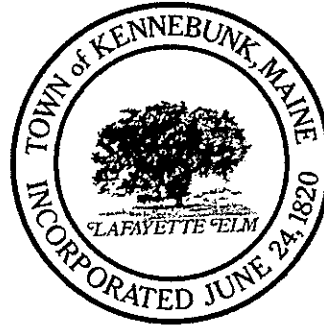


# Town of Kennebunk, Maine



## Planning Board

### MEETING MINUTES

July 24, 2023

In Person Meeting, Town Hall, Room 301, 3<sup>rd</sup> 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](http://TownHallStreams.com).

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

Absent: Edward Trainer [Member];

Also Attending: Brittany Howard [Town Planner], Christopher Osterrieder [Director, Community Development], Gregory Braun [Bergen & Parkinson LLC], Henry Hess [Sebago Technics], Nate Howes [Avesta Housing], Lucien Langlois [Atlantic Resource Consultants]; James Logan [Longview Partners LLC], Durward Parkinson [Bergen & Parkinson LLC]; and.

1. **Call to Order:** Chair and presiding officer C. MacClinchy called the meeting to order at 7:00pm on July 24, 2023. The meeting was held in person at Town Hall. The presiding officer elevated D. Kiley, an Alternate Member, to voting status for the purpose of the meeting. The number of voting members in attendance was, therefore, five: MacClinchy, Smith, Vance, Metcalf, and Kiley.

## 2. Agenda Items

### a. Public Hearing Subdivision – 7 Traditional Way – Map 62 Lot 19

B. Howard re-introduced this application and reminded the Board that it had previously reviewed the request on June 12, 2023. The application was specifically for lot creation on a parcel of land that spans four zoning districts.

This proposal, Howard stated, would entail filling in 7,232 sq. ft. of wetlands for the installation of a roadway. As the amount exceeds the Town's 500 sq. ft. threshold, the applicant was required to meet Article 15 [Wetland Mitigation Ordinance] and submit

appropriate documentation. The applicant, Howard said, also proposed to pay \$43,175.04 [i.e. \$5.97 fee x 7,232 sq. ft. of fill] in lieu of preservation.

Howard added that the applicant likewise proposed to connect the three lots to public water and sewer. Comments about the proposal had been received from the Town Engineer, Fire Chief, and Conservation Commission. Howard also reported that the applicant had revised the original waiver request from four to two.

L. Langlois, representing the applicant, provided additional detail. The applicant, Langlois said, proposed to extend and widen Traditional Lane for access to the lots. The applicant also proposed to limit traffic usage of the roadway for all three lots to a "250 trips per day."

D. Kiley questioned the impact of recent heavy rains on the wetlands on this property. J. Logan, the owner, responded that the size and depth of the wetlands had not changed. This is "forested wetland", J. Logan stated, without any vernal pools.

J. Vance inquired whether utilities would be installed or linked before the lots were actually marketed. L. Langlois responded in the negative. Langlois also affirmed that only two [2] of the three [3] lots would be sold.

In response to questions from R. Smith, L. Langlois further affirmed that no road construction would take place until the lots were sold and the appropriate Town approvals were in place.

C. MacClinchy then formally opened a Public Hearing and invited public comments and questions. Susan Bloomfield, a public commentator, decried the encroachment on wetlands and expressed disappointment that the Town was considering this subdivision. There being no other public commentator, C. MacClinchy formally closed the Public Hearing.

C. Osterrieder cautioned all parties that the limit of 250 daily traffic trips per day could potentially be used by only one of the two lots for sale and consequently impair the attractiveness of the other lot left with little or no traffic allotment.

R. Smith asked why the applicant wanted approval for a very large wetland fill without knowing in advance what the end uses of the lots would be. J. Logan responded that bank financing was only available if some initial approval were in place so the lots were "marketable". R. Smith asked what the applicant would do if the lots were not sold after all. J. Logan stated he had no back-up plan, but "would make this happen."

C. MacClinchy then summarized the case as follows: The Board was asked to approve wetland fill and the creation of three lots. No road construction would take place until the lots were sold and the new owner comes back before the Board with a site plan. No utility hookup would take place before the lots were sold. C. Osterrieder observed that restrictions could be put into place for each lot if the Board deemed them appropriate.

The Board subsequently called on L. Langlois to formally request and justify the two waivers sought by the applicant. Langlois did so, explaining that the applicant sought to install a "local road" instead of a commercial-industrial one to accommodate a "T"

turnaround for emergency vehicle circulation. The applicant also sought a waiver of the requirements for multi-family and non-residential subdivisions as the final uses of the lots to be sold were not known.

The Board then proceeded to entertain the following motions.

Motion: **Move to approve the applicant's request for a waiver of Article 6 Section 6.3.D.15 ["Plan Requirements for Multi-Family and Non-Residential Subdivisions"] with the caveat that applicant or new owner is to come back to the Planning Board with site plans when the use of the two lots are known.**

Moved: J. Vance

Second: R. Metcalf

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

Motion: **Move to approve the applicant's request for a waiver from the Addendum-Section 8.6.2 ["Street Design and Construction Standards"] to allow the applicant to construct a local road in lieu of a commercial-industrial street design so as to accommodate a 50-ft. "T" turnaround at the end of the road to allow emergency vehicle circulation. This approval is granted with two conditions: (1) traffic on this road shall not exceed 250 trips per day for all three lots; and (2) the applicant is to come before this Board for approval of an appropriate turnaround when the two [2] lots are developed.**

Moved: J. Vance

Second: R. Metcalf

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

After these votes, the Board proceeded to Findings of Fact.

## **Town of Kennebunk Planning Board**

### **FINDINGS OF FACT AND CONDITIONS OF APPROVAL**

#### **FINAL SUBDIVISION PLAN OF: 7 Traditional Lane** Subdivision Name

1. Property Owner: Splitrock LLC has shown legal interest in the property by deed.
2. Site Location: 7 Traditional Lane
3. Size and # of lots/units: 3 lots – lots one has existing structure, lots 2 & 3 are vacant
4. Zoning District (s): Business Park (BP), Branch Brook Aquifer Protection: Zone A Zone B, Zone B-BPA & Shoreland Overlay
5. Assessor's Map: 62 Lot: 19

6. Applicant: Lucien Langlois – Atlantic Resource Consultants

7. INFORMATION REVIEWED BY PLANNING BOARD:

- Staff reviews (Engineer, Fire Chief, Planner,) X
- Conservation Commission: X
- State/Federal Reviews: X
- Sketch: 10/24/2022
- Site Walk completed by Board: 10/29/2022
- Completeness Meeting: 6/12/2023
- Public Hearing: 7/24/2023

CONDITIONS:

1. This commercial subdivision, of three lots, will not produce more than 250 trips per day.
2. Any change to the plan, i.e. any development plan, shall come back before the Planning Board for review and approval before any issuance of a building permit can be made.
3. Applicant is to pay \$43,175.04 upon issuance of the Shoreland permit.
4. Applicant is to reply to the comments of the Town Engineer.
5. Applicant is to likewise provide confirmation of public sewer and water approvals after review by the Planning Board.

WAIVERS:

1. Article 6 Section 6.3.D.15 - “Plan Requirements for Multi-Family and Non-Residential Subdivisions”- with the condition that applicant or new owner is to come back to the Planning Board with site plans when the uses of the two lots are known.
2. Move to approve the applicant’s request for a waiver from the Addendum–Section 8.6.2 - “Street Design and Construction Standards” - to allow the applicant to construct a local road in lieu of a commercial-industrial street design so as to accommodate a 50-ft. “T” turnaround at the end of the road to allow emergency vehicle circulation. This approval is granted with two conditions: (1) traffic on this road shall not exceed 250 trips per day for all three lots; and (2) the applicant is to come before this Board for approval of an appropriate turnaround when the two [2] lots are developed.

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

With the condition that further review of the pollution control standards will be conducted when the Board reviews the site development plan for the lots.

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

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

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

With the condition that further review of the erosion control measures will be conducted when the Board reviews the site development plan for the lots.

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

With the condition that the site will not exceed 250 trips per day from the three lots and construction of the road way will not commence without lots having approved site plans.

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

With the condition that the Board receives a letter from the Sewer District approving the sewer design when the lots come back before the Board for site plan review.

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

The property is not in a floodplain.

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 upon any development on any of the lots, a stormwater plan needs to be provided and approved as part of a site plan before a building permit can be issued.

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

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 , 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 , 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 , 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) – Article 11 Section 8 compliance cannot be reviewed at this time. The Board reserves the right to review these lots for compliance with this section once a development plan is proposed and put forward. A building permit cannot be issued for either lot until this section is approved.**

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.
2. For a nonresidential project, effective buffers are maintained or created between it and adjoining residential properties and residential zoning districts.
3. Filling, excavation and earth moving activity is carried out in a way that keeps erosion and sedimentation to a minimum.
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.
5. Adequate provision has been made for water supply and sewage disposal.
6. The site plan provides for safe access to and egress from public and private streets, with adequate parking and internal circulation.
7. Vehicular access to the site will be on roads which have adequate capacity to accommodate any additional traffic generated by the development.
8. The site plan provides for safe pedestrian circulation, both on-site and off-site.
9. Exterior lighting does not adversely affect neighboring properties or streets.
10. Electrical and telephone utility lines and components serving the site will be placed in a manner that is not hazardous or unsightly.



C. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 15, Wetland Mitigation, of the Kennebunk Zoning Ordinance and determined:

- (1) The project will not fill or disturb a Wetland of Special Significance or its setback  
Standard is met  X , not met\_\_\_, N/A\_\_\_\_\_, met with following conditions and or waivers  
Rationale for negative determination:
- (2) For projects that fill or disturb five hundred (500) to fourteen thousand nine hundred and ninety-nine (14,999) square feet of wetland the applicant has made a clear showing that:
- (a) No reasonable alternative exists and no greater setback from the shoreland/wetland area can be achieved. The applicant shall provide evidence that the following alternatives are not feasible:
- i. Utilizing, managing or expanding one (1) or more other sites that would avoid or reduce the wetland impact.
  - ii. Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact.
  - iii. Developing alternative project designs, such as cluster development, that avoids or lessens the wetland impact.

Standard is met  X , not met\_\_\_, N/A\_\_\_\_\_, met with following conditions and or waivers: The applicant has shown that connecting to the existing right-of-way, there is no reasonable alternative that exist to provide to access to these lots and that the wetland impact could not be avoided.

Rationale for negative determination:

- (b) The project meets all applicable Federal and State permit requirements, and the applicant provides evidence that those agencies have approved the application.

Standard is met  X , not met\_\_\_, N/A\_\_\_\_\_, met with following conditions and or waivers: The Board has received the Army Corps and DEP permits.

Rationale for negative determination:

- (3) In addition to meeting the criteria in Subsection 2.a of this Section, for projects filling or disturbing from five hundred (500) to fourteen thousand, nine hundred ninety-nine (14,999) square feet of wetland, or as otherwise required by the reviewing authority, the applicant shall submit a wetland compensation plan showing proposed compensation measures (as set forth in Section 4.C) to be taken to offset potential adverse environmental impacts to the resource. Mitigation includes the preservation of upland adjacent to the affected wetland, and compensating for an impact by replacing or restoring affected resources.

The reviewing authority may consult with technical experts, including but not limited to a wetlands consultant, during the course of its review of the project to ensure that proposed methods of compensation are adequate. The applicant is responsible for reimbursing the Town for all consulting fees charged to the Town for this review.

Standard is met \_\_\_, not met\_\_\_\_\_, N/A  X \_\_\_\_\_, met with following conditions and or waivers: The applicant is choosing to pay in lieu of preservation. The fee is determined to

be \$43,175.04 which will be due upon issuance of the shoreland permit.

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)  
       deny

the Final Plan Application of

7 Traditional Lane  
Subdivision Name

In the course of these discussions, the Board enumerated the following conditions of approval:

- Traffic on the proposed roadway shall not exceed 250 trips per day from all three lots;
- Any change to the plan, i.e. any development plan, shall come back before the Planning Board for review and approval before any issuance of a building permit can be made.
- Applicant is to pay \$43,175.04 upon issuance of the Shoreland approval;
- Applicant is to reply to the comments of the Town Engineer; and,
- Applicant is to likewise provide confirmation of public sewer and water approvals.

Motion: **Move to approve the Findings of Fact, conditions of approval, and plan for the final subdivision plan of 7 Traditional Lane, applicant Split Rock LLC, to divide the property into three [3] lots, one [1] of which has an existing structure and the two [2] others being vacant, as conditioned.**

Moved: J. Vance

Second: R. Metcalf

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

[Note: The words "and plan" in the above motion were added by friendly amendment.]

**b. Public Hearing — Contract Zone — Kennebunk Savings Bank — Alewife Park Road — Map 62 Lot 19**

B. Howard reintroduced this application, which had come before the Board for preliminary review on May 22, 2023 and June 26, 2023. The Board had conducted a site walk on June 8<sup>th</sup>, 2023. The applicant was now before the Board for a Public Hearing.

Howard reminded the Board and public that the applicant sought to create a Contract Zone per Article 13. The applicant, Kennebunk Savings Bank, specifically sought to divide a 44.21 acre parcel of land into three lots: (1) Lot #1 would house two [2] affordable housing buildings having 35 residential units each or 70 units in total; (2) Lot #2 would be open space and connect to the Eastern Trail; and (3) Lot #3 would be the Bank's Commercial Operations Center. The housing units on Lot #1 would be managed by Avesta, an affordable housing management specialist.

B. Howard noted that the intent to preserve Lot #2 as open space needed to be so confirmed in the narrative. Howard also noted that the applicant had:

- Added a statement to the Contract Zone agreement that the Operations Center would not be subject to Contract Zone restrictions;
- Updated the green perimeter requirements in the bulk and space standards;
- Added the Shoreland Overlay to the bulk and space standards table; and,
- Added the abutters to the plan and fire access around the building.

Howard also reminded the Board that the applicant sought six temporary waivers.

H. Hess, representing the applicant, expanded on this information. He used an aerial diagram to describe the proposed housing development to be built on Lot #1. He also showed the open space [Lot #2] that is to be preserved. The Lot #2 "open land" near the gravel pit, he said, would be donated to the Kennebunk Land Trust. The project would also close a gap in the Eastern Trail by allowing it to run along the edge of the property in a proposed easement.

J. Vance inquired whether other development was contemplated on Lot #1, the lot to house the two residential buildings. H. Hess affirmed that, while that was a possibility, it was "not being considered at this time." Vance also asked why building dimensions had not been provided, and Hess replied that — after test pit work was done — the building locations and dimensions might shift slightly. Hence, the applicant preferred to provide dimension details at a later time.

J. Vance also asked how the project dovetailed with the Town's Comprehensive Plan, and H. Hess responded that affordable housing was one of the foremost priorities cited in that Plan.

R. Smith questioned whether the Contract Zone would exclusively apply to Lot #1, the housing unit lot. H. Hess re-iterated that the Contract Zone would apply to Lots #1 [housing] and #2 [the undeveloped free space to be donated]. It would not apply or include Lot #3 [the Bank's Operations Center].

C. MacClinchy then formally opened a Public Hearing and solicited public comments and questions.

A number of commentators addressed the Board to include Ray Billings, Jeannie Mineola, Linda Lyon, Jessica Gettinger, Gayle Spofford, Raymond Guillemette, Joseph Werden, Steve Kelly, and Edward Strachan. B. Howard likewise read the emails of three residents who wished to comment but could not attend the meeting. These individuals primarily expressed similar concerns. In their views, this project would: (1)

increase traffic in an already congested area; (2) increase noise; (3) result in overdevelopment; (4) eliminate mature trees and vegetation, (5) have a severely adverse impact on the environment and wildlife; (6) diminish the character of the neighborhood; (7) concerns about access onto Alfred Road; (8) distance from town and walkability; and (9) erode public safety.

After the public provided commentary, D. Parkinson, an attorney for the applicant, sought to rectify any misunderstanding about the "open space". He re-affirmed that Lot #2 [the open space lot] would be donated to the Kennebunk Land Trust and remain undeveloped.

H. Hess addressed other public concerns. He explained that a traffic study and other Public Hearings would take place later in the approval process. C. MacClinchy explained the approval process. MacClinchy stated that, if moved forward by the Planning Board, this application would go (1) to the Select Board for review and another Public Hearing, (2) if approved by the Select Board, it would next go to Town voters for their formal approval, and, if approved by voters, then (3) return to the Planning Board for the Board's detailed final review of traffic, egress, lighting, signage, parking, drainage, setbacks, landscaping, and other project details.

As regards trees and vegetation, H. Hess asserted that it was the applicant's intent to preserve as much vegetation and "tree privacy" as possible. The lot# 1 currently has a parking lot which is where most of the construction will occur. No access to or connection with Alfred Road or Warren's Way was being considered. Hess also affirmed that the Town's safety and construction standards would be honored and would likewise be carefully reviewed by the Planning Board at a later stage in the approval process as noted above.

N. Howes, representing Avesta [the proposed housing manager], spoke next, explaining the terms "affordable housing", "55+ housing", and "workforce housing". D. Parkinson observed that the Town was, in his view, privileged to have this housing opportunity rather than "have some industrial project" erected on the property.

There being no other public comments or questions, C. MacClinchy formally closed the Public Hearing. He polled Board members for their views.

D. Kiley said he was "comfortable" with the information provided thus far. J. Vance posed questions about the current zoning and use of the term "industrial" on one page of the submitted plan. R. Metcalf reminded fellow members and the public that the Board was meant to solely consider a *zoning change* at this time, not drainage, traffic, noise, lighting, roadway, or other details. The Planning Board's review of these later considerations was highly important, Metcalf reiterated, but would take place later in the approval sequence. A possible zoning change was the immediate focus.

R. Smith observed that Kennebunk Savings Bank and Avesta Housing had proven to be "trusted partners" in the community. He commended both for proposing this project, which he described as "a very good thing." Smith urged fellow Board members to move this application forward, but suggested that the Planning Board only do so after it had "a final, clean version of this plan" and of the final Contract Zone language.

D. Parkinson countered that the Board could move the application forward without further documentation changes or delay with, perhaps, the caveat that the Town Attorney approve the final Contract Zone language as a condition of the Planning Board's approval. However, Board members insisted on seeing and vetting the final language first-hand. Members agreed to revisit this application on August 14, 2023 after their receipt of the applicant's final plan and Contract Zone language.

Its review of this application complete until August 14<sup>th</sup> and given the late hour, the Board declared a 5-minute break. The session resumed after the break at 9:35pm.

**c. Public Hearing — Contract Zone — Wedding Cake House — 104 Summer Street — Map 81 Lot 16**

B. Howard next reintroduced the application of "Wedding Cake House" owners Hunt and Katie Edwards for the creation of a Contract Zone. The Board had conducted a preliminary review of the proposal on June 26, 2023 and a site walk of the property on June 29, 2023.

The intent of this particular Contract Zone, Howard observed, was to permit two additional uses of the property — (1) use as an "inn", and (2) use as a "community venue". The applicants, Howard said, had requested relief from the design standard which stipulates that guest rooms in an inn be a minimum of 200 sq. ft. in size and have a private bathroom. The applicants sought this relief in order to preserve the historic authenticity of the existing interior rooms and bathrooms without having to modify those spaces.

Howard went on to note that the applicants also proposed to decrease the green strip perimeter to 20 feet (except that if off-street parking were provided entirely to the side and rear of the building, the minimum perimeter width would be 10 feet). The Town Planner also commented on different features of the submitted plan. Those comments are set forth in detail in the Agenda for this meeting. B. Howard reported, as well, that the Conservation Commission had expressed concern about shore erosion along the riverbank of this property.

G. Braun, representing the applicants, elaborated on the rationale for a Contract Zone. "The purpose," he stated, "is to enable this beloved house to remain a staple of the community." Braun further explained that the applicants' intent was "to create a revenue stream sufficient to maintain and perpetuate this property." As a community venue, the property would be used for bridal showers, weddings, birthday and anniversary celebrations, corporate and other events.

G. Braun observed that these uses were in keeping with the Town's Comprehensive Plan. However, he cautioned the Board and public that — like the prior hearing — this particular session was meant to narrowly focus on the request for a zoning change and not traffic, drainage, parking, noise, landscaping, lighting, and other particulars. The latter would be scrutinized by the Planning Board at a later stage of the approval process.

J. Vance posed questions about the proposed hours of operation. G. Braun responded that the hours would be consistent with the noise ordinance 7:00am to 10:00pm Mondays through Saturdays and from 9:00am to 10:00pm on Sundays. Vance expressed

concern about these hours and the noise impact on neighbors. She also voiced concern about the erosion taking place along the river and if people were to walk over to look at the river while at an event. She asked that the Board be supplied with the specific dimensions of each of the eight [8] existing inn rooms so members could compare them with Ordinance specifications.

In response to other questions by J. Vance, G. Braun confirmed that the Fire Department had reviewed the project's turnaround plan. R. Metcalf questioned the different widths of the turnaround lane, and C. Osterrieder interjected that this was a detail for the Board's consideration in its final review of the plan after the approvals, if given, of the Select Board and Town's voters.

R. Metcalf remarked that he was adamant about protecting the privacy of neighbors.

R. Smith commented that the proposed "venue" or event use of this property was likely to result in traffic and noise levels which might well disturb neighbors. Even more importantly, Smith said, this request would set a potentially dangerous precedent. "Do we end up with a carnival on Summer Street?" Smith asked. He ventured that many other home owners on that street might decide to convert their homes into special-event venues, too. The precedent, Smith said, would quite possibly be contagious and erode the residential character of the neighborhood.

Smith concluded that the Contract Zone language needed to include "strong justification" for the unique treatment of this particular house in order for the Planning Board to consider moving the application forward.

G. Braun responded that the "Wedding Cake House" was altogether unique in Kennebunk. Braun agreed, however, to develop stronger justification for this application in the Contract language as Smith recommended.

Tom Murphy, a long-time resident, addressed the Board and public next, offering a history of the property in question. Several prior owners, he said, did not have the financial means to keep up the property. They left the house in a precarious state. The zoning application before the Board, Mr. Murphy concluded, was a step toward the creation of a revenue stream to help maintain and save this house.

C. MacClinchy then formally opened a Public Hearing and invited public comments and questions. Many speakers came forward and B. Howard related the emailed comments of residents unable to attend in person.

Commentators — to include Charles Godfrey, Marc Pfeiffer, and Rubin Bell — acknowledged the financial difficulty of maintaining a property such as the "Wedding Cake House" and recounted their positive experiences using historic properties for community events without inconveniencing neighbors. They voiced support for the project and zoning change.

Other commentators — to include Susan Edwards, Kathy Osterian-Roberts, David Spofford, Gayle Spofford, Joan Klein, Margaret Wibel, Cecily Cannon, Mark Baker, Michael Barra, Henry Kingsbury, Claudia Sayre, and Deborah Tudhope, and others — voiced strong opposition. They primarily expressed similar concerns: This project, they said, would (1) increase traffic; (2) increase noise pollution (in particular, noise

associated with weddings and outdoor music); (3) set a "dangerous precedent"; (4) escalate shoreline erosion; (5) a revenue stream should not be the reason approve a contract zone; and (6) contribute to the erosion of the neighborhood's residential character overall.

Wayne Berry, a commentator, handed out a printed statement and spoke instead about "spot zoning". He questioned whether the Town's Ordinance adequately addressed the need for special considerations from time to time like this "Wedding Cake House" proposal. He posed this question: "Should the Board consider whether an overall review of this type of situational zoning is warranted across Town?" Randy Gates, on the other hand, said that the Town had clear standards for inns and commercial venues and those standards should be enforced.

After the presiding officer again invited public comments and questions but no other commentator came forward, C. MacClinchy formally closed the Public Hearing. G. Braun offered rebuttal.

Braun observed that a Contract Zone can and often does embody limitations and restrictions. It does not give a property owner "carte blanche", he said, to do whatever he or she chose to do with a property. It does not give automatic waivers.

R. Metcalf then asked what the maximum venue capacity was expected to be, and G. Braun said 100 people. However, G. Braun took up anew the public comments that had been voiced. In particular, he strongly objected to the remarks of several speakers who called on the owner to "sell the property if he couldn't afford the upkeep."

Owner/applicant Hunt Edwards then addressed the Board and public to respond to the remarks. He stated that the events which he hoped to host on the property would not be loud weddings or, indeed, weddings exclusively. The property, he said, would also be used for rehearsal dinners, cocktail parties, anniversary parties, corporate recognition events, and other gatherings that would not generate noise.

H. Edwards went on to relate a recent experiment. He said he had played recorded music outdoors and measured the decibel level. Neighbors had not complained of any noise, he asserted. (One attendee disagreed.) Edwards also related that he had invested hundreds of thousands of dollars into the preliminary restoration of the house, but could not continue to do so indefinitely without some financial offset. "It's a useable house now," H. Edwards said, "but will cost hundreds of thousands more to continue the restoration work and maintenance."

R. Metcalf and J. Vance stated that they were not prepared to make a final determination of the zoning request at this time. Metcalf asked for "more succinct documentation better justifying the zoning request." Vance remarked that other sources of financial relief — such as tours and grants — might also be feasible. She asked for a "business plan" or more detail about the expected number of events, the number of projected participants, and more information in general about the kinds of events likely to take place. Vance also urged the applicant to consider more *in-door* events and perhaps limited hours of operation to offset noise concerns.

D. Kiley concluded that noise pollution was, indeed, a significant issue which the Board needed to consider. "The public's concerns," he said, "have not fallen on deaf ears."

C. MacClinchy then concluded this session's review of the application, calling on the applicant and his representatives to (1) digest the public's comments and concerns, and (2) provide Contract Zone language which sets restrictions addressing the concerns. There was no mention of a next review date.

### 3. Prior Meeting Minutes

C. MacClinchy next led the Board in a page-by-page review of the minutes of its meeting of July 10, 2023. No errors were identified.

Motion: **Move to accept the minutes of July 10, 2023 as presented.**

Moved: R. Metcalf

Second: D. Kiley

Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [C. MacClinchy had not attended the 7/10/23 meeting]; the motion carried.**

### 4. Other Business

B. Howard repeated the results of the Board's July 10<sup>th</sup>, 2023 election of officers. The Board's roster of officers going forward remains the same.

### 5. Adjournment:

There being no further business, the Chair adjourned the meeting at 11:47pm.

Motion: **Move to adjourn.**

Moved: J. Vance

Second: D. Kiley

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 August 14, 2023

Signed by:

  
PLANNING BOARD

8/28/23