Town of Kittery Maine
Town Planning Board Meeting
August 11, 2016

31 Badgers Island West – Business Use Change

Action: Accept or deny application. Approve or deny use restriction change. Owner, 31 Badgers, LLC, and applicant, Kevin Adams, requests consideration to change the on-site restaurant from the previously approved seasonal operation to year round. The restaurant is located at 31 Badgers Island West (Tax Map 1 Lot 31) in the Mixed Use – Badgers Island (MU-BI), Soreland and Resource Protection (OZSL & OZ-RP) and Commercial Fisheries / Maritime Use (OZ-CFMU) Overlay Zones.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
YES	Determination of Completeness	Scheduled for 8/11/2016	PENDING
NO	Public Hearing	At the Board's discretion	
NO	Site Walk	At the Board's discretion	
Yes	Final Plan Review and Decision	Feasible for 8/11/2016	TBD

Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN ¼: HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 – Grading/Construction Final Plan Required. – Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Background

The Planning Board approved the outdoor, 40-seat seasonal restaurant at the May 13, 2004 meeting, owned and operated by Weathervane Seafoods, Inc. (minutes attached). At the July 14. 2005 Planning Board meeting, a site plan for Weathervane Seafoods, Inc was approved to expand customer seating to 65 seats (minutes attached). The approved site plan included plan note #16 stating "approved as an outdoor seasonal restaurant".

A Business Use Change application (BUC) dated 3/23/2016 was submitted to the Town, after a change in property ownership, for Maine Ocean Lobster to operate wholesale/retail lobster pound/food processing at the site of the former Weathervane restaurant. A Notice of Decision was issued by the Planner and Code Enforcement Officer on April 14, 2016 to approve this application (Notice of Decision attached).

The new owner, 31 Badgers, LLC, submitted another BUC application July 27, 2016 to extend the operating hours of the existing restaurant from a "seasonal" operation to year-round. Title 16.4.3.5 states: *"The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6"*. After reviewing the application, the Planner and Code Enforcement Officer concurred the Planning Board should review and approve/deny the BUC because the seasonal operation is specifically identified on the 2005 Planning Board approved site plan (site plan attached).

The applicant plans to change the name of the restaurant to "The Pointe".

Staff Review

At the start it was not clear if this was strictly a major or minor modification to an approved plan or a business use change. Staff decided to continue with the business use change review and request the planning boards review and approval as anticipated under 16.4.3.5. Staff has the following comments:

1. "Seasonal use" is not defined in Title 16.2.2. Neither the site plan nor minutes define or restrict the hourly or season of operation. In the past the former Weathervane Restaurant was open between May and September.

2. It does not appear the requested change from seasonal to all year-round would increase the intensity of use more than what the current facility can accommodate. The requested change does not increase parking requirements for the restaurant. The lot currently provides 29 parking spaces. The Code Enforcement Officer has reviewed the parking in March of this year for the 2016 BUC application, and found 29 spaces is sufficient for the 65-seat restaurant.

3. A restaurant is a nonconforming use in the Resource Protection and Commercial Fisheries / Maritime Overlay zones. The restaurant may not be permitted to expand per title 16.7.3.5.2. The applicant is not requesting an expansion of use in their application.

4. No changes or alterations are proposed to the building where *The Pointe* restaurant is located.

5. No impacts to property or site development is proposed with this application.

6. The Board may consider the request as a modification to the original approval of the *nonconforming use change* in the shoreland zone. This provision, 16.7.3.6.2, describes the procedure to approve a change a nonconforming use to another nonconforming use in the shoreland zone. Though the use is not changing, the Board approved restriction to that nonconforming use is changing. The Board may want to confirm that the nonconforming use without the restriction remains to be in compliance to this provision. To address this the draft findings include a vote on this provision.

7. A condition of approval for the board to consider may be in lieu of revising the 2005 Site Plan with the proposed change, prepare a letter that documents the change and that includes the current plan as an exhibit for reference, all of which is recorded at the York County Registry of Deeds.

Recommendations

It appears the application is complete for review, however, the Board may require additional information they deem is necessary to complete the review. A public hearing is discretionary. The Board should determine whether a public hearing is warranted. Abutters are not notified as

part of a business use change application. If a public hearing is warranted the Board may accept the application (suggested motion below)…

Move to accept the Business Use Change application dated July 27, 2016 from Owner, 31 Badgers, LLC, and applicant, Kevin Adams, for the restaurant located at 31 Badgers Island West (Tax Map 1 Lot 31) in the Mixed Use – Badgers Island base zone, and the Shoreland, Resource Protection and Commercial Fisheries / Maritime Use Overlay Zones, and schedule a public hearing for September 8, 2016.

OR

If the Board is satisfied with the information presented by the applicant, Staff recommends the Board accept the application and approve the requested plan change (suggested motion below)…

Move to accept the Business Use Change application dated July 27, 2016 and approve the request to change the current seasonal use restriction to a year-round use as a restaurant, from Owner, 31 Badgers, LLC, and applicant, Kevin Adams, for the restaurant located at 31 Badgers Island West (Tax Map 1 Lot 31) in the Mixed Use – Badgers Island base zone, and the Shoreland, Resource Protection and Commercial Fisheries / Maritime Use Overlay Zones, upon the review and voting, in the affirmative, on the Findings of Fact.

<After an affirmative vote, proceed to reading and voting on the Findings of Fact>

Kittery Planning Board

UNAPPROVED

Findings of Fact
31 Badgers Island West
Business Use Change

WHEREAS: Owner, 31 Badgers, LLC, and applicant, Kevin Adams, requests consideration to change the on-site restaurant from the previously approved seasonal operation to year round. The restaurant is located at 31 Badgers Island West in the Mixed Use – Badgers Island, Resource Protection and Commercial Fisheries / Maritime Use Zones, hereinafter the "Development" and

Pursuant to the review meeting conducted by the Town Planning Board as noted {in the plan review notes prepared for 8/11/2016}

Business Use Change Review	8/11/2016	HELD
Business Use Change Approval	8/11/2016	GRANTED

And pursuant to the application and plan and other documents considered to be a part of the decision by the Planning Board in this Finding of Fact consisting of the following: {as noted in the plan review notes prepared for 8/11/2016}

1. Business Use Change Application, dated July 27, 2016
2. Proposed Renovation and Addition – Weathervane Lobster, Civil Consultants, dated 4/14/1989
3. Site Plan, Civil Consultants, dated 10/4/2005
4. Planning Board Minutes, 7/13/2005
5. Notice of Decision, Town of Kittery Code Enforcement Office, dated April 14, 2016

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 ADMINISTRATION and ENFORCEMENT

16.4.3.5 Business Use Changes
The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this code. Findings: The proposed changes do not appear to conflict with the standards of Title 16, nor will they appear to alter the existing character of the property or abutting properties Conclusion: This requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining

Chapter 7 Article III Nonconformance
16.7.3.6.2 Nonconforming Use Change.
An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses. Finding: The proposed change to the "seasonal" restaurant restriction approved in 2004 by the Planning Board when reviewing the request to change a nonconforming use (out-door seated restaurant) to another nonconforming use (indoor seated restaurant) does not appear to have an impact to parking and other land use requirements and the restaurant use as a "year-round" operation continues to have *no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use,* Conclusions: This requirement has been met.
Vote: ___ in favor ___ against ___ abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval:

1. Prepare a letter that documents the change and that includes the current plan as an exhibit for reference for Planner and CEO review and approval prior to being recorded at the York County Registry of Deeds.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Findings of Fact.

Vote of ___ in favor___ against ___ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON August 11, 2016

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any revisions as required by Planning Board and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

TOWN OF KITTERY MAINE
TOWN PLANNING DEPARTMENT

200 Rogers Road, Kittery, Maine 03904
Phone: (207) 475-1323
Fax: (207) 439-6806
www.kittery.org

APPLICATION: BUSINESS USE CHANGE

THIS REVIEW PROCESS REQUIRES APPROVAL FROM BOTH THE TOWN PLANNER AND THE CODE ENFORCEMENT OFFICER	FEE	☒ $100.00 plus receipt 433674	Amount Paid: $ 100 Date Submitted: 27 July 2016

PROPERTY DESCRIPTION	Parcel ID	Map	1	Lot	31	Zone: Base	MU-BT	Total Land Area	0.08 ACRES 34,848 SF
						Overlay	OZ-EFMU OZ-RP		
	Physical Address	31 BADGERS ISLAND WEST, KITTERY ME 03904							

PROPERTY OWNER'S INFORMATION	Name	31 BADGERS, LLC	Mailing Address	PO Box 904 Kittery, ME 03904
	Phone	207-229-0335		
	Fax	207-752-9111		
	Email	KEVIN@KTP.COM		
APPLICANT INFORMATION	Name	KEVIN F ADAMS	Name of Business	THE POINTE
	Phone	207-229-0335	Mailing Address	PO Box 904 Kittery, ME 03904
	Fax	207-752-9111		
	Email	MOSSLAND360@GMAIL.COM		

PROJECT DESCRIPTION

See sections below regarding information to be provided.

Existing or previous use(s):	SEASONAL RESTAURANT
Other on site use(s):	LOBSTER POUND + OFFICES
Proposed Business Name:	THE POINTE
Proposed Hours of Operation	M-F 4:00PM - 11:00 PM S-S 10:00 AM - 11:00 PM HOLIDAYS 10:00 AM - 11:00PM
Proposed Use or Uses:	YEAR-ROUND RESTAURANT
Please provide a brief narrative of the proposed project:	MODIFICATION TO APPROVED PLAN CHANGE FROM SEASONAL USE TO YEAR ROUND USE
Describe all land or structural modifications that will be made on the property:	N/A

Number of people that will work, reside or visit the property during a typical weekday and weekend?	100
Number of off-street parking spaces that will be provided:	29

If the property will be used for storage, what, how and where will it be stored? (Also place on site plan)

None

Describe any foreseeable odor, smoke, gases, light, dust, vibrations or noise omitted beyond the property's boundaries:

None

Describe any improvements (buffering, vegetation, permeable surfaces, ect…) that will be made to the property that will enhance the surrounding environment: (Also place on site plan)

None

I certify that, to the best of my knowledge, the information provided in this application is true and correct and I will not deviate from the plans submitted without notifying the Kittery Planning Department of any changes.

Applicant's Signature:		**Owner's Signature:**	
Date:	7/28/16	**Date:**	7/28/16

Minimum Submission Requirements

1) Application and Payment of Fee(s)

2) Site Plan (see minimum plan requirements below)

3) Floor Plan (include dimensional figures and label what areas will be used for)

4) Mail Copy of Plans to:

Office of the State Fire Marshall
Inspections / Plans Review Division
52 State House Station
Augusta, Maine 04333-0052

Make sure to sure to obtain a packing slip or proof of mailing and include the slip or a copy of the with your application submission.

5) Completed Building Permit Application

Minimum Plan Requirements

Related Kittery Land Use Code Requirements:

16.4.3.5 5387 **Business Use Changes.**
The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

16.10.3.6 Business Use Review.
All business use including the following must be reviewed by the CEO and Town Planner to ensure compliance with the requirements of this Code including:

1. Movement of an existing commercial or business entity from like to like facilities/use where major building/site modifications are not made;

2. Movement of an existing commercial or business use into related facility/use buildings;

3. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different.

IT IS THE RESPONSIBILITY OF THE APPLICANT TO PRESENT A <u>CLEAR UNDERSTANDING OF THE PROJECT</u>.

A) Show location and description of:
- ☐ All structures ☐ Floor plans
- ☐ Elevations of principle structures
- ☐ All structures and accesses within 100 feet

B) Show parcel data:
- ☐ Total parcel area ☐ Building setbacks
- ☐ Wetland setbacks ☐ Length of street frontage

C) ☐ Show names and addresses of all owners of record on abutting parcels and the assessor's map and lot numbers.

D) ☐ Label all zoning districts abutting the property boundaries.

E) ☐ Show locations of natural physical features such as water bodies,
Water courses, forest cover, and ledge outcroppings.

F) Provide description of these materials stored on the property:
- ☐ Hazardous ☐ Toxic ☐ Raw Waste

G) Show parking calculations:
- ☐ Existing parking ☐ Proposed parking spaces
- ☐ Handicapped spaces

H) Submit a narrative of proposed use of the property for categorization purposes: (i.e. retail, wholesale, restaurant, video rental, office, auto repair, etc. The narrative must include:
- ☐ any assigned numbers from the tenant roster for the space that will be occupied
- ☐ the business hours
- ☐ Estimated number of customers or clients per day

Size of lots and/ or buildings
- ☐ proposed public improvements

I) Describe any development constraints such as:
- ☐ Wetlands ☐ Shoreland ☐ Floodplains
- ☐ Existing structures ☐ Existing Uses
- ☐ Lack of utilities , public private

<u>ANY SUBMITTAL DEEMED SUFFICIENTLY LACKING IN CONTENT WILL BE RETURNED WITHOUT REVIEW.</u>

TOWN OF KITTERY MAINE

Planning and Development Department
200 Rogers Rd. Kittery, Maine 03904
(207) 475-1323

NOTICE OF DECISION

PROPERTY OWNER/APPLICANT:	31 Badgers Island LLC / Kevin Adams
MAILING ADDRESS:	P.O. Box 904, Kittery, ME 03904
PROPERTY LOCATION:	31 Badgers Island West
MAP LOT:	**MAP 1 LOT 31,**
APPLICATION:	**Business Use Change – Maine Ocean Lobster & The Pointe**
ZONE(S):	Mixed Use – Badgers Island
DATE:	April 14, 2016

Title 16.10.3.2 Other Development Review, of the Town of Kittery Land Use and Development Code, does not include business use review, per 16.4.3.5, as requiring Planning Board approval.

16.4.3.5 Business Use Changes.
The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

The Town Planner and Code Enforcement Officer have reviewed the Business Use Change (BUC) applications dated 3-23-16 and other information listed below, and finds it does conform to the Town Code and prior town approvals with conditions and **approves** the application based on the following:

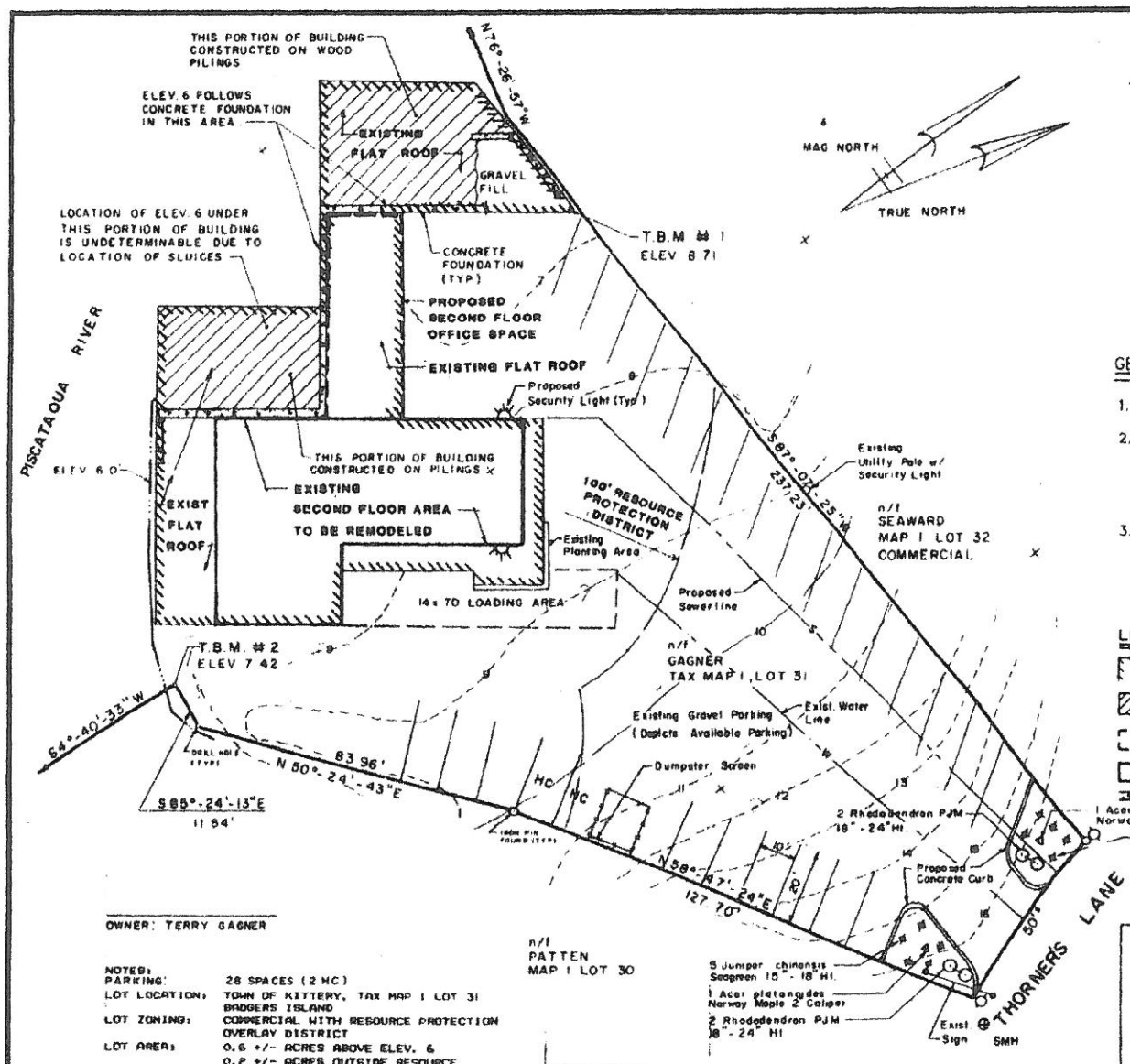
Conditions:
1) Retail use is not allowed on the property per Zoning Board of Appeals 5/31/1989 decision.

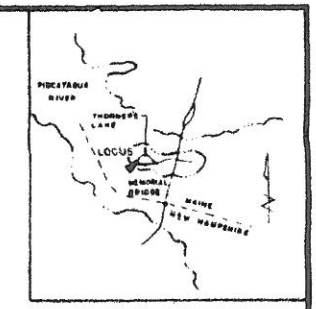
Submittals included

1. Business Use Change application for Maine Ocean Lobster, to operate wholesale/retail lobster pound/food processing.
2. Business Use Change application for The Pointe, seasonal restaurant, offices.
3. Building/Regulated Activity permit application for above stated uses.

Application submittals included the following-

a. 1989 site plan, for reference
b. Floor plan
c. 2005 site plan, for reference. Planning Board Minutes, and Site plan approved and signed by Planning Board on October 27, 2005, included the following information:
    - Existing use – Office & Warehouse.
    - Proposed additional use – Restaurant with outside dining
    - Restaurant will operate at non-conflicting hours of the office and warehouse.
    - Parking calculations: classification – restaurant has 65 seats, requires 22 spaces.
    - Hours of restaurant operation: Monday-Friday 4:00PM-11:00PM, Saturday & Sunday 11:00AM-11:00PM.
    - Public access allowed only during hours of restaurant operation.
    - Approved as a seasonal restaurant.





LOCATION PLAN
n.t.s.

GENERAL NOTES

1. THIS PLAN IS NOT BASED ON A STANDARD BOUNDARY SURVEY.
2. ELEVATIONS DEPICTED AT T.B.M. #1 & T.B.M. #2 ARE BASED ON A CLOSED LEVEL LOOP FROM A S.E.A. CONSULTANTS BENCHMARK LOCATED IN UTILITY POLE N.E.T. & T. NO. 4 ON THORNERS LANE & IS A RAILROAD SPIKE AT ELEVATION 24.57' N.G.V.D.
3. BOUNDARY LINE DATA DEPICTED HEREON IS FROM A PLAN ENTITLED "GAGNER / SEWARD PROPERTY LINE EVALUATION," DATED MARCH 15, 1988, AND PREPARED BY KIMBALL CHASE AND PROVIDED TO THIS FIRM BY JERRY RICHARDS.

LEGEND

- EXISTING BUILDING & FOOTPRINT
- BUILDING CONSTRUCTED ON PILINGS
- PROPOSED NEW SECOND FLOOR OFFICE SPACE
- PROPOSED REMODELED SECOND FLOOR OFFICE SPACE
- CONCRETE FOUNDATION WALL

20 0 20 40 60 80 FEET
GRAPHIC SCALE

OWNER: TERRY GAGNER

NOTES:
PARKING: 28 SPACES (2 HC)
LOT LOCATION: TOWN OF KITTERY, TAX MAP 1 LOT 31 BADGERS ISLAND
LOT ZONING: COMMERCIAL WITH RESOURCE PROTECTION OVERLAY DISTRICT
LOT AREA: 0.6 +/- ACRES ABOVE ELEV. 6
0.2 +/- ACRES OUTSIDE RESOURCE PROTECTION DISTRICT
LOT FRONTAGE: 50' ON THORNER'S LANE
EXISTING USE: WEATHERVANE LOBSTER POUND
PROPOSED USE: SAME
EXISTING BUILDING FOOTPRINT: 8,720 +/- S.F.
PROPOSED BUILDING FOOTPRINT: SAME
SETBACKS: FRONT 50'
SIDE & REAR 30' (BUILDING GRANDFATHERED)
SEPTIC SYSTEM AS IT EXISTS IS UNKNOWN
EXISTING BUILDING IS SCHEDULED TO BE CONNECTED TO THE PUBLIC SEWER SYSTEM CURRENTLY UNDER CONSTRUCTION.

PLAN APPROVED
TOWN OF KITTERY PLANNING BOARD

DATE

NO.	REVISIONS	INT.	DATE
1	Planting, Utilities, Topo		6-20-89

PROPOSED RENOVATION AND ADDITION
WEATHERVANE LOBSTER
WEATHERVANE SEAFOODS
THORNER'S LANE & BADGERS ISLAND
KITTERY, MAINE

STATE OF MAINE — THOMAS W. HARMON — REGISTERED PROFESSIONAL ENGINEER

CIVIL CONSULTANTS
ENGINEERING & PLANNING
293 MAIN STREET SOUTH BERWICK, MAINE

DRAWN TEB	SCALE 1"=20'	DATE 4/14/89
CALC. FL	APPROVED	
N.B. #	SHEET 1 OF 1	86-136

TOWN OF KITTERY MAINE

Planning and Development Department
200 Rogers Rd. Kittery, Maine 03904
(207) 475-1323

NOTICE OF DECISION

PROPERTY OWNER/APPLICANT:	31 Badgers Island LLC / Kevin Adams
MAILING ADDRESS:	P.O. Box 904, Kittery, ME 03904
PROPERTY LOCATION:	31 Badgers Island West
MAP LOT:	**MAP 1 LOT 31,**
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ZONE(S):	Mixed Use – Badgers Island
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16.4.3.5 Business Use Changes.
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The Town Planner and Code Enforcement Officer have reviewed the Business Use Change (BUC) applications dated 3-23-16 and other information listed below, and finds it does conform to the Town Code and prior town approvals with conditions and **approves** the application based on the following:

Conditions:
1) Retail use is not allowed on the property per Zoning Board of Appeals 5/31/1989 decision.

Submittals included

1. Business Use Change application for Maine Ocean Lobster, to operate wholesale/retail lobster pound/food processing.
2. Business Use Change application for The Pointe, seasonal restaurant, offices.
3. Building/Regulated Activity permit application for above stated uses.

Application submittals included the following-

a. 1989 site plan, for reference
b. Floor plan
c. 2005 site plan, for reference. Planning Board Minutes, and Site plan approved and signed by Planning Board on October 27, 2005, included the following information:
    - Existing use – Office & Warehouse.
    - Proposed additional use – Restaurant with outside dining
    - Restaurant will operate at non-conflicting hours of the office and warehouse.
    - Parking calculations: classification – restaurant has 65 seats, requires 22 spaces.
    - Hours of restaurant operation: Monday-Friday 4:00PM-11:00PM, Saturday & Sunday 11:00AM-11:00PM.
    - Public access allowed only during hours of restaurant operation.
    - Approved as a seasonal restaurant.

Proposed Use:

1. Maine Ocean Lobster, hours of operation-Monday-Sunday, 4:00AM-12:00AM for wholesale/retail lobster pound/food processing.
2. The Pointe, hours of operation Monday-Friday 4:00PM-11:00PM, Saturday & Sunday, 10:00AM-11:00PM, Holidays 10:00AM-11:00PM for seasonal restaurant, offices.

Previous Use:

Weathervane Seafood-Wholesale & offices.
Weathervane Restaurant & Offices – Seasonal restaurant, offices.

Code and Prior Town Approval Review

Review and approval based on Title 16.10.3.6.3 Business Use Review- *All business use including the following must be reviewed by the CEO and Town Planner to ensure compliance with the requirements of this Code including: 3. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different.*

Restaurant hours consistent with allowed hours of operation in the Mixed Use – Badgers Island zone, 5:00AM-11:00AM.

Restaurant and offices will operate on non-conflicting hours to maintain 2005 Planning Board approval regarding use and parking.

Review finds proposed uses same as previous use, with the exception of retail use proposed for lobster pound. The combination wholesale and office use of the site was approved by the Zoning Board of Appeals on May 31, 1989. A condition of ZBA approval was elimination of the retail and fast food take-out business. It doesn't appear that the retail use was reviewed and approved at a later date, therefore the retail use cannot be approved without review and approval by the Planning Board, a modification to an approved plan application.

Any proposed field changes, diversion or revisions to the approval shall be reported to the Code Enforcement Officer prior to proceeding with the proposed changes for review and approval. Any changes not approved in this Notice of Decision will be in violation of State law and Town Codes. This approval is not in lieu of any required building and sign permits.

This decision, per Title 16.6.5.1, may be appealed to the Board of Appeals in 30 days of the date of this notice. An application is available at the Town Hall Planning and Code office Monday through Thursday between 8AM to 6 PM

Sincerely:

Christopher Di Matteo
Town Planner

Robert Marchi
Code Enforcement Officer

Cc: Planning Board Chair
Board of Appeals Chair
file

MAP 1 LOT 31

TOWN OF KITTERY
PLANNING BOARD MEETING

APPROVED

Thursday, July 14, 2005 Council Chambers

Meeting called to order at: 6:05 p.m.

Present: Ron Ledgett, Chairman Russell White, Doug Muir, Janet Gagner, Megan Kline, Scott Mangiafico, Ernest Evancic
Also Present: Earldean Wells, Planner Jim Noel, Town Manager Jon Carter, Town Council Chairperson Ann Grinnell, Mark Eyerman, Terry Dewan

1. ROLL CALL

Roll call noted.

2. DISCUSSION 6:05 - 8:30

Town Council is willing to hold a public hearing on August 8 to take up the KFC. There are sufficient members of the Planning Board that believe they can be there that there should be a quorum. The votes are not there to extend the moratorium. See also Action Items from July 14, 2005.

3. PUBLIC COMMENT ON NON-AGENDA MATTERS (20 MINUTES)

There is a comment from Earldean Wells concerning the tree tags.

4. PUBLIC HEARING: WEATHERVANE SEAFOODS, INC. 31 BADGERS ISLAND WEST. APPLICANT IS PROPOSING TO EXPAND CUSTOMER SEATING ON DECK INTO EXISTING BUILDING FOR A COMBINED TOTAL OF 65 SEATS. MAP 1, LOT 31, ZONED BI.

Janet Gagner steps down for this item and the following item because she is related to the applicant.
Chairman White introduces the application.
Jeremy Gagner, 37 Pocahontas Road, Kittery Point, Maine, is representing Weathervane Seafoods. They are asking for a minor modification to an approved plan, note 16. They would like to be approved as a seasonal restaurant. Based on the code, the expansion of an existing use with less than 6 parking spaces would not necessarily need peer review, but the note does, so that is why they are here tonight. There was some confusion on the original plan. They were approved as a drive in restaurant initially. They will have a net decrease in the required parking onsite with this change.
Chairman White opens the item for public comment and counts those present.

Rae Landgarten, 9 Badgers Island West, has lived there almost 6 years, during which time the traffic on her street has gotten heavier and heavier. She is opposed to the expansion for the following reasons. One is increased traffic. The road is small and narrow. Large trucks and tons of cars travel up and down the street. It is dangerous as is. If the Weathervane expands, there will be more traffic, much of it at night, when visibility is poor. There is not adequate parking on the island. The Weathervane says they will add seats and need less parking. This makes no sense. They have no lighting plan, but the town is in the process of adopting more stringent lighting rules. There is more activity on the waterfront that will cause more pollution and they have no plans to control that. She knows her neighbors have had problems with the Weathervane complying with approvals they have gotten. She does not think the Weathervane should be permitted to add 40 indoor seats on Badgers Island at this time.

Joan Jones, 27 Badgers Island, is here on behalf of her husband, Arthur Jones, Suzette and Ed Beavers, and Sue and Gary Freud who also live there. There are a number of issues that she raised at the June 9 meeting and she wrote a letter to Heather Ross re: code violations. She asked for a response and clarification and received neither. It was suggested at that meeting that she contact the town manager. She wrote him a letter outlining the sign issues and the continued violation of the May approval of their outdoor restaurant. Mr. Jankowski wrote and said that someone would contact her. This did not occur and the violations continue. The support beams of the existing sign show signs of rust. The one support beam has rusted through in areas and she questions the integrity of this support. Now the Weathervane is asking for approval to extend seats indoors and they do not adhere to the codes and prior approvals. They erected a canopy prior to approval of the Board over the outdoor seating. She would like to know how adding more seats will result in a need for less parking. The parking and traffic is of concern and the large sign continues to create confusion. She asks that the Weathervane be required to comply with the existing code and prior approvals.

Chairman White asks if she got a letter that was addressed to her dated today.

Ms. Jones did not.

Chairman White just saw it himself. He asks if she wants a copy.

Ms. Jones would like a copy.

Donna Dion is a 30 plus year resident of Kittery. She does not live on Badgers Island, but is concerned with what goes on in the town of Kittery. She understands that the Weathervane is interested in adding 40 more seats. She understands there is no stormwater management and it is a nonconforming lot with dining on the water. She thinks it is a perfect time to require stormwater management. The Weathervane got approved to have this restaurant a year ago and they said there would be no further expansion. Now a year later, they are applying for an expansion. This will mean more night traffic with drivers that have been drinking. The application suggests that they will need less parking when they will add more seats. Badgers Island has virtually no parking now. Where are the cars going to park? They will park wherever they find a space available, including on property of the other residents. Over the past year, there have been issues with this site. The Weathervane is also seeking approval to add a large awning to cover the entire deck area. It is wrong to approve this when they are not following the approvals they have. Awnings like this have always been considered structures. There is nothing in the code that would allow the Weathervane to enlarge this nonconforming structure closer to the wetlands. This should definitely be denied. There is also not enough space on this site. This

application should not be granted.
Chairman White asks if there is a response or further information from the applicant.
Jeremy Gagner would like to address a couple of issues. They do have the required parking onsite for the existing restaurant as it sits right now and the expansion. By code, they are allowed to have this use. The Badgers Island Zone allows the restaurant to be there with the parking that they have. As far as Joan's issues, the letter from Heather states that there are no violations at the property. As for the sign application, that has been withdrawn. They can deal with it after this. As far as the sign integrity, there is no indication that there is any problem with it at this time. If it becomes in disrepair, they will fix it. He does not know that there is anything else to respond to. He is happy to answer the Board's questions.
Planner Noel says that Ms. Dion said that there was no stormwater management at this site. He believes she is in error. He thinks Mr. Rossiter was out there when the initial application came in for this and met with the Weathervane maintenance man who was satisfied there were catch basins and stormwater provisions onsite.
Mr. Gagner confirms that the original application contained a letter from Mr. Rossiter approving the stormwater plan in place.
Mr. Mangiafico asks if there are oil and water separators in those.
Mr. Gagner is not sure. He does not have the information with him.
Chairman White asks about the hours of operation.
Mr. Gagner says that they were until 11 pm initially. They have not had any issues. Ed Strong testified to that. The liquor license is still in place and was renewed this year.
Mr. Muir says that some questions have been raised about diners seated on the dock area as opposed to the deck area. Is this a practice that has been followed in the last year?
Mr. Gagner says that started out in the area of public access that was past the existing area and that was where people wanted to sit. They started to stand there and continued to order and instead of saying no, the Weathervane said yes. The customers asked for seats and the Weathervane gave them to them. When they realized that it was going to be a problem, they took them away. With them removed, they have had complaints from guests. That area was public access. The entire restaurant, with a deck on the waterfront, is public access. They would like to continue that practice to satisfy the guests. They have the parking available to fill that area as it sits today.
Mr. Muir says that his question was with respect to having tables on the dock.
Mr. Ledgett says there is no deck here, it's all dock.
Mr. Gagner asks if there is a difference according to the town.
Mr. Ledgett says there is a big difference. It's a waterfront use approved by the Port Authority and the rules for construction and expansion of docks are different than decks.
Mr. Muir says that Jon Carter got him confused because he makes a distinction between the dock and the deck in his letter of June 14. The rectangular area closest to the building is where the seating is for the restaurant.
Chairman White asks if there are other questions.
Joan Jones says that it is not true that they are not sitting down on the dock. They have been for over a year. Maybe they are not today, but they were last weekend. As for the support beams, they are rusted through. One of the beams goes like this; it has a definite give to it where the rust holes are and she thinks it should be looked into. As soon as they saw it was rusted when they

removed the planter around it, very shortly after that, they painted it and for a while it was white, but now the rust is coming through again.
Resident of 27 Badgers Island West. There was an awning until 4-5 days ago and they just took it down. It appears that they pulled the stools that they use to serve people along the pier part just days ago. Just wanted you to know that.
Chairman White thinks that Mr. Gagner did indicate that they had been seating people there and did want to be able to do that.
Mr. Gagner says that if the sign was broken or needed to be fixed, they would fix it.
Mr. Mangiafico has a question for the applicant. The Plan of 2/4/05 does show stools out on the dock. Is that the current proposal? Is that included in the seating capacity? The way he understood it is that they are looking to use that area also.
Chairman White thinks it is a legitimate question. If there is seating out in that area, he does not know if that expands the number for the restaurant.
Mr. Mangiafico asks the Planner how we count that. For example, Portsmouth Brewery has a bar area. He assumes they count the number of stools with the seating capacity.
Chairman White asks if you use that as expansion seating.
Mr. Gagner says it is currently not counted in the parking calculations we have before us right now.
Chairman White asks if it would be a preference to include that. If it is a practice that has occurred in the past, and clearly some of the public comment is that they did not ask for that in the beginning and are doing it, it may be a reasonable thing to do. He does not know if the applicant wants to address it now or separately at another time.
Mr. Gagner would like to address it now if possible. He believes the area that they are talking about as marked for public access on the original plan does not have a square footage attached to it. He believes it is roughly 300 sf which he believes would require another 7-8 parking spaces which he believes they will have. The deck area is 314 sf and would add roughly 7 parking spaces to the expansion for which he is asking. He thinks that they had a net before of minus 9. That would take them up to minus 2 at this point. If possible, he would like that portion of the plan also amended.
Chairman White says that according to Planner Noel's memo, the current calculations show 22 is required and the applicant is proposing 28. If you add another 7, that would be 29.
Mr. Gagner does not have a copy of that.
Chairman White says that while he is looking at those, are there other issues the Board wants to bullet?
Mr. Muir says that the Planner raised an issue that there may be some uses of this building that would occur simultaneously and invalidate the parking. That may be an issue for the applicant to address.
Mr. Ledgett says that initially this structure was a commercial dock and used for the handling of commercial seafood. The application when first done was to take a portion of the dock, there is no deck, and have a seasonal outdoor restaurant on that dock. Now they are expanding to an indoor/outdoor restaurant. There is a question in his mind as to what uses are approved and occurring at this facility. Is it still an offloading facility for commercial seafood? Is it only a restaurant? He is looking at the use of the portions of the building that are affected here. Is this dock no longer a commercial pier in support of a business in that building? The prior approval

had the commercial loading and offloading of seafood being maintained.
Mr. Gagner says that the portion of the building that is used for a warehouse and the portion used for loading fresh lobster is still being maintained and will still be maintained. They land almost a quarter of a million pounds of local seafood there through those two doors each year.
Mr. Ledgett says that Mr. Muir's point is valid that this is a dual use facility.
Mr. Muir asks if there is any overlap.
Mr. Gagner says there is about an hour overlap between the warehouse and the restaurant. They have discussed having that overlap end. The overlap with the office has ended.
Chairman White asks if a notation to that effect could be placed on the plan.
Mr. Gagner believes it already was.
Ms. Kline says it is number 11 - they will operate at nonconflicting hours.
Mr. Muir says there is a conflict for one hour, so they are not in compliance with note 11.
Mr. Gagner says they will be nonconflicting. They will go by that plan. They will comply.
Mr. Muir says the seafood that is landed goes to the warehouse.
Mr. Evancic asks what happens if a boat comes in late in the day for some reason and there is a choice to unload or not.
Mr. Gagner says they take their catch and hold it for that day and bring it back the next.
Chairman White says that we have a letter from Code Enforcement saying there are no violations on the property. There is also a letter to Ms. Jones dated today addressing her questions. Heather Ross has been on vacation and that may address why her questions were not answered until today.
Mr. Ledgett says that it appears that we are changing the use of a preexisting building that lies inside the 25' setback.
Chairman White asks what the change is.
Mr. Ledgett says that we are now changing a portion of the building to a restaurant and it is the portion of the building that is in the setback. The zone would permit a restaurant behind the setback.
Chairman White asks if it prohibits one.
Mr. Ledgett asks how we apply the code to a change of use to a water dependent structure within that setback. If it is on the dock, it has to be an operational necessity. The question is what is it when you have a structure. If you came and tried to build this now, you could not.
Mr. Mangiafico begs to differ. If you look at page 256, -4, 1 public access includes outdoor patio seating at a restaurant open to the public. You can't have a public dock for people to enjoy without having access. He thinks that this is part of the public access, so we can look at it from that standpoint.
Mr. Ledgett agrees with respect to the dock, but not with respect to the structure.
Mr. Mangiafico says that we are adding another use within an existing structure.
Mr. Muir says that we are replacing a use within a portion of that building.
Mr. Mangiafico says that it was a storage area.
Mr. Ledgett asks how the code applies in this circumstance.
Mr. Mangiafico says that from operational necessity, they probably need this. How many restaurants do you know that are just an outdoor deck? They all are run by an indoor restaurant because of weather. You almost need some indoor seating when the weather is bad.
Mr. Ledgett's question is different. The general rule is that you are not supposed to make a

nonconforming structure more nonconforming.
Mr. Mangiafico says that we are not making it more nonconforming to setback. There are accessory uses allowed all the time.
Mr. Ledgett says this is not an accessory use.
Mr. Mangiafico says it is an approved use.
Ms. Kline says it is a permitted use.
Mr. Ledgett is asking the question where it permits us to approve this use for a nonconforming structure.
Chairman White asks where it prevents us from doing that.
Mr. Ledgett says that is not the way the code works. We need to identify the permitted use.
Chairman White says it is a permitted use in the zone. Is Mr. Ledgett saying that because it is within the 25' setback, the uses within that portion of the building must be strictly operational necessity?
Mr. Ledgett is not saying any of that. He is asking the question. If this was a new construction activity, they would not be building it in that 25' setback as a restaurant. The public access provision does not get you the ability to build closer than 25' to the water. For new construction, on Badgers Island only, you can build as close as 25' if you provide public access. We have a preexisting, nonconforming use, and if you go to your second paragraph on that page, that is how that building got built that way and the purpose for building the building and the dock was commercial waterfront activity. We are changing that. What is the structure of the code that the applicant is proposing as a permitted use that allows us to do this?
Chairman White says that it is a fairly unique combination of landing and bringing in the seafood that is cooked and sold in other locations. At one point of the day, they are landing it and at another point, they are cooking and selling it. And it provides public access to the waterfront.
Mr. Mangiafico says it is a great way of doing business. The business is more viable than just the commercial end of it and is more able to sustain itself. The city of Portland is trying to do that with a strip of their waterfront. The city of Portland will try to encourage mixed use buildings just for that purpose because a lot of times, they cannot stand on their own.
Mr. Ledgett says so the provision of the code that we are using is on page 256-4 section e, special incentives to encourage waterfront activity and we are using both 1 and 2 in this case?
Ms. Kline says yes.
Mr. Ledgett asks whether if the next proposal were to eliminate the commercial use of the pier, they would be able to meet this. It has to be dual use.
Ms. Kline says it does not say it has to be.
Mr. Mangiafico says it makes sense.
Chairman White says that dual use helped convince us the first time around.
Mr. Ledgett says that it was initially an ancillary use. It is now turning into a full-fledged restaurant in a preexisting, nonconforming structure. It is a dual use. Mr. Ledgett wants to make sure he understands since we need to clearly understand what the permitted use is.
Chairman White is satisfied that the stormwater issue was previously looked at and accepted. It appears that the applicant has more than sufficient parking. He does not know how the Board feels about dealing with the additional use of the dock on the portion that extends out.
Mr. Muir thinks that expanding the use out onto the dock is inappropriate. It extends the magnitude of the business that is out over the river. He does not think we should go beyond the

amount of permitted seating on the river.
Mr. Ledgett says that in section e, when you go to the public access piece, to do this, there should be a grant of an easement to the town for public access. This is a core principal with respect to the Badgers Island setback of 25' to 75'. If we are going to use the public access provision, then what is the easement that is being granted to the town or other acceptable party?
Mr. Mangiafico says there is an "or" there and they can do a patio.
Chairman White thought that with the prior application, we agreed to a gate and allowed for access after hours. He does not see how we can ask for more. What they are doing is within the building. The idea has come up to legitimize some use out on the dock. He would rather see that up on the table and deal with it than know it is going on and not deal with it.
Mr. Mangiafico thinks that if Mr. Ledgett keeps reading, he will see the language "or includes customer seating".
Mr. Ledgett says it is neither an outdoor deck nor patio. What we have is a dock.
Chairman White says it is well-argued and the Board could consider that when we take a vote. He asks if there are other issues.
Mr. Mangiafico has one question and one problem with the fence proposed. On here, it shows a 40" fence and somehow it got into the record as over 40". Unfortunately, here we are allowing public access to the water, but we have taken away some public access viewing to the water. He would like to know if there a way to take it down to 40"? It is 5' plus.
Mr. Ledgett asks which it is. Is it a scenic view issue? Then it's 36" per the Comprehensive Plan.
Ms. Kline says that it was 40" to curb light spill.
Mr. Mangiafico says that unfortunately in the minutes, it says over 40".
Chairman White says that we may be bound by our own mistakes sometimes.
Mr. Mangiafico says that he can't argue public access at one point and then argue to take it away. At 40", it will protect light spill to some extent. This is a commercial mixed use zone and we have to work with both the public and the private interest here.
Chairman White would be uncomfortable requiring the applicant to restructure the fence without going out and looking at it.
Mr. Mangiafico has been out and looked at it several times and it definitely does. You lose the whole view of the marina as you come around. He is asking the applicant whether it is possible to ask the fence company to do something smaller.
Mr. Gagner says it is definitely bought and paid for and installed with some hardship in a very short amount of time. They actually received a notice from the CEO and it said at least 40" high and she would not have it any other way. They went with what they had in stock. He feels Mr. Mangiafico is basically asking him to tear down what was built and rebuild it.
Chairman White does see it as a fairness issue.
Mr. Mangiafico also looks at the applicant and the Board member and there was extensive discussion on that issue.
Mr. Ledgett says it was with respect to 36" versus 40".
Mr. Mangiafico says there are the minutes of the meeting and also the discussion that goes on and he thinks it is very clear that we did not want it any higher than 40". Unfortunately, we did not catch it when we were correcting our minutes.
Ms. Kline says she hates to say it, but she thinks we are stuck with it as water under the bridge.

Mr. Mangiafico says they are asking for additional area.
Chairman White says there is no physical change to the hard scape on the property. He will agree that the fence was built too high and that is attributable to us and other town staff. He does not attribute any bad faith to the applicant on this. It was a mistake in good faith at some expense.
Mr. Mangiafico would buy the fence if he could use it. The public view means something to him.
Chairman White says that the issue regarding the fence has been raised and regarding public access has been raised.
Mr. Gagner comes up with 3 extra parking spaces - 26. He took the total square footage of the existing deck and the total of what they are applying for and the portion of the dock being used, divided by 45, which is how the code reads, and came up with 24 spaces required.
Mr. Muir asks how many total seats he is talking about.
Mr. Gagner does not know. The code requires 1 parking space per 45 square feet of restaurant space.
Mr. Muir understands the calculation is based on tables on the dock.
Ms. Kline says that is stools, not tables.
Mr. Muir says, well, seats. So how many can they add based on the permitted use?
Chairman White is not sure he is comfortable approving this without the Planner having sufficient time to review the parking issue.
Mr. Gagner asks if Planner Noel was counting square footage or seats.
Mr. Gagner says that seating is based on square footage. He has 1,094 square feet. You divide that by 15 and divide by 3 again. He asks for a calculator. He gets 24.3 required parking spaces and he has 29, unless the Plan is wrong.
Chairman White does not think that parking calc is rocket science and because of that, he would consider the expansion.
Mr. Muir does not think we can consider it without it being part of the application. We would need to see a new application.
Chairman White sees it as a minor modification to an approved plan.
Mr. Ledgett does not see it as minor.
Chairman White asks if it is the applicant's preference to go ahead.
Mr. Muir would vote against this proposal. It is not part of what has been posted to the public. The public hearing is for 65 seats, and now we are talking 80 or 85.
Mr. Mangiafico says the space has not been changed.
Mr. Muir says we are talking about the footage on the dock that has never been used for this.
Chairman White does not think there is any express restriction on how this was to be used.
Mr. Ledgett thinks that we discussed it at some length at a prior hearing and there was not to be seating out there. He is in the same position Mr. Muir is. He thinks this is substantially different from what was proposed and we ought to publicly notice it as it is actually going to be.
Chairman White says we can also deal with it as the application is presented.
Mr. Mangiafico asks if delaying this for a month would cause a substantial problem. It would allow us to post the notice.
Mr. Ledgett says he thinks the issue is that the testimony we have heard from the applicant and from the abutters is the nature of this facility forces the issue of the use of this space. If you

approve it, they are going to use it anyhow.
Chairman White thinks it is the pressure of the people who come there. If it is a nice night, people move out in that direction. He appreciates the applicant's forthrightness in saying how it was used in the past. He does not think there was any intention to do that in the past. He asks if the applicant wants the Board to act on the application as it stands.
Mr. Gagner wants the Board to act on the application as it stands. The nature of the facility as it sits between the hours of 4 am and 4 pm is exactly how it's been operating since 1986 when they got there. They have always closed the lobstering facility at 5:00 when it's been done. To him, this is an expansion of an approved use in a zone it's allowed in. If the Board could make a decision on it as it's applied for, he will deal with the public access issue on his end.
Mr. Mangiafico says it was part of the packet with the seats out there.
Mr. Ledgett says it was part of the prior packet.
Mr. Mangiafico says it was part of the record. It is part of this application. The Plan shows the seats out there.
Mr. Ledgett says what he is saying is that the final application is inconsistent with the prior application.
Mr. Mangiafico is not saying that at all.
Mr. Muir says that to him, there is an issue as to people eating there and the second issue is the size of the facility. He thinks that we have heard testimony that the infrastructure on Badgers Island is severely stressed and he would not like to see more than 65 people eating there at the restaurant, wherever they sit.
Mr. Mangiafico says that one of the reasons for that is the general development district we put in there. Condos have gone in and not businesses. This was meant to be a mixed use zone. That's what was passed. It was meant for an intensification of use out there. Some of the new owners may not have been aware of what was meant out there. It was meant to be similar to Portsmouth, right or wrong.
Mr. Mangiafico moves to extend the meeting to 10:30 pm.
Ms. Kline seconds.
All in favor.
Mr. Ledgett says one other thing we need to do is to be clear on what we are going to vote on and we need to correct this plan and get the deck/dock thing straightened out.
Ms. Kline says our code has a definition of a deck.
Chairman White says that the plan that we approved says existing deck.
Mr. Ledgett says we did that when that is a dock.
Chairman White says it was an existing dock and the terminology went by us. We can simply insist that the terminology be changed on the plan.
Mr. Ledgett says it will be very important in the next application because there is a big difference between an awning over a deck and an awning over a dock.
Mr. Gagner asks if there is an existing definition for dock.
Ms. Kline says no, there is an existing definition for deck. It is an unenclosed, unroofed, exterior platform with or without railings that is elevated above ground and built of wood. It is over submerged land.
Mr. Ledgett says it is over water.
Mr. Mangiafico says to call it a pier and leave it at that.

Chairman White asks if that is part of a motion - a request to change the terminology on the plan.
Mr. Mangiafico suggests changing it to pier.
Mr. Gagner is not real comfortable changing it.
Mr. Ledgett says that it is not clear as deck and dock.
Mr. Mangiafico says it may have been approved as a deck. We don't know that.
Mr. Ledgett says we looked and it was approved as a dock.
Mr. Mangiafico moves that having reviewed the Land Use and Development Code, specifically Badger Island District Zoning and the Shoreland Zoning District, we approve the application for the Weathervane Seafoods, 31 Badgers Island West, Kittery, Maine, for a modification to an approved plan to switch an outdoor seasonal restaurant to a seasonal restaurant as depicted on a Plan drawn by Civil Consultants, plan dated 6/3/04, no revisions, also to include Plan dated 2/4/04, Tax map 1, lot 31, with the following conditions:
1. That the terminology used for existing dock and existing deck be changed to include existing pier for both instances.
Ms. Kline seconds.
Chairman White says the motion is to allow an amendment of note 16 to delete the word outdoors and also to incorporate the new cut sheets and propose a condition that the words dock and deck be deleted and the word pier be submitted. Chairman White would like to know our authority to require that at this point and where are we pulling those definitions from - out of the ordinance?
Ms. Kline says yes, page 317 - piers, docks, wharves and other structures.
Mr. Mangiafico says yes, 312. We don't define a dock.
Chairman White says that if it is not in our definition, how can we require it?
Ms. Kline says that is her comment.
Mr. Ledgett says the key point is that it is a structure over the water.
Mr. Mangiafico says and it's a permitted structure if it's a pier.
Ms. Kline says that it's piers, docks, wharves.
Chairman White does not know why we are attempting to do this.
Mr. Ledgett says that this is a structure over the water and was approved as such by the KPA. There was a history of it being a commercial dock. The requirement is a structure extending over the normal high water line, which this is. The reason for that is that there are requirements in the code that specifically apply to those structures.
Chairman White thinks that we are really addressing the next agenda item.
Mr. Ledgett feels it needs to be consistent.
Chairman White would say that even if it is labeled wrong, it does not prevent us from saying what it is, but he is not sure it is germane to this application. If the applicant asks to put an awning over something, then we have to look at what it is. No matter what it is called in the plan, we have to look at the ordinance. Chairman White thinks this is not germane to this item and would suggest that it be deleted from the motion.
Mr. Mangiafico amends his motion to not include the condition.
Ms. Kline seconds.
Chairman White says the agenda item indicates a combined total of 65 seats and that is what he believes the motion assumes at this point.
Mr. Ledgett thinks we ought to make that explicit.

Chairman White asks if the maker would consider making that part of the motion.
Mr. Mangiafico would amend his motion to delete the word "outdoors" and add "65 seat" before seasonal restaurant.
Ms. Kline seconds.
Mr. Muir says that he is also removing the take out business, so that needs to be removed also.
Mr. Gagner says that the definition does not need to be changed.
Mr. Mangiafico would amend his motion to include that a recalculation of the parking be made to show that it is now a 65-seat restaurant.
Mr. Muir appreciates what the applicant has said, but it seems that note 12 should be modified to remove the reference to a drive in restaurant.
Ms. Kline seconds.
All in favor.
Chairman White says that an appeal can be made to the Superior Court within 45 days. We ask that the applicant accept them as the findings of fact.
Mr. Gagner agrees.

5. PRELIMINARY PLAN/SCHEDULING HEARING: WEATHERVANE SEAFOODS, INC. 31 BADGERS ISLAND WEST. APPLICANT IS PROPOSING TO ERECT A CANOPY/AWNING OVER CUSTOMER SEATING AREA ON EXISTING DECK FOR SEASONAL USE. MAP 1, LOT 31, ZONED B1.

Chairman White asks if this is potentially a scheduling hearing.
Planner Noel says it is. If asked, he would suggest to the Board that the application is substantially complete.
Chairman White asks if there are waivers requested.
Planner Noel says that on the last packet that we were given, he would say that 2.p. is not necessary, 2.q. is existing, and 2.z. contains land identified for public use - this comes from the parking lot onto the deck/dock/pier and onto the dock where Mr. Gagner has provided a gate that limits public access. The only other thing is that we do have the letters from the KPA and others. The only one we don't have is from Public Works Director Rossiter. Mr. Rossiter has no issues with this particular plan, but does have an issue with Badgers Island West and Route 1. The problem is when the bridge is up and the road is blocked, but he cannot conceive of something to fix that.
Mr. Mangiafico asks if there is a request for waivers, or is that just saying what is not applicable?
Chairman White says that technically, we are supposed to approve the waivers by formal action.
Mr. Mangiafico moves that after reviewing the application for Weathervane Seafoods and the Kittery Land Use and Development Codes, that we approve the request for waivers, with the submission content, for 31 Badgers Island West, Map 1, Lot 31, Zone Badger Island and Shoreland Zone and find the application substantially complete and have the Planner set it for public hearing.
Ms. Kline seconds.
Chairman White asks to incorporate into the motion the request for waivers as noted by the Planner, 2.p, q and z and the letters from Town Departments.
Mr. Mangiafico would amend his motion to reference the February 4, 2005, request for waivers.

Ms. Kline seconds.
Mr. Ledgett says the applicant has not addressed the issue raised at the sketch plan, compliance with 16.32.490 3e.
Chairman White asks if this is a completeness issue.
Mr. Ledgett says it could be. It says that a structure like this to be applied for has to be an operational necessity. The letter from the applicant does not address it. The applicant is talking about the table, but the actual requirement is in 3e.
Chairman White asks if this is an approval condition or an application condition.
Mr. Mangiafico says it is addressed, although you may not agree with it.
Chairman White thought that we could point it up as issues to be addressed for the hearing.
All in favor of the motion.
Mr. Ledgett says that there are important distinctions between operational necessity and functionally water dependent and they need to be addressed.
Ms. Kline says a previous applicant used inclement circumstances for his customers.
Mr. Ledgett says we are lucky he wasn't here.
Chairman White says that the applicant can schedule this matter for public hearing in consultation with the Planner.

6. PRELIMINARY PLAN: FIRST STEP LAND DEVELOPMENT, INC./THE BRIERS AT MEAD FARM, WHIPPLE ROAD. PROPOSING TO AMEND AN APPROVED SUBDIVISION WITH THE ADDITION OF A COMMUNITY PIER, DOCK, AND FLOAT SYSTEM. MAP 17, LOT 43, ZONED URBAN RESIDENCE

The applicant did not appear.

7. OLD BUSINESS

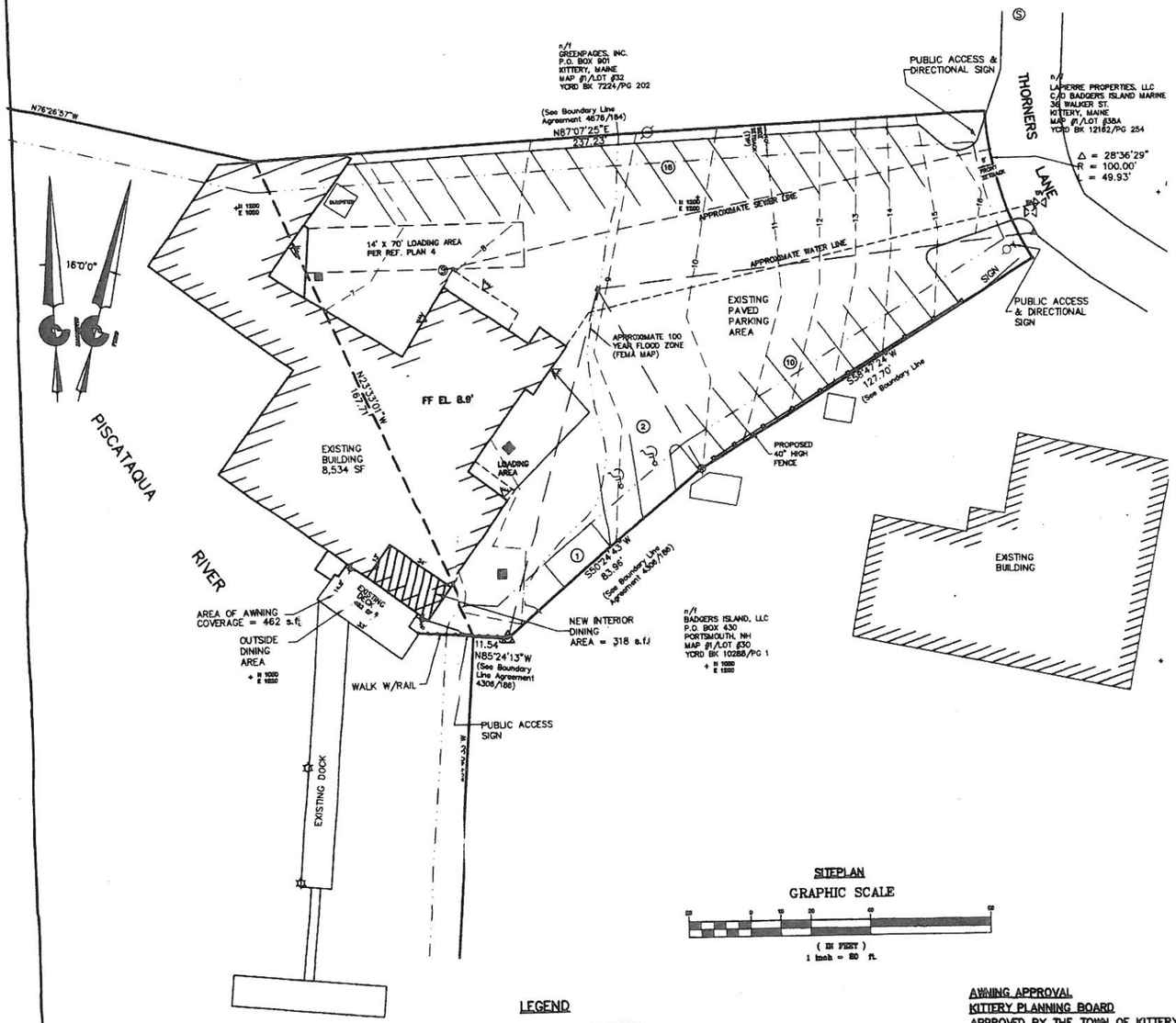
N/A.

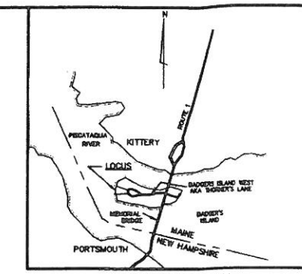
8. PLANNER'S TIME

N/A.

9. ADJOURNMENT

The meeting ended on its own at 10:30 pm.





LOCATION PLAN

SCALE 1"=2,000'

GENERAL NOTES

1. EXISTING FEATURES AS SHOWN FIELD LOCATED NOV., 1988 & JULY, 1996.
2. BEARINGS ARE BASED ON REFERENCE PLAN.
3. PARCEL IS SHOWN AS LOT 31 ON KITTERY TAX MAP 1.
4. THE LOCATION OF UNDERGROUND UTILITIES DEPICTED HEREON IS APPROXIMATE, AND SHOULD BE FIELD VERIFIED.
5. OWNER OF RECORD IS GAGNER FAMILY LIMITED PARTNERSHIP, BY YCRD BOOK 7975/PAGE 46
6. PARCEL AREA 0.8 ACRES± (34,848 SF±)
7. APPROXIMATE 100 YEAR FLOOD ZONE ELEVATION IS ELEVATION 9.0'
8. LOCUS PARCEL IS LOCATED IN THE BI ZONE W/RESOURCE PROTECTION OVERLAY

   ZONING INFORMATION:
   MINIMUM LOT SIZE – 6,000 SF
   MINIMUM FRONTAGE – 50'
   MINIMUM FRONT YARD – 5'
   MINIMUM SIDE & REAR SETBACK – 10'
   SETBACK FROM WATER – 0'
   MAX. BLDG HEIGHT – 40'
9. EXISTING USE – OFFICE & WAREHOUSE
10. PROPOSED ADDITIONAL USE – RESTAURANT W/OUTSIDE DINING
11. RESTAURANT WILL OPERATE AT NON-CONFLICTING HOURS OF THE OFFICE AND WAREHOUSE.
12. PARKING CALCULATIONS:
    CLASSIFICATION– RESTAURANT REQUIRES 1 SPACE FOR EACH 45 s.f. OF RESTAURANT FLOOR SPACE.
    EXTERIOR = 462 s.f., INTERIOR = 318 s.f.
    780/45 = 18 SPACES REQUIRED
    SPACES PROVIDED = 29 INCLUDES 2 ♿
13. CONTOURS SHOWN TAKEN FROM REFERENCE PLAN WHICH WERE SHOWN AS PROPOSED HAVE NOT BEEN FIELD VERIFIED.
14. HOURS OF RESTAURANT OPERATION:
    MON – FRI 4:00PM TO 11:00PM
    SAT & SUN 11:00AM TO 11:00PM
15. PUBLIC ACCESS ALLOWED ONLY DURING HOURS OF RESTAURANT OPERATION.
16. APPROVED AS AN OUTDOOR SEASONAL RESTAURANT.

REFERENCE PLAN

PLAN ENTITLED "SITE PLAN WEATHERVANE LOBSTER – SEAFOOD BADGERS ISLAND KITTERY, MAINE," BY CIVIL CONSULTANTS DATED: JUNE 3, 2004. APPROVED BY THE KITTERY PLANNING BOARD ON 5/27/04.

SITEPLAN

GRAPHIC SCALE

(IN FEET)
1 inch = 20 ft.

LEGEND

- IRON PIN FOUND
- CATCH BASIN
- SEWER MANHOLE
- DRILL HOLE FOUND
- UTILITY POLE
- NUMBER OF PARKIING SPACES
- N/F NOW OR FORMERLY
- Y.C.R.D. YORK COUNTY REGISTRY OF DEEDS
- CONTOUR
- EXISTING LIGHT FIXTURE
- PROPOSED LIGHT FIXTURE

AWNING APPROVAL
KITTERY PLANNING BOARD
APPROVED BY THE TOWN OF KITTERY AUGUST 11, 2005

DATE: _____

INTERIOR DINING APPROVAL
KITTERY PLANNING BOARD
APPROVED BY THE TOWN OF KITTERY JULY 14, 2005

DATE: _____

OWNER:
GAGNER FAMILY LIMITED PARTNERSHIP
C/O WEATHERVANE SEAFOOD
31 BADGERS ISLAND WEST
KITTERY, MAINE
YCRD BOOK 7975/PAGE 46

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NO.	REVISIONS	INT.	DATE

SITE PLAN
WEATHERVANE LOBSTER - SEAFOODS
BADGERS ISLAND
KITTERY, MAINE

CIVIL CONSULTANTS

NOTEBOOK: 228 & 339B
DRAWN GDC/PJP CALC. GDC
DATE 10/04/05
APPROVED
SCALE 1"=20'
SHEET TITLE: - SITE PLAN
SHEET NUMBER: C1
SHEET 1 OF 1
PROJECT #04-416.00

TAX MAP #1/LOT #31