

JON EAGLESON et al.

v.

TOWN OF KENNEBUNKPORT et al.

Argued November 14, 2017

Decided January 11, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

## MEMORANDUM OF DECISION

The Town of Kennebunkport and Kennebunkport Conservation Trust appeal from a judgment of the Superior Court (York County, *Douglas, J.*), *see* Kennebunkport, Me., Land Use Ordinance § 10.8.J (June 10, 2014); M.R. Civ. P. 80B; M.R. App. P. 2(b)(3) (Tower 2016),<sup>1</sup> vacating the Town Planning Board’s decision to approve the Trust’s application to build a replica grist mill as an accessory to an existing structure, namely, a boathouse museum, and remanding with instructions for the Board to deny the application. We affirm the judgment.

In April 2015, the Trust applied to the Board for approval to build the grist mill as a structure that would be accessory to the boathouse’s purported use as a museum. *See* Kennebunkport, Me., Land Use Ordinance § 2.2 (defining “museum”). Pursuant to the plain language of the Town’s Land Use Ordinance, *see 21 Seabran, LLC v. Town of Naples*, 2017 ME 3, ¶ 14,

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<sup>1</sup> This appeal was filed before September 1, 2017; therefore, the restyled Maine Rules of Appellate Procedure do not apply. *See* M.R. App. P. 1 (restyled Rules).

153 A.3d 113, because the boathouse is located in the Village Residential Zone, which allows a museum only as a conditional use, construction of the grist mill could be approved only if, among other things, the Board had approved a site plan application for the boathouse to be operated as a museum. *See* Kennebunkport, Me., Land Use Ordinance §§ 4.3, 10.2.A(1). In granting the Trust's application for the grist mill, the Board found that the boathouse "constitute[d] a lawful museum use" under the Town's ordinance. The record establishes, however, that the Board had never approved a site plan application for the boathouse to be operated as a museum. Further, we are not persuaded by the assertion of the Town and the Trust that, despite the restrictive language of the Board's past approvals regarding the boathouse, the Board had implicitly approved the boathouse to be operated as a museum. *See Driscoll v. Gheewalla*, 441 A.2d 1023, 1029, 1030 n.5, (Me. 1982) (although we will extend a presumption of regularity to municipal actions, a municipal body "should take pains to frame their legal conclusions in language commensurate with that of the statutes they enforce and to specify in their decisions the facts upon which they base such conclusions.").

Because the Board erred by granting the Trust's application, *Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174, ¶ 5, 151 A.3d 933 (stating the applicable standard of review), we affirm the judgment.<sup>2</sup>

The entry is:

Judgment vacating the Town's approval of the  
Trust's application to build a replica grist mill  
affirmed.

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<sup>2</sup> Because the absence of any approval for the boathouse to be used as a museum is dispositive of the outcome of this appeal, we need not and do not address the other arguments presented here.

Amy K. Tchao, Esq., and Agnieszka A. Dixon, Esq. (orally), Drummond Woodsum, Portland, for appellant Town of Kennebunkport

Durward W. Parkinson, Esq. (orally), Leah B. Rachin, Esq., and Benjamin T. McCall, Esq., Bergen & Parkinson, LLC, Kennebunk, for appellant Kennebunkport Conservation Trust

John C. Bannon, Esq. (orally), Murray, Plumb & Murray, Portland, for appellees Jon Eagleson et al.

York County Superior Court docket number AP-2015-31  
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