — Restaurant — Map 89 Lot 68

B. Howard re-introduced this application, reminding the Board that it had previously heard the case on March 16 and April 20, 2023. The applicants — Matt and

Mariah Dyer — sought to open a restaurant at 135 Port Road. The Board had conducted a site walk on March 20, 2023.

Howard noted, the applicants sought two waivers: (1) waiver of the 5-ft. landscaping strip between the parking area and front of the building, as otherwise required by Article 11 Section 6.A.(3)(t); and (2) waiver of the two-ft. planting strip between the on-site walkway and the parking area, as otherwise required by Article 11 Section 8 (8)(b). The applicants, Howard said, additionally sought a 20% parking requirement reduction (5 spaces) per Article 10 Section 9.C.(7)a, predicated on their restaurant's proximity to a municipal lot.

H. Hess, representing the applicants, handed out copies of several exhibits. He explained that the rationale for the "5-ft. landscaping strip" waiver was due to the narrow configuration of the property and space constraint. Hess also justified the waiver of the 2-ft strip between the parking area and the front of the building as such a strip would be a "winter hazard" and not having the strip would make it easier for clients to alight from their cars.

The representative then reported that the applicants had reached a parking agreement with the owner of The Shops of Morning Walk Lane on May 1st, 2023. That owner, he said, was prepared to allow the applicant to use six [6] parking spaces in the parking lot of Morning Walk Lane [MWL] with similar parking spaces at 135 Port Road but on different hours.

H. Hess summarized the parking being proposed: six [6] off-site spaces at the MWL lot; twelve [12] on-site spaces at the restaurant, itself; and two [2] on-road spaces. This would give the project twenty [20] spaces in total. It was less than the 25 spaces otherwise required because the project, Hess argued, is requesting to utilize the 20% parking reduction because it was within 1,000 feet of a public parking lot.

A. Kolff expressed concern about the possibility of spill-over parking taking place on adjacent streets. He asked whether there were "no parking" signs already in place on Morning Walk Lane. A commentator from the audience said there were none.

G. Dumas then formally opened a Public Hearing and solicited comments and questions.

Six commentators in attendance addressed the Board: Betsy Smith [who supplied written comments], Patricia Sass Perry, Mitar Khalsa, Scott Cavanaugh, Kari Gates, and Joseph DePalma. Following their comments, B. Howard read emails from three other individuals who were unable to attend but wished to comment: Jason Sabat, Bridget Casey, and Karen Stoma. Summarizing their remarks, these commentators expressed the following views and concerns:

1. **Parking:** This project, most commentators said [B. Smith, P. Sass Perry, M. Khalsa, K. Gates, J. DePalma, K. Stoma], cites its proximity to a municipal parking lot as grounds for a reduction of its parking requirement. A 100-seat restaurant requires 25 parking spaces. The applicants, however, propose

only 20 instead. Commentators noted that Kennebunk's Ordinance expressly limits parking in public lots from "dawn to dusk". Hence, the restaurant should not qualify for any parking reduction as it cannot use municipal parking spaces in the evening when peak restaurant traffic is expected. Moreover, a revision or waiver of the Town's Ordinance on this limitation is not permitted.

2. **Traffic:** Commentators [B. Smith, P. Sass Perry, M. Khalsa, J. DePalma, S. Cavanaugh, K. Stoma, J. Sabat, S. Cavanaugh] also cited the project's own traffic study which concluded that there would likely be a "traffic count increase of 300 trips" over and above current traffic levels because of the new restaurant. That was a huge traffic increase, commentators said, which would jeopardize the safety of neighborhood and diminish the quality of life there. Commentators were also concerned that delivery trucks would block streets, take up parking space, and generally add to vehicle congestion. In the words of J. DePalma: "The increased traffic will be substantial and problematic."
3. **Square Footage and Non-Conformance:** Commentators [B. Smith, P. Sass Perry] also questioned whether the total square footage being considered included decks, overhanging extensions, and other additions to the existing structure. The existing structure is non-conforming. Commentators therefore questioned whether the project would increase the structure's non-conformance. "The Town should not permit an increase of the footprint of a non-conforming structure," P. Sass Perry concluded, "and decks should not be allowed."
4. **Lighting:** Commentators [B. Smith, P. Sass Perry, M. Khalsa, K. Gates] criticized the lack of a photometric plan and posed questions about the project's proposed lighting, lighting fixtures, dark-sky compliance, and the compliance of the proposed lighting in general with other Ordinance requirements. Speakers expressed concern about light trespass in general.
5. **Ecological Impact:** The restaurant site, P. Sass Perry said, abuts a wetland. Permitting a 100-seat restaurant to operate nearby, in her view, would necessarily have an adverse ecological impact. In the words of P. Sass Perry: "This is the overutilization of an environmentally sensitive lot."
6. **Noise:** Commentators [K. Stoma, J. Sabat, M. Khalsa, S. Cavanaugh, and B. Casey] likewise expressed concern about the noise pollution that was likely to occur if the restaurant had night music, live bands, or outdoor music. How, commentators asked, would that be restricted? How would "reasonable hours of operation" be fixed and enforced?
7. **Hours of Operation:** Commentators [B. Smith, P. Sass Perry] likewise questioned if the hours of operation had to be approved or fixed. G. Dumas responded that they could be a condition of approval and stated on the plan.
8. **General Use:** Several commentators [K. Gates, B. Casey] observed that "this property was not suited for the proposed use." There was not adequate

parking. The restaurant would bring more traffic into an already congested area. The existing structure was already non-conforming. A different use was preferable.

In addition, K. Gates complained of “a double standard,” alleging that the Site Plan Review Board was not demanding the same photometric detail, dimensions, right-of-way limitations, and other requirements of this project as the Board had sought of her own, 9 Barnard Way project.

There being no other comment or questions, G. Dumas closed the public comment portion of the meeting. He called on H. Hess to comment on these remarks. Hess made the following observations in response to some of them:

1. **Parking:** The restaurant would have adequate on-site and off-site parking. The applicants suggested putting “no parking” signs on Morning Walk Lane to prevent any parking (restaurant or otherwise) on that private way.
2. **Square Footage and Non-Conformance:** “It is not our intent to make the building more non-compliant,” Hess said. Adding decking, he added, would still be within the Town’s space limits.
3. **Lighting:** Lights, Hess said, would be LED and could be set to meet Town requirements. Lighting would have shields to prevent trespass and would likewise be dark-sky compliant.
4. **Ecological Impact:** H. Hess reported that the applicants propose to “rehab the slope” where the property descends to a wetland by planting wildflowers and vegetation there. The plantings should help preserve the wetland.
5. **Noise:** The applicants, H. Hess stated, intended to respect neighbors’ “quality of life.” “They intend to be a good neighbor,” Hess stated, adding that the restaurant would not have outdoor music or live bands.
6. **Hours of Operation:** G. Dugas had commented earlier that the restaurant’s hours of operation could be a condition of approval. The applicants, Hess said, were willing to fix them.

B. Robinson posed questions about the traffic count. “Three hundred more cars a day needs explanation,” she said. Discussion ensued about Sebago Technics’ traffic study. B. Howard read excerpts from it. The “trip count” number, Howard said, was based on the proposed operating hours of the restaurant, full-day Saturday activity, and peak hours other days. Board members were nevertheless of the opinion that the “traffic count” number was too high. H. Hess volunteered to double-check the traffic study and report back.

G. Dumas inquired about deliveries, and H. Hess said they would be made on off-hours only, to utilize the parking lot.

A. Kolff posed questions about parking. H. Hess responded that the applicants sought a 20% reduction of their overall parking requirement because of the site’s proximity to a public parking lot. However, Board members countered that such

proximity would not, after all, justify any reduction because of the “dawn to dusk” parking limitation.

Michele McGrady, owner of the The Shops on Morning Walk Lane, addressed the Board next, stating that she supported the applicant’s project and had agreed to share or swap parking spaces. She volunteered to make more spaces in her parking lot available if the applicants required them.

M. Whitehouse posed questions about truck parking on the road and expressed preference that the applicant not use the two on-road parking places. Using those spaces, Whitehouse said, might add to congestion.

B. Robinson asked where the restaurant’s dumpster would be located and H. Hess pointed out the location on a diagram. Robinson suggested that the applicant consider moving the dumpster to a different location so as to create two additional on-site parking spaces. H. Hess countered that there was not enough depth for the dumpster elsewhere and, even if an alternative location were found, cars might not have maneuverability. B. Howard observed that the Fire Department was satisfied with its ability to maneuver in the parking area proposed.

G. Dugas commented on the on-road parking. He was of the view that the Town Engineer, Chris Osterrieder, had vetted that option. B. Howard concurred. However, Board members said they sought Osterrieder’s clarification.

G. Dumas then directed the Board to consider the applicant’s two waiver requests.

Motion: Move to waive Article 11 Section 6.A.(3)t requiring a 5-ft. landscaping strip between the parking area and the front of the building.

Moved: J. Dunn

Second: B. Robinson

Vote: Show-of-hands vote, 5 votes in favor, none opposed; the motion carried.

Motion: Move to waive Article 11 Section 8 (8)(b) requiring a two-ft. planting strip between the on-site walkway and the parking area as the site constricts the ability to put in green strips.

Moved: J. Dunn

Second: A. Kolff

Vote: Show-of-hands vote, 5 votes in favor, none opposed; the motion carried.

After these votes, the Board took up the issue of parking again. They briefly discussed whether a waiver or revision of the Town’s “dawn to dusk” parking limitation in municipal parking lots might be feasible, but concluded that such action was not a timely or likely solution.

H. Hess offered to consider an alternative approach. Rather than seek a parking reduction to only 20 parking spaces in total, he and the applicants were prepared to meet with M. McGrady and investigate the possibility of satisfying the full 25

spaces required. The applicant might achieve that number, Hess said, if there were 12 on-site parking spaces, 2 on-road ones, and 11 shared or swapped spaces at The Shops on Morning Walk Lane. M. McGrady again affirmed her willingness to make the spaces available.

Discussion among the Board ensued, with some members suggesting that the applicant return at a later date with confirmation of the above parking arrangement and the other details or submissions discussed. However, the applicants countered that they were meant to close on the property on or by May 15th. The applicants said they had already asked the seller for three time extensions to supply data and plans to the Site Plan Review Board. They could not, they said, obtain yet another time extension.

G. Dugas stated that he, for one, was favorably inclined to approve the project providing the sundry conditions of approval, cited during this and prior meetings, were clearly stated and met. He called on B. Howard to enumerate them. B. Howard responded that the Board had thus far cited the following conditions of approval or requirements:

1. Back corner of deck be removed from setback;
2. Revised traffic memo;
3. Parking lot lighting shutting off 1 hour after closing;
4. Updating photometric plan;
5. Sign being reviewed by Code Officer;
6. Parking agreement:
 - o Times of existing business listed for Morning Walk;
 - o Additional spaces;
 - o 5 year period be updated if any business change in that period & be resubmitted prior to expiration. Seat count will need to be reduced if parking agreement cannot be extended in the future; and
 - o Limits on Morning Walks Shops that all business close by 5pm.
7. Deliveries are off hours to utilize parking lot;
8. Final review and approval from Fire Marshall Office prior to building permit;
9. As-built for sewer and tracing line;
10. No outdoor music or live bands;
11. Hours approval – 5pm – 10pm per the parking agreement;
12. Work with Morning Walk regarding no parking signs;
13. Memorial Day to Labor Day full seating capacity – off months inside dining only;
14. No approved outside seating other than the deck;
15. Water and sewer submitted for final approval; and
16. Parking spots & sidewalk – maintained by applicant.

Several Board members expressed willingness to approve this application provided the above stipulations were met. “We want to help businesses establish themselves in Kennebunk and allow them to great jobs,” A. Kolff said. B. Robinson

was not of the same view. There were “too many loose ends”, B. Robinson said, and she recommended that the Board review the necessary documentation and changes at a future meeting. G. Dugas proceeded to Findings of Fact.

**Town of Kennebunk
Site Plan Review Board**

FINDINGS OF FACT

1. Project Name: 135 Port Road Renovations
 2. Date of Action Taken: May 4, 2023
 3. Site Location: 135 Port Road
 4. Zoning District: Lower Village Business (LVB)
 5. Lot Size: 0.34 acres
 6. Assessor’s Map 89 Lots 68
 7. Property Owner: Market Day 135 LLC
 8. Applicant: Matt and Mariah Dyer
 9. Representative: Henry Hess – Sebago Technics
 10. The applicant has shown legal interest in the property by purchase and sale.
11. The Kennebunk Site Plan Review Board has reviewed the above noted proposal utilizing the set of approval criteria in Article 11, Section 8 of the Kennebunk Zoning Ordinance as summarized below and determined:

Approval Criterion # 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.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments:

Approval Criterion # 2

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: There is no proposed changes to the existing buffer which is comprised of evergreen trees and shrubs and an existing fence.

Approval Criterion # 3

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments:

Approval Criterion # 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.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments:

Approval Criterion # 5

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: An existing septic system is being removed from the site. The applicant will be submitting final plan to the water and sewer districts for final approval. The applicant will be installing a tracer line.

Approval Criterion # 6

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: The applicant will supply a revised parking agreement for the Shops at Morning Walk for review. They will supply a revised traffic account. They provided a truck turning plan in earlier documents.

Approval Criterion # 7

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

Criterion is: met ____, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: The applicant will supply a revised traffic account.

Approval Criterion # 8

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: The applicant is installing a sidewalk along Port Road and a new crosswalk across Morning Walk.

Approval Criterion # 9

Exterior lighting does not adversely affect neighboring properties or streets.

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments: Photometric Plan shall be updated to be compliant with the zoning ordinance.

Approval Criterion # 10

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

Criterion is: met X, not met ____, or not applicable ____ with the following conditions, waivers, and/or comments

12. In their review, the Board finds that the criteria of Article 11, Section 8 of the Zoning Ordinance:

- Have been met or are not applicable
 - X Have been met with the conditions and/or waivers noted above and listed below
- (4-0-1)

Conditions:

1. Back corner of deck be removed from setback;
2. Revised traffic memo;
3. Parking lot lighting shutting off 1 hour after closing;
4. Updating photometric plan;
5. Sign being reviewed by Code Officer;
6. Parking agreement:
 - o Times of existing business listed for Morning Walk;
 - o Additional spaces;
 - o 5 year period be updated if any business change in that period & be resubmitted prior to expiration. Seat count will need to be reduced if parking agreement cannot be extended in the future; and
 - o Limits on Morning Walks Shops that all business close by 5pm.
7. Deliveries are off hours to utilize parking lot;
8. Final review and approval from Fire Marshall Office prior to building permit;
9. As-built for sewer and tracing line;
10. No outdoor music or live bands;
11. Hours approval – 5pm – 10pm per the parking agreement;
12. Work with Morning Walk regarding no parking signs;

- 13. Memorial Day to Labor Day full seating capacity – off months inside dining only;
- 14. No approved outside seating other than the deck;
- 15. Water and sewer submitted for final approval; and
- 16. Parking spots & sidewalk – maintained by applicant.

Waivers:

- 1. Article 11 Section 6.A.(3)t requiring a 5-ft. land-scaping strip between the parking area and the front of the building.
- 2. Article 11 Section 8 (8)(b) requiring a two-ft. planting strip between the on-site walkway and the parking area as the site constricts the ability to put in green strips

 Have been met with the conditions and/or waivers noted above
 Have not been met (list criteria not met) or are not applicable

Based upon the information above, the Board therefore:

 approves the Site Plan.
 X approves the Site Plan with conditions **which are to be completed & evidence filed in the Planning Office by May 11; and prior to permit.** (4-0-1)
 denies the Site Plan.

13. PLEASE NOTE THAT THE FOLLOWING APPLY:

 X AFTER SITE PLAN APPROVAL AND PRIOR TO OCCUPANCY, THE APPLICANT MUST RECEIVE A BUILDING AND OCCUPANCY PERMIT FROM THE CEO.

 X A BUILDING PERMIT SHALL NOT BE ISSUED BY THE CODE ENFORCEMENT OFFICER UNTIL THE APPLICANT FILES A PERFORMANCE GUARANTEE IN CONFORMANCE WITH ARTICLE 11. SECTION 10. (ZONING). **THIS GUARANTEE SHALL BE REVIEWED PRIOR TO ISSUANCE AND THE AMOUNT SHALL BE AGREEABLE WITH TOWN.**

14. This approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant, as well as any oral representations made to the Board during the final review of the project. Any variation from the plans, proposals and supporting documents is subject to review and approval by the Site Plan Review Board, except for de minimus changes, which the Town Planner may approve.

Motion: Move to approve the Findings of Fact.
Moved: A. Kolff
Second: K. Hafer
Vote: Show-of-hands vote, 4 votes in favor, none opposed, 1 abstention [Robinson]; the motion carried.

Motion: Move to approve the site plan with the conditions noted above and with the documentation [to be] submitted and reviewed by Town Hall staff by the close of business, May 11, 2023.

Moved: A. Kolff

Second: G. Dumas

Vote: Show-of-hands vote, 4 votes in favor, none opposed, 1 abstention [Robinson]; the motion carried.

4. Other Business

There was none.

5. Adjournment: There being no further business, the Chair adjourned the meeting at 9:13pm

Motion: Move to adjourn today's meeting.

Moved: A. Kolff

Second: J. Dunn

Vote: Show-of-hands vote, 5 votes in favor, none opposed; the motion carried.

Respectfully submitted by,
J. Schlagheck

Adopted by the Site Plan Review Board at its meeting
of May 25, 2023

Signed by


Site Plan Review Board

