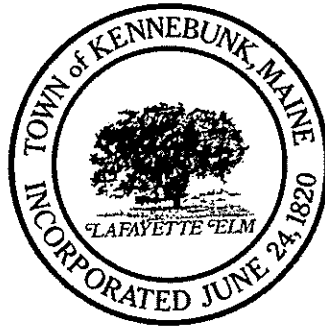


# Town of Kennebunk, Maine



## Planning Board

### MEETING MINUTES

September 25, 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], Edward Trainer [Member], and Daniel Kiley [Alternate];
- Absent: Robert Metcalf [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], Durward Parkinson [Bergen & Parkinson LLC]; and Brad Paige [Kennebunk Savings Bank].

- 1. Call to Order:** Chair and presiding officer C. MacClinchy called the meeting to order at 7:00pm on September 25, 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, Trainer, and Kiley.

## 2. Agenda Items

- a. Proposed Contract Zone – Kennebunk Savings Bank – Alewife Park Road – Map 62 Lot 19**
  - B. Howard reintroduced this application, which had previously come before the Board on May 22, 2023 and June 26, 2023. The Board had conducted a site walk on June 8<sup>th</sup>, 2023.

The applicant, Howard said, sought to create a Contract Zone per Article 13 to divide 44.21 acres of land into three lots: (1) Lot #1 to be used to build two [2] affordable

housing buildings having 35 residential units each or 70 units in total; (2) Lot #2 to remain open, undeveloped space with connection to the Eastern Trail; and (3) Lot #3 to be used for the Bank's Operations Center. The housing units on Lot #1 would be managed by Avesta.

B. Howard reminded the Board that at the Public Hearing of July 24, 2023 for this proposal, public commentators had raised concerns about: (1) noise; (2) overdevelopment of the area; (3) the adverse environmental impact of eliminating mature trees and vegetation; (4) the diminished character of the neighborhood if this project were carried out; (5) access to and over-congestion of Alfred Road; (6) poor transportation logistics; and (7) concerns about public safety.

The Town Planner also reminded the Board that Kennebunk's Zoning Ordinance allowed 120 days from the date of submission for the Board to act on a Contract Zone application. At the Board's August 14, 2023 meeting, the Board and applicant had agreed to a 90-day extension until November 30, 2023 for this particular application.

B. Howard also remarked that Lot #3, the Bank's Operations Center, would *not* be part of the Contract Zone. It would, she said, continue to be zoned "industrial". Only Lot #1 and #2 would make up the Contract Zone. C. MacClinchy also noted that the Planning Board's role was to consider the Contract Zone proposal, and not site plan details, landscaping, grading, or drainage. They would be scrutinized at a later "Site Plan Review" stage in the Town's multiple reviews of such proposals.

H. Hess, representing the applicant, addressed the Board next. Since the Board's prior review, Hess said, the applicant had:

- Added deed information to the Contract Zone Agreement;
- Added a general statement regarding the project's compatibility with Kennebunk's Comprehensive Plan;
- Amended the Contract Zone Agreement to state that the proposed Contract Zone would be a stand-alone zone;
- Modified Statement #2 in the proposed Contract Zone Agreement to confirm that Lot #2 would be dedicated to conservation and outdoor recreational use exclusively;
- Revised Exhibit B's list of "Permitted Uses" to only include the uses proposed in the Contract Zone;
- Reduced the kinds of recreational uses cited in the list of "Permitted Uses" in Exhibit B; and,
- Met with neighbors and the public at large on September 18, 2023 as part of an "outreach initiative".

D. Parkinson, also speaking on behalf of the applicant, added that other changes to the Agreement language had been made, as well. In Parkinson's view, however, signage details were best left for consideration during the later, Site Plan Review stage.

H. Hess then commented on the outreach session, he provided a sheet summarizing the outcomes of that initiative that were included in the Boards packets and linked on the meeting agenda. He showed aerial images of the proposed elevations. He suggested that there would be "abundant vegetation" separating the proposed housing site [Lot #1] from neighboring properties.

D. Kiley thanked Hess for the changes and outreach. Kiley inquired whether there would be some road development linking the conservation area to Alfred Road. Hess said that access via Alfred Road might be considered such as a parking lot to access the open space, but a full-blown roadway was not being contemplated or built.

J. Vance asked questions about the Contract Zone Agreement's definition of "outdoor recreation", and D. Parkinson offered an explanation. Vance noted that the Contract Zone Agreement lacked any mention of Avesta. Parkinson said that Kennebunk Savings Bank was donating the land to Avesta. "Avesta will formally be the successor," D. Parkinson said, "and will be bound by the duties of the Contract Zone."

Discussion ensued about the building's maximum height and B. Howard confirmed that the maximum height in the Industrial Zone was 40 feet.

R. Smith concurred with Vance that the definition of "recreational use" was perhaps overly broad. The Contract Zone Agreement, Smith said, should limit the use of the conservation space to "passive recreational use." He specifically recommended that the word "passive" be added. Smith also questioned whether neighbors and abutters attending the outreach session were satisfied with the meeting and exchange. Brad Paige, a Bank officer, said we could not speak on the neighbors' behalf, but in his view the meeting was "cordial, constructive, and non-confrontational." B. Howard observed that the Town had received no email feedback --- positive or negative --- from the public following the outreach session.

E. Trainer posed questions about traffic, and H. Hess said that a formal traffic study would be provided at the Site Plan Review stage. C. MacClinchy inquired whether this Contract Zone, if approved by the Planning Board, would then be reviewed on a "sub-division" or "site plan" basis. B. Howard responded that both kinds of reviews would have to take place as this project entailed multi-family housing.

Discussion ensued about signage. C. Osterrieder said that the signage standard of one specific zone should be cited so the signage requirements were clear. D. Parkinson suggested that the signage standard of the Industrial Zone be used as it permitted larger signs of up to 50 sq. ft. C. MacClinchy concurred. Parkinson agreed to amend the plan accordingly and again observed that signage details would be provided and reviewed at the Site Plan stage.

In response to questions by J. Vance, Avesta's N. Howes said that the state financing for this project would specifically require contractual, written confirmation that the residential units to be constructed were exclusively meant to provide "affordable housing" for a minimum term of 35 to 40 years.

Board members then returned to R. Smith's concern about the "passive" recreational use of Lot #2. Members agreed that "ball fields" should be added to the list of "excluded uses".

J. Vance and R. Smith expressed concern that neighbors might still have strong reservations about the project. They questioned whether a second Public Hearing should be organized by the Planning Board. D. Parkinson countered that at least one other Public Hearing would necessarily take place. If moved to the Select Board for consideration, Parkinson said, the Select Board would have to organize a Public Hearing, as well. C. MacClinchy agreed, stating that a second Public Hearing organized by the Planning Board was unlikely to surface new information. "We understand the public's concerns," MacClinchy said, "and are taking steps to act on them."

The Planning Board then considered the sundry of temporary waivers which this applicant sought: B. Howard and H. Hess read them:

- (1) Waiver of the need to provide dimension details about the existing and proposed buildings otherwise required by Article 11 Section 6.A.(3)(j);
- (2) Waiver of the need to provide detail about the total parcel, existing and proposed building coverage, existing and proposed impervious surface, and existing and proposed gross floor area otherwise required by Article 11 Section 6.A.(3)(l);
- (3) Waiver of the need to submit a wastewater disposal plan as mandated by Article 11 Section 6.A.(3)(o) ;
- (4) Waiver of the signage requirement mandated by Article Aa Section 6.A.(3)(t);
- (5) Waiver of the lighting requirement mandated by Article 11 Section 6.A.(3)(v); and,
- (6) Waiver of the federal and state approvals mandated by Article 11 Section 6.A.(3)(w).

Howard reminded the Board that these waivers were strictly "temporary" in nature as the applicant would have to satisfy them later in time when the project's Site Plan details were reviewed. The Board consequently entertained the following motion after a friendly amendment.

**Motion: Move to grant temporary waivers of (1) Article 11 Section 6.A.(3)(j) [dimensions], (2) Article 11 Section 6.A.(3)(l) [parcel, building coverage, etc.], (3) Article 11 Section 6.A.(3)(o) [wastewater disposal plan], (4) Article 11 Section 6.A.(3)(t)[signage], (5) Article 11 Section 6.A.(3)(v) [lighting], and (6) Article 11 Section 6.A.(3)(w) [state and federal approvals].**

Moved: J. Vance

Second: R. Smith

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

**Motion: Move to send this Contract Zone application to the Select Board with a positive recommendation [and] with the conditions that (1) "ball-fields" be added to the list of excluded uses; (2) the text Article 15 is to be removed from Exhibit B; (3) Section 3 of the Agreement is to be modified regarding signage; and (4) two items — water & wastewater and signage — are to be added under Performance Standards.**

Moved: J. Vance

Second: R. Smith

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

**b. Proposed Contract Zone — Wedding Cake House — 104 Summer Street — Map 81 Lot 16**

B. Howard next reintroduced the proposal to create a Contract Zone for 104 Summer Street so it could be used (a) as an inn and (b) as a community venue. The proposal, Howard added, had a Public Hearing on July 24, 2023.

Howard read the applicant's definition of a "community venue":

"A building or place, either indoors or outdoors, used by public and private organizations and members of the general public for meetings, gatherings, special events and functions, indoor and outdoor dining and dancing, including by way of example but not limited to weddings, bridal showers, and organizational outings."

The applicant, Howard said, proposed to reduce the required green perimeter from 25 feet to 20 feet "except that if off-street parking is provided entirely on the side or rear of the building the minimum width shall be 10 feet."

B. Howard then summarized the outcome of the Public Hearing of July 24, 2023 on this proposal. Public commentators, she said, had voiced concerns at that Hearing about: (1) increased traffic; (2) noise — particularly at night from outdoor music; (3) shoreline erosion; (4) safety at the edge of the river bank; (5) inadequate buffering and landscaping adjacent to abutting properties; (6) guest rooms smaller than the minimum size required by Ordinance; (7) diminishment of the neighborhood's character; and (8) refutation of the notion that the need for a revenue stream justified the creation of a Contract Zone.

At the close of the July, 2023 Public Hearing, Howard said, the Board directed the applicant to take the above concerns into advisement for a future re-submission. On August 23, 2023 the applicant provided additional documentation which:

- Revised the "Purpose" section of the Contract Zone Agreement to show this application's consistency with Kennebunk's Comprehensive Plan;

- Reduced the proposed hours of operation:

FROM	TO
7:00am to 10:00pm	9:00am to 9:30pm

- Confirmed that no outdoor music or sound amplification would take place after 9:00pm; and,

- Proposed the addition of a traffic attendant for events having 50 or more guests.

G. Braun, an attorney representing the applicant, addressed the Board next. He asserted that the above changes amply addressed the public's concerns about noise, traffic, and parking. "Limiting the hours of operations and limiting sound amplification should address concerns about noise pollution," he said.

G. Braun also stated that it was the applicants' intent to use fencing to impede access to the river's edge.

G. Braun went on to assert that "buffers of historically-appropriate vegetation" would ensure privacy for neighbors. As for the charge that commercial activities would change the character of the neighborhood, Braun countered that a Contract Zone allowing the Wedding Cake House to thrive would do the exact opposite. Rather than diminish the neighborhood's character, a Contract Zone would help the neighborhood preserve its character and this historic icon. The Wedding Cake House, Braun said, was repeatedly cited and depicted in the Town's Comprehensive Plan. "It's now up to the Planning Board to help preserve it."

Hunt and Katie Edwards, the owners of the Wedding Cake House, addressed the Board as well. H. Edwards circulated a piece of the one of the WCH's finials, showing Board members the extent of its rot. He showed pictures to illustrate the "visual history" of the House since 1852. He also showed photos detailing the extent of weather and rot damage, failing beams, and the property's collapsing foundations.

H. Edwards showed that cranes were needed to make many repairs and move heavy replacement beams into place. Important finials and columns, he said, had already fallen off. The need for massive restoration work had thus far cost him more than \$750,000 dollars. Even larger outlays were needed to complete the restoration work going forward.

G. Braun interjected that the Hunts were ready and willing to "carry out the necessary repairs as well as meet the concerns of neighbors." However, revenue was needed to offset some of the considerable expense ahead.

R. Smith commended the restoration work that has been done thus far. However, Smith observed that the Planning Board was responsible to review the application from two perspectives. On one hand, the owners of 104 Summer Street legitimately sought to derive commercial revenue from the property to help offset the financial burden of restoring and maintaining it. On the other hand, neighbors sought to retain the area's residential character.

"I want to see specific guarantees," R. Smith said, "of what restoration and maintenance work will be done if a Contract Zone is endorsed by us." Smith also called for signage and "some kind of fence or demarcation" impeding visitors from the river's edge.

Katie Edwards observed that the Nonatum Inn had a river-side "wedding platform area", but access to the water there was barred by a chain fence.

R. Smith questioned whether the owners' financial projections confirmed that there would likely be sufficient revenue to "comply with the Contract Zone", "restore the property to its former glory", and "maintain it longer term." H. Edwards responded in the affirmative. However, H. Edwards also said that it was likely to take several years of event activity to achieve adequate funding to fully restore the house and have a surplus left over for maintenance.

J. Vance voiced preference for signage and a fence to keep visitors away from the river's edge. She also suggested that "tent events" be limited in number. H. Edwards responded that he was willing to limit all events to a maximum of 100 guests. There was room to accommodate 80 people in the carriage house, he said. That space might be used for dining or indoor dancing. "Tented events should be rarer," the applicant stated, as he very much wanted to avoid lawn damage.

J. Vance stated that these limitations should be written into the Contract Zone Agreement. H. Edwards countered that the Town already had a noise ordinance which had to be honored. Further limits seemed redundant. "We can put skirts of the tents and use directional speakers to muffle 'tent music'", H. Edwards, said, "but we still have to honor the Town's noise limits in any case."

G. Braun asked the Board what specific language changes it sought. Creating more limitations, he asserted, would only hamstring the owners and impede their ability to produce revenue after all. Board members, however, did not immediately respond to G. Braun's question.

J. Vance instead inquired about the adequacy of the existing septic system. H. Edwards replied that a septic plan from a specialist engineer had already been submitted. The existing septic system was deemed to be adequate.

D. Kiley questioned the possibility of parking "over-load" — i.e. the possibility of the inn operating at full capacity at the same time that a large event was held. Wouldn't that over-tax parking? G. Braun said that event coordinators would be used to schedule and supervise event activities. The occupants of the inn, Braun said, were likely be members of a bridal party or event principals using the property. The parking requirements should not, Braun asserted, be magnified if the inn were also in use.

C. MacClinchy agreed with R. Smith that the Contract Zone Agreement should contain "some general statement making a commitment that existing and future owners of the property will maintain and preserve it." C. Osterrieder suggested that some "compliance timetable" or "compliance milestones" be incorporated in the Contract Zone language for this purpose.

H. Edwards then stated that he intends to hire off-duty Police officers and/or security personnel to be on hand for events, to monitor noise levels, and to contribute to the maintenance of public safety. He had, he said, already spoken with the Police Chief, who said that uniformed personnel would be available if given sufficient advance notice.

In the course of these discussions, H. Edwards repeated earlier comments that events would be limited to 100 guests, there would be no "back-to-back" events, and event planners would organize off-site parking and shuttle service if there was parking overflow. B. Howard and C. MacClinchy suggested that these stipulations also be included in the Contract Zone Agreement.

K. Edwards then offered her vision of the kind of event activity expected to take place. The limited space available at the Wedding Cake House, she said, meant that it would not and could not attract large events or crowds. "We intend to be a smaller, boutique venue," Ms. Edwards said, "and host smaller-scale dinners and events."

R. Metcalf, a Planning Board member unable to attend the meeting, sent an email questioning how far the tent area would be from the property line and from neighbors. G. Braun responded that the area would be approximately 100 feet from the property line and 300 feet from neighbors.

R. Smith and J. Vance questioned whether a second Public Hearing would be appropriate. R. Smith suggested that the applicants consider an "outreach" initiative, as well. G. Braun countered that, if the application were, indeed, moved forward to the Select Board, the Select Board would be required to hold another Public Hearing on the application. Braun stated that there was limited time remaining before the Town's March election date for voter consideration. Further delay, Braun said, seemed unwarranted.

Board members debated the merits of a second, more immediate Public Hearing. E. Trainer and C. MacClinchy were of the view that it was premature to make such a decision. Instead, members formulated the following list of changes to be included in the Contract Zone Agreement so as to create clear obligations for future owners of the property as well as present-day ones as regards the uses, limitations, and maintenance of 104 Summer Street:

- (1) Signage (particularly making water-edge access off limits);
- (2) Installation of a fence for the same purpose;
- (3) The inclusion of "compliance milestones" or "progress milestones";
- (4) More detail about the obligation to restore and maintain the property;
- (5) If possible, a further reduction or limitation of operating hours;
- (6) Waiver of the right to install a pier or dock on the river;
- (7) Use of on-site security personnel;
- (8) Confirmation that "back-to-back" events would not take place;
- (9) Limitation of the maximum number of event guests and maximum inn occupancy';
- (10) Increase, if possible, the buffer space between the back parking area and neighbors;
- (11) Elimination in writing of unnecessary uses;
- (12) Stated measurement of the distance of the tent area from the property line;
- (13) Specify the "district" or "zone" to be cited for signage standards;
- (14) Statement of the expectation that inn guests would primarily be event participants as well; and,
- (15) Statement making it the obligation of event planners to satisfactorily address overflow parking.



Board members and the applicants agreed that these modifications would be reviewed at the Planning Board's next meeting of October 23, 2023.

### 3. Prior Meeting Minutes

C. MacClinchy next led the Board in a review of the minutes of its meeting of September 11, 2023. An error was identified and corrected.

Motion: **Move to accept the minutes of September 11, 2023 as amended.**

Moved: J. Vance

Second: R. Smith

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

### 4. Other Business

B. Howard highlighted the future applications to be heard by the Board at its next meeting. A revised application for single-family dwellings at 6 Oakwood Lane, she said, would be forthcoming.

### 5. Adjournment:

There being no further business, the Chair adjourned the meeting at 10:03pm.

Motion: **Move to adjourn.**

Moved: J. Vance


Second: E. Trainer

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

Respectfully submitted by  
J. Schlagheck, Clerk

Adopted by the Planning Board in its Meeting of October 23, 2023

Signed by:

 11/13/23

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PLANNING BOARD

