



KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kittery.org

AGENDA for Thursday, March 26, 2015

6:00 P.M. to 10:00 P.M.

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 3/12/2015

PUBLIC COMMENTS - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

PUBLIC HEARING

ITEM 1 – Town Code Amendment - Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding; 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required.

Action: review amendment and make recommendation to Town Council. Proposed amendment: codifies the need to hold a pre-construction meeting; updates provisions associated with inspections; and provides clarity through minor changes where needed.

OLD BUSINESS

ITEM 2 – Board Member Items / Discussion

- A. Committee Updates
- B. Action List; review, edit and prioritize
- C. Other

ITEM 3 – Town Planner Items:

- A Memorial Circle Improvement Plan;
- B. KACTS Grant for Route One By-Pass;
- C. Town Sewer Expansion Project update
- D. Ongoing Code Amendments; and
- E. Other.

NEW BUSINESS

ITEM 4 – Thron and Arris – Request for Adjustment of Common Boundary Line of Nonconforming Lots.

Action: review request and grant or deny approval. Owners and applicants Mary Thron and Raymond J. Arris are requesting consideration of their application for a Miscellaneous Variation regarding the adjustment of the common boundary line between 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42), both in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250'), and Resource Protection Overlay (OZ-RP) Zones.

ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)

NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION. DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING. TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING CONTACT STAFF AT (207) 475-1323.

1 TOWN OF KITTERY, MAINE
2 PLANNING BOARD MEETING
3 Council Chambers

UNAPPROVED
March 12, 2015

4
5 Meeting called to order at 6:09 p.m.
6 Board Members Present: Karen Kalmar, Deborah Davis, David Lincoln, Ann Grinnell, Robert Harris,
7 Mark Alesse
8 Members absent: None
9 Staff: Chris DiMatteo, Town Planner; Elena Piekut, Assistant Town Planner

10

11 Pledge of Allegiance

12

13 Minutes: February 26, 2015

14

15 Ms. Davis moved to approve the minutes of February 26, 2015 as amended

16 Ms. Kalmar seconded

17 Ms. Davis proposes another change

18 Ms. Grinnell moved to amend the motion

19 Ms. Davis seconded

20 Motions carry: 6-0-0

21

22 Public Comment:

23 Ken Markley: Kittery's code standards should be brought more in line with AASHTO (American
24 Association of State Highway and Transportation Officials) standards in order to reduce over-
25 building of roads, particularly in rural areas serving small developments. For example, required
26 roads serving 7-20 homes in Kittery can actually serve almost 2,000 trip ends per day, which is
27 more in line with 200 homes. Changes would help prevent over-disturbance of large areas, which
28 in turn create an increase in storm water, which then increase the need for larger stormwater
29 management structures, which then increase the impact on adjacent land areas that may be
30 sensitive, and so forth.

31 Ms. Grinnell: This should to be included on our action list for further discussion.

32 There was no further public comment.

33

34 ITEM 1 – Pine Tree Plaza Site Plan – Modification to an Approved Plan.

35 Action: grant or deny final plan approval. Kenneth Lemont, owner/applicant (for Harrison E. Lemont
36 Management Co., Inc.), requests approval to amend an approved Site Plan to replace an existing building
37 and ell with a new 2,450 sf building, and increase the existing garage at 435 US Route 1 in the Mixed Use
38 zone, Tax Map 50, Lot 8. Agent is Jeff Clifford, P.E. with Altus Engineering, Inc.

39 Ken Lemont: When last before the Board, I was told to provide a lighting and landscaping design for
40 your consideration. A landscape design has been submitted and, in discussions with the Planner and Jeff
41 Clifford, have come to an agreement regarding lighting.

42 Mr. DiMatteo: The code requires screening as addressed in items 1 and 2 of the review notes, though this
43 parcel has only a narrow area to meet screening requirements. There remains issues to be addressed for
44 landscaping, but if the Board is amenable, these could be addressed at the staff level following approval.
45 The parking is designed for ease of maintenance, and an island as suggested could complicate this.

46 Mr. Lemont: I appreciate Chris' opinion, and he is correct that it does create a nightmare for snow
47 plowing. We have the same thing in front of the Pine Tree Country Store and people drive over it. I
48 would prefer to work with staff to address screening and landscaping closer to the road. I would prefer to
49 place more trees next to the road than create a planting island.

50 Ms. Kalmar: If you plant appropriately along the Carvery from the north that might be sufficient without
51 additional planting in the parking area, as the front of the parcel appears to provide screening.

52 Ms. Davis: The planting along the front is more crucial with the parking area more for aesthetics. I
53 would be comfortable with beefing up the corner by the Carvery.

54 Mr. Lincoln: Presented some photos of the existing signage and the parcel. Screening from the street is
55 vital.

56 Discussion followed regarding what is legally existing and previously approved, and what is proposed.

57 Mr. DiMatteo: Screening is a code requirement and the proposed landscaping is addressed in the plan
58 notes.

59 Mr. Lincoln: Will the additional plantings at the entrance impede sight lines of cars heading south onto
60 Route 1? With the new proposed businesses, will traffic increase?

61 Mr. DiMatteo: The plantings will be placed further enough onto the site that this should not be a
62 problem.

63 Mr. Lemont: The engineers have addressed these traffic issues and addressed them in their traffic survey.

64 Eardean Wells: The Conservation Commission has concerns about the location of the snow storage at
65 the front of the site which could reduce the effectiveness of the under drain soil filter. Ken [Lemont] said
66 he'd be pushing the snow back. This is something that should be considered, because if you get sand into
67 those filters they stop working, requiring maintenance. He would save a lot of money if he didn't locate
68 the snow storage at that location. We are fine with the storage at the back of the lot.

69 Mr. Lemont: I can keep the snow storage to the back of the lot.

70 Ms. Grinnell: The snow storage location at the front will be removed from the plan.

71 Ms. Kalmar: Asked about the wheel stops near the rain garden.

72 Mr. Lemont: There will be a guardrail or rocks at that location, similar to the Community Center. The
73 building was specifically designed to fit the charm and character of Kittery, made out of wood with a nice
74 facade. I will return with pictures when it is completed.

75 Ms. Kalmar: The Board needs to move on the waiver request regarding review by York County Soil and
76 Water Conservation District [YCSWCD].

77 Ms. Kalmar moved to waive drainage design review by the York County Soil and Water Conservation
78 District (Title 16.10.5.2.C.6)

79 Ms. Davis seconded

80 Motion carried: 5-0-1 (Lincoln)

81

82 Ms. Kalmar moved to grant approval with conditions for the modification of an approved plan for Pine
83 Tree Plaza, Site Plan Amendment No. 2, revised March 2, 2015, for Kenneth Lemont, owner/applicant
84 (for Harrison E. Lemont Management Co., Inc.).

85 Mr. Alesse seconded

86 Mr. DiMatteo suggested a review of the conditions prior to final vote, including removal of snow storage
87 at front of parcel; and remove condition 6.

88 Motion carried: 5-0-1 (Lincoln)

89

90 Findings of Fact:

91

92 Whereas Kenneth Lemont, owner and applicant (for Harrison E. Lemont Management Co., Inc.) requested approval
93 to amend an approved Site Plan to replace an existing building and ell with a new 2,450 sf building, and increase the
94 existing garage and associated parking, lighting, landscape and drainage improvements at 435 US Route 1 in the
95 Mixed Use zone, Tax Map 50, Lot 8. Hereinafter the "Development". Pursuant to the Plan Review meetings
96 conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other
97 documents considered to be a part of the approval by the Planning Board in this finding consist of the following
98 (Hereinafter the "Plan").

99

100

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

The proposed Development appears to conform to Title 16. The Board finds this standard has been met.

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

B. Freshwater Wetlands Identified.

None have been identified. The Board finds this standard is not applicable.

Vote of 4 in favor 0 against 2 abstaining (Lincoln/Harris)

C. River, Stream or Brook Identified.

None have been identified. The Board finds this standard is not applicable.

Vote of 4 in favor 0 against 2 abstaining (Lincoln/Harris)

D. Water Supply Sufficient.

The property is currently connected to municipal water. The Board finds this standard is not applicable.

Vote of 5 in favor 0 against 1 abstaining (Harris)

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on the municipal water supply currently servicing the property. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

F. Sewage Disposal Adequate.

The property is currently connected to municipal sewer and the Kittery Sewer Department Superintendent has stated the plan is acceptable. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available.

The property is currently managed for solid waste disposal and the proposed development accommodates an additional dumpster. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

H. Water Body Quality and Shoreline Protected.

It does not appear that the proposed development will have an adverse effect on the nearby wetland. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

I. Groundwater Protected.

The site is serviced by public sewer. The Board finds this standard is not applicable.

Vote of 5 in favor 0 against 1 abstaining (Harris)

J. Flood Areas Identified and Development Conditioned.

The property is not located within a flood prone area. The Board finds this standard is not applicable.

Vote of 6 in favor 0 against 0 abstaining

K. Stormwater Managed.

The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

L. *Erosion Controlled.*

The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. The Board finds this standard has been met. --

Vote of 6 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. The Board finds this standard has been met.

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

N. Water and Air Pollution Minimized.

It does not appear the proposed development will result in undue water or air pollution
The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The property does not include any significant aesthetic, cultural or natural values that require protection.
The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan. The Board finds this standard has been met.

Vote of 6 in favor 0 against 0 abstaining

101

Now therefore, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

102

Waivers: Title 16.10.5.2.C.6 Review by the York County Soil and Water Conservation District
Granted: March 12, 2015

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained in the Findings of Fact (dated: March 12, 2015).

Conditions of Approval (Not to be included on the final plan):

5. Revise the site plan (C-2) to reflect the minor plan changes staff recommended in the 3-12-15 Plan Review Notes, including removal of plan reference to snow storage at the front of the property.
6. Revise the site plan (C-2) to include additional tall shrubs and small trees in the area adjacent to the property to the east (M60-L22, Henry VIII Carvery), approximately 50 feet in from Route One, to aid in screening the proposed parking from view.

103

104 The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings
105 of Fact upon confirmation of compliance with any conditions of approval.

106

107

Vote of 5 in favor 0 against 1 abstaining (Lincoln)

108

109

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

112

113

114 ITEM 2 – Beatrice Way –Major Subdivision Plan - Preliminary Plan Review.

115

Action: grant or deny preliminary plan approval. Owner Operation Blessing LP, and applicant Richard
116 Sparkowich, propose a five lot subdivision on remaining land from the previously approved 3-lot
117 subdivision located between Highpoint Circle and Kittree Lane. The site is identified as Map 61 Lot 08,
118 in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

119

Ken Markley: Addressed the CMA Review, noting many of the issues have been addressed. Suggested
120 holding off on the wetland crossing issue at this time.

121

Mrs. Sparkowich: [Attached]

122

Mr. Markley: Suggests a road association rather than a homeowner's association; a condition of approval
123 could be included that no further land division would be allowed without Board approval; addressed
124 Preliminary Plan approval requirements including addressing Highpoint Circle and Kittree Lane;
125 recertification of wetlands, as soils has already been done; finalization of boundary survey; required open
126 space is as proposed.

127

128

Break

129

130

Ms. Kalmar suggested the Board proceed with voting on the special exception request that a conventional
131 subdivision was appropriate for this development versus a cluster subdivision to avoid pushing the
132 development to the rear of the property where the valuable habitat is located. A conventional subdivision
133 requires a special exception.

134

135 Ms. Kalmar moved to grant a special exception for a conventional subdivision for the Beatrice Way
136 subdivision.

137 Seconded by Mr. Harris

138 Mr. Lincoln: Where will this special exception?

139 Mr. DiMatteo: In the final Findings of Fact.

140 Motion carried: 6-0-0

141

142 Ms. Kalmar moved to grant the request for a waiver from a cul-de-sac to a hammerhead.

143 Mr. Lincoln seconded

144 Ms. Driscoll: We seem to have issues regarding hammerheads vs. paper cul-de-sacs, which leads to more
145 development.

146 Mr. DiMatteo: This is a reasonable request, as a standard cul-de-sac takes up more space and a
147 hammerhead has less impact. The paper cul-de-sac allows for a more reasonable layout of lots.

148 Ms. Kalmar: I see the logic of less impervious surface, but the frontage is still there, it just isn't paved.
149 We're benefitting the natural resources.

150 Discussion followed regarding driveways onto the hammerhead, parking in the hammerhead area that
151 could impede emergency vehicles.

152 Motion carried: 6-0-0

153

154 Ms. Kalmar moved to waive review by the York County Soil and Water Conservation District
155 (16.9.1.3.C).

156 Ms. Davis seconded

157 Motion carried: 6-0-0

158

159 Ms. Kalmar moved to waive the requirements for sidewalks on Beatrice Lane.

160 Mr. Harris seconded

161 Ms. Davis: Requests that further development of the rear acreage would require sidewalks.

162 Ms. Kalmar: When waiving a required improvement, the objective must be met. Given the size of the
163 proposed project, the roadway and shoulder would provide a safe place to walk. Less pavement the
164 better.

165 Ms. Davis: Concerned about future 'woodlot management' and trucks on the road.

166 Ms. Kalmar: Timber harvesting is not a permitted use in the Rural zone.

167 Mr. Markley: There has been no timber harvesting since 2010. Woodlot management would be to
168 remove damaged and diseased trees and for personal firewood use.

169 Motion carried: 6-0-0

170

171 Board discussion of Plan Review Notes:

172 1. Vernal Pools/Wetlands: Protection of the vernal pool areas with other wetland, forested wetland and
173 open space areas, avoiding fragmentation. Mr. Markley: The proposed open space area meets the
174 concerns of the Conservation Commission and ACOE. Brett Taylor, Potential Buyer: Would like to
175 retain property value and conserve the land, and this proposal meets those objectives. It is not my
176 intention to develop beyond my single family home, but doesn't want to diminish his future property
177 value, perhaps for his children. Discussion followed regarding locations of protected open space
178 areas.

179 2. 'woods road': Road will become part of proposed parcel H and blocked at both ends following
180 recording at YCRD. Plan will illustrate blocked areas. Buffer of trees need not be included.

181 3. Highpointe Circle extension acceptance: Discussion followed regarding the history of this road area,
182 whether the town would accept the extension to the hammerhead at Kittree Lane. Mr. Sparkowich
183 agrees the town should take it over. The Board requested the applicant to submit the necessary
184 applications for street acceptance and naming to the town.

- 185 4. Boundary Plan: Agent will submit a boundary plan.
186 5. Density calculations: Will be addressed.
187 6. Wetland delineation: A re-certified delineation will be prepared for the area to the south and west of
188 proposed parcel I.
189 7. ROW/Easement for parcel A and I: Reference will be made as an 'easement'. Include plan note to
190 state 'driveway no longer than 500 feet serving two dwellings are permitted'. Submittal of a wetland
191 alteration application is needed.
192 8. Sidewalk: Previously addressed.
193 9. Homeowner's association: In lieu of a homeowner's association, establish a road association and a
194 deed covenant for the parcel where the open space area is located.
195 10. Condition of final approval restricting further division of land without receiving Board approval.
196

197 Mr. Markley: Owner would like a waiver to place a driveway longer than 500 feet.
198 Discussion followed regarding the authority to grant such a waiver. No decision was made.
199

200 Discussion returned to the open space location.
201

202 Break
203

204 Brett Taylor: I am spending a lot of money for this property and don't want to give up my rights as my
205 heirs may want, in 50 years, to be able to access the rear of the property.

206 Discussion followed regarding code requirements to establish contiguous open space as well as a
207 reduction in required open space for conventional subdivisions; review process of various development
208 scenarios.

209 Ms. Grinnell: Asked for a Board consensus regarding the applicant's open space design. The Board did
210 not reach a consensus (2 consenting; 4 not consenting).
211

212 Ms. Kalmar moved to grant preliminary subdivision approval to the Beatrice Lane subdivision plan as
213 revised February 19, 2015 with conditions: resolution of open space issue; include stone wall closure of
214 'woods road' on the plan; receipt of boundary plan; road acceptance petition application; include net
215 residential acreage and density calculations on plan; re-delineation of wetland area; include plan note to
216 state 'driveways no longer than 500 feet serving a maximum of two dwellings are permitted'; road
217 association and back parcel covenant for open space maintenance; wetland alteration application.

218 Ms. Davis seconded

219 Motion carried: 6-0-0
220

221 Members agreed to review Item 5A out of agenda order.
222

223 Ms. Kalmar moved to extend the meeting 15 minutes

224 Ms. Grinnell seconded

225 Motion carried: 6-0-0
226

227 ITEM 3 – Town Code Amendment - Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7
228 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding;
229 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required.

230 Action: review amendment and schedule a public hearing. Proposed amendment: codifies the need to hold
231 a pre-construction meeting; updates provisions associated with inspections; and provides clarity through
232 minor changes where needed.

233 Mr. Harris: Read from a prepared statement regarding the proposed amendment language.

234 Discussion followed regarding rewording of the proposal.

- 235 Ms. Grinnell: Comments should be shared with the Board during a meeting and not sent independently to
236 the Town Planner. It is the Board's responsibility to review code amendments as a Board.
237
- 238 Ms. Davis moved to extend the meeting an additional 15 minutes
239 Mr. Alesse seconded
240 Motion carried unanimously
241
- 242 Mr. DiMatteo: Willing to meet with Mr. Harris to review his concerns and add to the March 26 meeting
243 as a public hearing.
244 Ms. Kalmar moved to hold a public hearing on March 26, 2015 to discuss proposed code amendments to
245 Title 16.4.4.1, 16.10.3.7, 16.10.3.8, 16.10.8.2.2 and 16.10.9.1.
246 Mr. Alesse seconded
247 Motion carried: 6-0-0
248
- 249 ITEM 4 – Board Member Items / Discussion
250 A. Retreat date and agenda: Wednesday, April 8, 9-11 a.m., Kittery Community Center
251 B. Other - Board Sensitivity Training, Thursday, March 19 at 6:30 p.m.
252
- 253 ITEM 5 – Town Planner Items:
254 A. Landgarten, minor modification to an approved plan for 7-17 Wallingford Square.
255 Originally approved in 2013. Proposed minor modification conforms with the ordinance. Both the CEO
256 and Planner are comfortable with the proposed change of use and parking requirements have been met.
257 Request the Board allow staff to approve the minor modification. Following discussion Board members
258 concurred this request may be reviewed at staff level.
259 B. Recently ordained amendments.
260 C. Other: Shoreland development project not within the 100-foot setback; does the Board need to review?
261 Ms. Davis: If the code requires all shoreland development requires Board approval, that is what is
262 needed.
263 Ms. Kalmar: A summary of the protocol you are suggesting will help us better address your request.
264 D. Cluster workshop: May 28, 2015
265
- 266 ITEM 6 – Board Member Items / Discussion
267 Ms. Grinnell: Reminded members to review letter from Vern Gardner.
268 Ms. Driscoll: Asked for update on sewer project;
269 There is a need for a manager to continue the Kittery Community Market.
270
- 271 Mr. Alesse moved to adjourn
272 Ms. Kalmar seconded
273 Motion carried 6-0-0
274
- 275 The Kittery Planning Board meeting of March 12, 2015 adjourned at 10:33 p.m.
276 Submitted by Jan Fisk, Recorder, March 18, 2015
277

278
279

ATTACHMENT

Kittery Planning Board
3/12/15
Item 2 O.B.L.P. 5 Lot Subdivision

RECEIVED

BY: C. DiMatteo

read by Ms. Sparrowick
at meeting

My husband Rick and I were very saddened once again to hear that it has been recommended to have sidewalks on Beatrice Lane. There is going to be so few people walking in that area. This isn't necessary at all. This is really a horse trail. Plus there's no money for sidewalks. We've already spent forty-five thousand dollars (\$45,000) on this project, not including the cost of the road plus everything else that is required.

The prospective buyer, who is here tonight, originally came to us seeking to buy a large parcel of land, that wouldn't be developed. His desire was and still is to see the land remain the way it is so he and his family can enjoy the peace and beauty all around them. I know that the Town Planner doesn't seem to believe that Rick, I and the buyer are all in agreement to see the land remain the way it stands today. **We desire to see a country setting.**

All along, we have been treated as if this forty-three acres will be fully developed. This seems so *unfair* to assume that this is the case, causing us to incur extra added expenses. Our intentions are just the opposite, to see the forty-three acres of land not^{be} developed into a housing project. To lay out finances that we don't have, for sidewalks that aren't really needed, just for a few homes is ridiculous.

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281

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283

It seems to us, that we are on a path for failure, instead of getting help as a taxpayer.

The way we see it, this is going way beyond the point of common sense. We are constantly being challenged on just about everything. That means, that we are continually incurring added expenses that aren't necessary and it never seems to end.

When we think we are just about at the finish line, we are thrown another curve ball such as the sidewalks.

Rick and I would ask you, the planning board, to seriously consider everything we have gone through the last eleven years. We have faith that the planning board is here to help us get through this process, and that you don't want to see us fail.

We appreciate so much all the time, work and effort you so freely give each week to help us and others that live in this town. Tonight, my husband and I are asking the planning board to not support the town planner's recommendation for sidewalks on this project.

Thank you,

Rachel Sparkowich

284

**Town of Kittery
 Planning Board Meeting
 March 26, 2015**

Town Code Amendment - Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding; 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required. . Action: review amendment, hold a public hearing, and make a recommendation to the Town Council. Proposed amendment: codifies the need to hold a pre-construction meeting; updates provisions associated with inspections; and provides clarity through minor changes where needed.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		
YES	Initial Planning Board Meeting	Scheduled 2/26/13; Continued 3/12	
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH, scheduled for 3/26/15	PENDING
YES	Review/Approval/ Recommendation to Town Council		PENDING

Background

The Board is interested in codifying the current practice of holding a pre-construction meeting with the developer and the Peer-Review Engineer. Staff has reviewed the Code and identified the pertinent provisions that need to be amended to meet the objective.

Staff Comments

Attached is a draft code amendment that modifies four sections of the Code. These sections are related to inspections and independent review. Along with requiring pre-construction meetings, the noted sections were also amended for clarity, including moving the topic of inspections from 16.10.3.7 and incorporating it in 16.4.4.1. Revised the proposed amendment with input from Councilor Dennett and in response to 3/12 comments from Mr. Harris. Changes made since the amendment was last presented (3/12/15) are highlighted. Revisions prompted by Councilor Dennett included clarity on: who the inspecting official is; the term “professionally prepared;” and the clause stating the properties subject to only building permits do not require a pre-construction meeting.

Below are comments and answers to board member Mr. Harris’ questions and comments from the last meeting, March 12 (attached)

General

Comments regarding protocol and procedures include good points, however, staff does not concur that a ‘procedure and policy manual’ would replace the need for the proposed amendment.

- 1) The answer *Yes, generally* was intended to state that other than the scope of services prepared by the consultant, there is no formal procedure that is documented and placed in the Town File. With regard to consultants being engaged within the last three years, they have all been associated with

peer-review of plan applications requiring Planning Board approval. The use of a peer-review engineer is anticipated in the code, specifically with Town's stormwater drainage requirements. Other than stormwater, the Board has the discretion to engage a consultant at the applicant's expense to review issues that may arise during review of a plan application.

- 2) As stated above, all of the consultations have been associated with the peer-review engineer. Town staff does not include a professional registered civil engineer. Though the peer-review also includes a review of applicable site development and zoning standards that staff has the expertise to review, the limited duplication of effort has proven to be very helpful in maintaining consistency and attending to the applications in a timely manner.
- 3) The 3rd party building inspection is somewhat different in that they are directly contracted with the owner/applicant and not the Town. Though the inspectors certify that construction conforms to the applicable building code, which is part of our local code by reference only, they do not represent the Town like the peer-review engineer does. Yes, there may be a need for an alternate consultant where conflicts may arise, however, those opportunities would be rare, and in the same manner that we don't give an option of more than one Town Attorney to use if an application incurs legal fees. The Town, however, can use another attorney when there happens to be a legitimate conflict.
- 4) See above comment.
- 5) Yes, there is a broader annual contract for the peer-review consulting. The consultant provides a scope of services that is based on the code requirements the proposed development must meet. The applicant reviews that proposal prior to providing funds to the Town to cover the peer-review.
- 6) The need to codify is being considered by the Board because of its interest to ensure this policy is perpetuated regardless of staff's current or future policy and internal procedures.
- 7) A "procedure and policies manual" in lieu of codification does not seem appropriate in this instance.

Lines 3-9

- 8) The minutes are prepared for the pre-construction meeting. Typically there is only one of these. Subsequent meetings are typically inspections and minutes are not prepared, however, salient aspects of the inspection would be documented in the Peer-Review Engineer's notes and shared with involved parties.

Lines 11-20

- 9) Revised this to 7 days. Day is defined in 16.2.2 as a calendar day.

Lines 106-110

Revised this to include the 2% and provide flexibility if the percentage is not sufficient. The 10% contingency is based on the construction costs covered by the performance guaranty.

Lines 132 Preconstruction meeting....."prior to any clearing or earthwork for approved development that requires inspections"

Timber harvesting is not likely to be "approved development that requires inspection", however, if it did, then it could not commence prior to a pre-construction meeting.

Lines 54 and 55 refer to "abatement of nuisances"

This clause refers presumably to existing conditions. Examples are included in the state statute Miscellaneous nuisances, MRSA Title 17 §2802 which is referenced in the Town Code Title 1.2.2.2.

Removal of public requirement of the files.

- 10) The revised draft is clearer on what is proposed to be deleted. To reiterate, all files are available to the public for inspection and all records that involve decisions related to conformance is always part of the Town file. With regard to feedback on the process, there does not seem to be an objective identified concerning what to do with the information once gathered. This provision seems more appropriately dealt with as internal policy than codified in local law.

Performance guarantee

- 11) "I say toe-may-tow and you say too-mah-toe". There is probably room for both spellings to be correct. Staff defers to the Board, and perhaps, eventually to Mr. Dennett.

Assurances and guaranties

12) Yes. The attached draft reflects the change.

Recommendation

If the Board is comfortable with the revised draft amendment after review and holding a public hearing, it may:

move to recommend to Town Council the adoption of the Town Code Amendment to titles 16.4.4.1 Inspection of Required Improvements; 16.10.3.7 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding; 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required as presented (and amended?) in the March 26, 2015 staff review notes.

Chapter 16.4 ADMINISTRATION and ENFORCEMENT

16.4.4.1 Inspection of Required Improvements.

1
2
3 A. Prior to the commencement of any work associated with development approved in accordance with
4 this Code, the developer or duly authorized representative must provide a schedule of expected construction
5 activities by phase to the inspecting official (the Code Enforcement Officer (CEO) or their representative, or
6 when applicable, the Town's Peer Review Engineer), and coordinate a pre-construction meeting.
7 Attendance at said meeting must at a minimum include authorized representation from the Town, the
8 developer and their General Contractor. Meeting minutes must be prepared by the Town's representative
9 and distributed to all attendees and the Town Planner. A pre-construction meeting is required for a Planning
10 Board approved Site Plan, Subdivision Plan, and Right-Of-Way Plan, and for all other plans is at the
11 discretion of the Town Planner. A pre-construction meeting for approved development not subject to
12 Planning Board review is at the discretion of the Code Enforcement Officer.

13
14 B. A- The developer or General Contractor shall coordinate inspections with the inspecting official and
15 provide written notice. At least five seven (7) days prior to commencing each major phase of construction as
16 outlined in the construction schedule. At completion the General Contractor shall request a final inspection
17 where the inspecting official shall prepare a punch-list of any outstanding items to be completed, within
18 seven (7) days of the final inspection. Once construction is complete the developer or the General
19 Contractor shall coordinate a final walk-through where the inspecting official certifies that the construction
20 has been completed in accordance with the approved plans. The inspecting official must provide written
21 certification if construction is or is not complete within seven (7) days of the final walk-through of required
22 improvements, the applicant or duly authorized representative must notify the CEO, in writing, of the time
23 when construction of such improvements is proposed to commence, so inspection may be made to ensure
24 all specifications are met during the construction of the required improvements, and to insure the satisfactory
25 completion of improvements and utilities required by the Planning Board.

26
27 C. B- If the inspecting official finds, upon inspection of the required improvements, that any of the required
28 improvements have not been constructed in accordance with the Planning Board approved plans and
29 specifications filed by the developer, the inspecting official must report, in writing, to the Town
30 Planner, Planning Board, CEO and the developer or duly authorized representative, and, when applicable
31 the, CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections.
32 The Town shall take any steps necessary to preserve the municipality's rights.

33
34 D. Where applicable and in advance of any construction the developer must deposit sufficient funds for
35 said inspections in an Applicant's Service Account per Title 3.3. The amount is based on a scope of services
36 and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate
37 prepared by a professional engineer or an accomplished and qualified contractor.

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article III. Development Plan Review and Approval Process

16.10.3.7 Independent Peer Review/Inspection Consultant Review.

46 A. ~~All development may be reviewed by an independent review/inspection consultant(s) engaged by the~~
47 ~~Code Enforcement Officer, with the approval of the Town manager, after prior notification to and at the~~
48 ~~expense of the applicant, to assure compliance with all requirements of this Code related to public health,~~
49 ~~safety and welfare and the abatement of nuisances. The estimated costs of such studies must be deposited~~
50 ~~with the Town prior to their undertaking. {MOVED AND MODIFIED. SEE 16.10.3.7.A.1 AS PROPOSED}~~
51

52 ~~A4.-The Town Planner, in addition to the Planning Board or~~ **after Town Manager's approval, the Town Planner**
53 ~~and the~~ Code Enforcement Officer, may require the applicant to pay the cost of an independent consultant or
54 specialist engaged by the Town, **at the applicant's expense** if required by the Town Planner and approved by
55 the Town manager, to:

56 **1. ensure compliance with all requirements of this Code related to public health, safety and welfare, and the**
57 **abatement of nuisances; or {MOVED AND MODIFIED FROM CURRENT 16.10.3.7.A.}**

58 **2.** assist with the technical review of applications submitted for new or amended development. The estimated
59 cost of such a review will be deposited in a Town escrow account prior to the application review/inspection
60 work being conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's
61 option, used to pay any further costs associated with the project application.
62

63 **B. When peer-review is required of the applicant, sufficient funds, based on a written estimate by the**
64 **required consultant, must be deposited in an Applicant's Service Account per Title 3.3, prior to commencing**
65 **said review and continuing with the review of the development plan application. {NEW}**
66

67 ~~2.— Compliance Inspection Fees. The reviewing/inspection consultant, upon direction of the Town Planner,~~
68 ~~will be assigned to conduct compliance inspections of the approved new or amended plans to assure~~
69 ~~compliance with the codes and conditions of approval. Inspection compliance reports will become a part of~~
70 ~~the applicant's project file and submitted at agreed to intervals based on the required inspection items~~
71 ~~developed between the Town and the developer following Town approval. Copies of all inspection reports~~
72 ~~will be submitted to the Town Planner, CEO, and project owner or agent. The estimated cost of the~~
73 ~~compliance inspection will be deposited in a Town escrow account prior to the inspection work being~~
74 ~~conducted. Remaining funds in the account will be returned to the applicant or, at the applicant's option,~~
75 ~~used to pay any further costs associated with the project application. {DELETED}~~
76

77 ~~3.— Records of application review and inspection reports are public records. {DELETED}~~
78

79 ~~4.— Determination of the need for application review and/or compliance inspection is made by the Town~~
80 ~~Planner, with the oversight of the Town manager. The Planning Board will be advised of such requests as~~
81 ~~they occur. {DELETED}~~
82

83 ~~5.— As part of each request, feedback about the process will be gathered by the reviewing/inspection~~
84 ~~consultant from the applicant, Planning Board, and planning department, and made a part of the record.~~
85

86 **~~16.10.3.8 — Independent Review Applicant Funding.~~**

87 ~~The Planning Board must require an applicant to pay the costs of an independent consultant or specialist~~
88 ~~whose services the Planning Board may require, at its discretion, to analyze any or all of the application, in~~
89 ~~the Town's interest. {DELETED}~~
90

92 **Article VIII. Planning Board Final Plan Action**

93 **16.10.8.2.2 Performance Guaranty Conditions.**

94

95 Where improvements for the common use of **future lot or unit owners, lessees** or the general public have
96 been approved, the Planning Board ~~must~~ **shall** require a performance guaranty of **an** amount sufficient to pay
97 for said improvements as a part of the agreement. The applicant must file with the Town, as a condition for
98 approval of the final plan, a performance guaranty in a form acceptable to the Town manager.
99 1. The amount must be at least equal to the total cost of furnishing, installing, connecting and completing all
100 street grading, paving, storm drainage and utilities and other improvements specified in the development
101 master plan and shown on the final plan, ~~and~~ **In addition, it** must guarantee the satisfactory coordination with
102 other related phases of development and satisfactory completion of all specified improvements.
103 2. Where the Planning Board reviews and approves project phasing, the Board may also require the
104 developer to provide performance ~~assurances~~ **guaranties** directly related to a particular phase or phases of
105 the project where it can be demonstrated that the uncompleted portions thereof do not detrimentally affect
106 the completed development or the current and ongoing development.
107 3. No phase of construction may commence until the required performance ~~assurances~~ **guaranties** have
108 been met.
109 4. Performance guaranties must be based on professionally prepared cost estimates for all approved
110 infrastructure improvements, and **verified by the Town's Peer Review Engineer, The cost estimate must**
111 **include an additional ten (10) percent cost for contingencies and/or warranty period.** ~~include an inspection~~
112 ~~escrow agreement for site inspection equal to two percent of construction costs.~~
113 ~~(Ordained 9/26/11; effective 10/27/11)~~
114 **5. Ten (10) percent of the performance guaranty may be retained to cover circumstances where additional**
115 **time or resources are required for satisfactory final completion of improvements that include, but are not**
116 **limited to: vegetated swales and slopes, plantings, and lawns. This warranty period may be up to one year.**
117 **6. Inspection of improvements that require a performance guaranty must be performed at the expense of the**
118 **applicant and in accordance with Title 16.4.4.1. Inspection funds for construction requiring a performance**
119 **guaranty shall equal two (2) percent of construction costs unless the Peer Review Engineer provides**
120 **sufficient reason for a greater amount.**
121

122 **Article IX. Post Approval**

123 **16.10.9.1 Post Approval Actions Required.**

124 **16.10.9.1.1 Approved Final Subdivision Plan.**

125
126 A. An approved subdivision plan must be filed with the York County Registry of Deeds within ninety
127 (90) days from date of such approval. Any plan not so filed and recorded is null and void, unless particular
128 circumstances dictate and upon petition, the Planning Board grants an extension which may not exceed two
129 additional ninety (90) day periods.

130
131 B. Where applicable, the Stormwater and Erosion Control Maintenance Agreement that must be
132 included in the Document of Covenants, Homeowners Documents and/or as riders to the individual deed
133 must be recorded with the York County Registry of Deeds.

134
135 **C. A pre-construction meeting, in accordance with Title 16.4.4.1 must be held prior to any clearing or**
136 **earthwork for approved development that requires inspections.**
137
138

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/5/2015	Title: Various
Town code section: Title 16, §16.4.4.1; 16.10.3.7; 16.10.3.8; 16.10.8.2.2; and 16.10.9.1	History: Amendment

ENCLOSURES: CODE AMENDMENT

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PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to inspections and peer-review consultation and would codify what is current practice, specifically with regard to pre-construction meetings.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.4.4.1 (lines 1-12)

This section would codify current practice to hold a pre-construction meeting prior to clearing and earthwork and identifies associated expectations, including: who is authorized to hold such meetings; in what manner are they held and when are they required. The amendment also identifies who the inspecting official is.

Section 16.4.4.1 (lines 14-21)

This section clarifies the inspection process.

Section 16.4.4.1.D. (lines 34-37)

This new provision clarifies in what manner the required inspection is paid for, through the current provision in Title 3.3 of the Town Code, Applicant Service Account.

Section 16.10.3.7 (lines 44-89)

Revised this section to only focus on peer-review consultation and not inspections. The latter is now in 16.4.4.1.

Section 16.10.8.2.2 (lines 92-120)

This section clarifies the inspection process as it relates to the Town's performance guaranty requirement. Provides more flexibility to the amount of funds deposited for inspection and the provision for a 10% retainage of the performance guaranty to cover construction items that may need additional time to determine compliance, as with installation that involves vegetation.

JUSTIFICATION:

- The current code does not include a provision requiring pre-construction meetings that are essential to ensure all parties in agreement over how to execute the approved development. The amendment would correct this.

- 174 • The current code lacks clarity in describing the inspection process and peer-review
175 process. The amendment would correct this.

176
177 FISCAL IMPACT: None.

178

For Chair MARCH 18

RECEIVED
MAR 18 2015
BY:.....

Responses, additional questions, and unanswered questions.

1) When the need for a consultant has to be hired do we document the need why, your answer was YES GENERALLY.

This infers that it is NOT always done. Why is it NOT ALWAYS done? Or are we just generally documenting the need and not into great details. How can we hire a consultant if we do not provide ourselves with the specific detailed needs?

REASONS for always doing. Document the need, document why spending the money, provide documentation of past work could prevent repeating. We must be doing the thought process, it seems we are just NOT writing it down.

2) NO list of what the town can do inhouse and what has to go out house.

Why has this not been done? It seems the staff has to be doing this evaluation to come to the conclusion that a consultant has to be hired. So its merely documenting the process.

REASONS for list. Document strengths and weaknesses of staff. Should we not being doing what we can inhouse before going outhouse?

3) No. Yes for third party inspections for building permits.

The applicant does not get any say in the consultant. Why cannot a list be provided and possible conflicts be eliminated? Similar to the 3rd party building inspection permits. There may be conflicts that the Town Manager is not aware of.

4) NOT TYPICALLY. The issue would need to be significant and perusing it is in the best interest of the Town.

I agree that a conflict/issue would have to be significant. But here we do not include the applicant and it seems costs can be incurred of the applicant before they get a chance to disclose any possible issues. Providing a list upfront would ensure that conflicts can be eliminated and a remaining pool is still available.

--

5) Depends. If it is part of an on-going contract with the town or selected thru a RFP process. The former would be typical and fees are negotiated by the Town Manager.

An on going contract, not sure what this means. Does the town have yearly contract with a firm to do all its peer review? On-going here seems to infer a contract where the fee is to be determined later and pre negotiated.

Do we have a cap on how much engineering costs we can attach to an applicants project?

It seems the applicant has no say in who or how much the town can spend for them?

6) Not aware of any.

If there has been no issues in the past, then it seems there is no need to codify. BUT a nice point for a policies and procedure manual.

7) NO. IT HAS NOT COME UP BEFORE AS A NEED.

I think the need for this has come up multiple times. Staff turnover has been mention here. There has been significant turnover in the staff.

A written procedure and policies manual does exactly what we said was an issue. Informs new hires what, when, and how things are done. It's a basic communication tool. Its an excellent training resource. Its written documentation. It saves time by not rethinking procedures already written down. Manages the complex code and operations. It standardizes procedures for everybody. It would communicate to us on this board what the staff is or has to do.

It could document that the procedure for a pre-construction meeting without putting it in the code. It is still authoritative. What are the penalties for not having this meeting?

The town's operating budget is in the millions and the town has no written procedures and policies. The town is not so small it can be operating without written procedures.

8) Agreed construction schedule is rigid enough but ever changing. Such is the need for notification of the completion and start of phases. If the minutes do not need to be approved or timely communicated, cannot a letter suffice? Are we not doing this now with letters and not official minutes? I think a great item for a procedure and policies manual.

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9) Five business days

This is still not clear enough 5 business days of the town or standard 5 business days. An example.....when the 5th business day falls on a Friday, the town offices are closed. Will a penalty be incurred? Is there a penalty for failure to meet this 5 business days?

Example.

Town's 5 business days. Monday, Tuesday, Wednesday, Thursday, and 2nd Monday.

Standard 5 Business days. Monday, Tuesday, Wednesday, Thursday, and Friday.

An applicant has no place to deliver because on Friday the Town offices are closed.

Line 54 and 55 refer to “abatement of nuisances”

Does this only refer to abatement with new projects or with abatement of nuisances in general? Please expand and give examples.

When would this ever come into play in a large new development?

10) removal of the public requirement of the files. I see all those lines are struck out of the code, but do not see the lines put any other place. If we strike the lines and do not put them else where, we are removing them. Should these lines need to be included in the code somewhere else? = =

Why are we not including feed back? If we have not recorded feedback how do we know there is any issues. Feed back seems to be part of a necessary review process. I am weary of not keeping this function. Feedback is valuable tool for evaluation and improvement in a process.

11) performance guarantee

I understand one of many types of guaranties, but always known the legal document/ agreement as “ee”. Perhaps an item for Councilor Dennett.

12 assurances to guaranties.

I see line 99 was changed, but should not also line 105 also be changed too?

Lines 106-110 Old lines 104-107

Why are we increasing from 2% of construction costs to a 10% additional cost for contingencies? Please explain why we are requiring deposits for contingencies. Events which may not occur. Could you explain and give examples for types of contingencies?

Has the 2% ever been insufficient or come into play?

Is this 10% of the total construction costs or just the infrastructure improvements costs? This can be a huge difference in amount?

Lines 132 Preconstruction meeting.....”prior to any clearing or earthwork for approved development that requires inspections”

What if the timber harvest is being done prior to the construction and all state permits for the timber harvest have been obtained. This would be a separate and distinct operation. This appears to conflict with that state permits? Can the staff research those state codes? Provide a list of construction activities that would not be precluded?

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
1	8/9/2012		16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor (for May 2015 TC workshop)	1	Staff to draft language for review	
2	10/13/2012	TE	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	CDM to discuss with DPW, report to PB	
3	2/14/2013	DD	DEFINE COMMERCIAL RECREATION (for May 2015 TC workshop)	2	CDM to propose / December 2014; re-draft for 1/22/15 discussion; Re-send 12/18 pkt to PB for HOMEWORK; Board discussed reducing to priority 2; staff is reviewing all permitted uses/definitions, creating table of uses	
5	4/25/2013		WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	1	KOSC wants input; workshop postponed to 4/23	
6	4/26/2013		ROADS / SIDEWALKS TO NOWHERE (ROW plans)/Shared Driveways/ROW Standards/Emergency access roads	1		
7	8/22/2013	Staff	Site dev pre-meeting; CMA construction inspection; Ref: 16.4.4.1.A (for May 2015 TC workshop)	1	Discussed December, 2014; staff drafted language for review, reviewed 3/12/15. Public Hearing and recommendation to Council 3/26/15	Pending
8	10/24/2013	Staff	HAT - Highest Annual Tide: no Elevation 6 (for May 2015 TC workshop)	1	January, 2015	
9	10/24/2013		16.7.8 Soil Suitability Guide; discontinue; replace with Net Residential Acreage calculations	Done	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval; 5/5/15 TC workshop	Pending
10	11/14/2013		Fines	3	CDM to discuss with TM	
11	11/14/2013	Staff	16.7.3.5.6 Structure replacement <u>outside</u> of shoreland zone (missing from code)	1	Proposed language reviewed 12/18/14; no action; suggested review at 5/5/15 workshop	
12	11/14/2013		Review flood hazard ordinance; 16.5.3.4; (esp. <i>No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.</i>)	3	Coordinate w CMA; draft language, if needed	
13	12/12/2013 3/28/2013	- -	<u>Comp Plan Items</u> Pedestrian / Bike paths / Bike Racks CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year	CPC* - -	CDM will provide existing bike path plan; disc. 12/18; req. input from T. Emerson 1/22/15; input to CPC when appropriate May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability; PB input to CPC* when appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
14	1/23/2014		Outdoor Seating/Use of Public Way; extend to other zones	1	PB review: 10/23/14; rev. language 12/18/14; 1/22/15 discussion; <u>Foreside only</u> ; CDM to work w/ NCP/TC to add to Title 5 permanently; bring to TC 4/17/15	
15	2/27/2014		Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Done	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14; Effective 2/28/15	Done
16	2/27/2014	AG	List of Committees/Boards to monitor	Done	CDM to place in 2/26 packets	Done
17	2/27/2014		Flag Lots (16.8.-16.9)	Done		Pending
18	3/13/2014		Septic pretreatment requirement as bonus (See also: VIII.3.i.ii 2015 Code Amendments: Briefing Book, #38)	Done		Pending
19	3/27/2014	DD	Kittery Historic Resources; historic designation identification	3		
20	5/8/2014	Staff	Sign ordinance changes:	2	Workshop: 7/14/14; Int'l Sign Assoc. 10/23/14 16.8.10.2.C approved by TC, effective 2/28/15	Done
			Message boards/internal & external lights & timers			
			Window/A-frame & portable signs/banners			
			Sign character/appearance/administration & enforcement			
21	5/22/2014	DD	Parking credits	1	Staff review; PB to discuss/recommend amendment if needed	
22	1/22/2015		Shoreland Zone:	3		
			Invasive plants; shoreland invasive plant removal			
			Excavation			
			Structure replacement; time periods			
			Shoreland definition		CDM to research Code for use of term;	
23	1/8/2015		Foreside Review Committee (16.3.2.15.F)		Discussed 1/22; deferred awaiting TM report; Board was provided with The Foreside Forums 2014 report at 3/12/15 mtg.	
STAFF						
24	2/28/2013		UPDATE DESIGN STANDARDS FOR LED LIGHTING:	Staff		
25	10/13/2012		BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances	Staff/CPC	Workshop; Sustain So ME; set up January 2014 workshop; Further discussion; PB input to CPC when appropriate	
26	10/24/13 Amendment		DPW Road Cuts; Title 12 amendment; approved by PB 10/24/13; to Council 11/25/13	Staff	Revise per Council Action / Re-visit: January 2015; 1/15: Shared notification w/ DPW & Planning per CDM	
27	10/24/2013		Definition: Substantially complete re: development vs. building permits (for May 2015 TC workshop)	Staff	Staff draft definition differentiating from bldg permits as appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

COMPLETED ITEMS		
Complete	LEGAL NOTICES IN PACKET OR EMAILED TO PB MEMBERS (email to PB @ same time sent to publication)	Complete
4/25/2013	UNBUNDLE ZONING AMENDMENTS	Complete / Ongoing
Complete	BUILDING PERMIT LIST IN PACKETS	Complete / Ongoing
3/25/2013	Amendment: 16.8.24.2 F (LED lights); amended 12/14 (allowing LED lighting)	Ordained: 3/25/2013; ordained 12/14
3/25/2013	DISCUSS PUBLIC NOTICES; ABUTTER'S LIST EARLY, INCLUDE M/L AND PHYSICAL ADDRESS; Sales (assessor) close April 1; system update in Fall	Complete
4/25/2013	Amendment: Speciality Food & Beverage	ordained 6/10/2013
1/24/2014	Foreside workshop with Council	
1/24/2014	REVIEW REPORT TO COUNCIL (RTC) FORMAT	1/24/2013
4/25/2013	PB Workshop Update: training; education; conflict of interest; attendance/voting;	Retreat: January 10, 2014; MMA workshop 3/25/14
4/25/2013	Title 16.11 Marine Development	Ordained: 1/27/2014
2/14/2013	Outdoor Seating/use of public ROW extension period/Title 5 (Seasonal only; extend sunset date)	To Council 6/9/14
	Proposed Ordinance Changes on line	Packets posted online
4/24/2013	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING (at sketch plan)	
	Waivers;	January 2014
	Post Building Permits on Web Site	Provided in Board packets
11/14/2013	ByLaw Changes	Adopted 1/22/15
2/28/2015	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Effective 2/28/15

Town of Kittery Planning Board Meeting March 26, 2015

71 & 73 Tower Road – Request for Adjustment of Common Boundary Line of Nonconforming Lots

Action: review application and deliberate, schedule public hearing at your discretion, grant or deny request.
 Owner/applicants Mary Thron and Raymond J. Arris are requesting consideration of their application regarding the adjustment of the common boundary line between 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42), both of which are in the Residential-Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250’), and Resource Protection Overlay (OZ-RP) Zones.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan Review		NA
NO	Site Visit		NA
YES	Completeness/Acceptance	Application accepted by Planning Office 2/11/15	ACCEPTED
NO	Public Hearing	Scheduled at Planning Board's discretion per 16.10.5.3.2.C	
YES	Planning Board Determination		

Applicant: 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, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" 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

Ms. Thron and Mr. Arris co-own contiguous lots at 71 Tower Road (Map 58, Lot 42A) and 73 Tower Road (Map 58, Lot 42). Both lots are in the Residential – Rural Conservation Zone, as well as the Shoreland Overlay and Resource Protection Overlay Zones.

Both lots are nonconforming in several aspects: lot size, road frontage, shore frontage, and building coverage. See the table prepared by the applicant, which provides the required, existing, and proposed dimensions for each lot.

The applicants received approval from the Board of Appeals on February 26, 2013 to alter the common boundary line between the two lots by means of an equal land swap. The applicants originally sought to transfer property from one nonconforming lot to the other to accommodate a new septic system without creating an easement. The BOA found that this would result in one lot becoming *more* nonconforming, and did not grant their request. Instead, the BOA approved the equal land swap which, though it accomplished the goal of avoiding an easement, resulted in a very irregular line between the lots.

Although the BOA found a solution, the applicants later brought forward a proposal to amend Title 16 with provisions for adjusting a common boundary line between nonconforming lots. A proposed

M58 L42 & M58 L42-A

amendment was developed over 2013-2014 and became effective on February 28, 2015 as 16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots. Ms. Thron and Mr. Arris now make a request to adjust the lot line in question under that section.

Staff Review

The applicants are requesting Planning Board determination that each proposed lot is “as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards” and subsections a-c under 16.7.3.5.12.A.3.

16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots. (Effective: 1/28/15)

A. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:

1. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this Code; or

2. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code; and

a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

b. each resulting lot is not less than the smallest residential lot permitted under the town’s land use base zones, Title 16.3, when served by public sewer; or

➔ *3. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and*

a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore frontage^{2 13}; and

b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and

c. common boundary lines may not be adjusted when both subject lots are non-conforming per state minimum lot size requirement.

¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

M58 L42 & M58 L42-A

² *Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint ownership.*

³ *Adherence to State Minimum Lot Size Law (12 M.R.S. sections 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.*

Comments:

- 1) Both lots 42 and 42-A are located in the Residential – Rural Conservation, Shoreland Overlay, and Resource Protection Overlay Zones, which in combination require a minimum lot size of 80,000 square feet (1.84 acre), minimum road frontage of 200 feet, minimum shore frontage of 250 feet, and a maximum building coverage of 6%. Both lots, as existing, do not conform to these standards, with the one exception of road frontage on Lot 42, which does exceed the 200-foot minimum.
- 2) It is well established by staff and the BOA that the proposed lot line adjustment makes one lot (Lot 42) *more nonconforming*. Lot 42 would conform less with each dimensional standard, including becoming nonconforming with the one standard (road frontage) that it currently meets. However, it would still conform to MDEP's 100-foot shore frontage standard established in subsection a, an allowable minimum in this instance because both lots are under the same ownership (see footnote 2).
- 3) On the other hand, Lot 42-A would become *less nonconforming*. As proposed it would meet the MDEP 20,000-square-foot minimum lot size imposed by subsection a, in accordance with State Minimum Lot Size Law. The existing lot is well under 20,000 square feet. The proposed dimensions would also come closer to meeting each of the dimensional standards in the R-RLC/OZ-SL-250' zones.

Board Action

Staff finds the request to be in conformance with applicable provisions of Title 16 and recommends the Board make a determination that the proposed lots are as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards and 16.7.3.5.12.A.3 a-c.

It is up to the Board's discretion whether to schedule a public hearing. Staff notes that there was a public hearing at the February 26, 2013 Board of Appeals meeting and there was no public comment. Further, because both lots in question are under joint ownership, the proposal is unlikely to affect abutters.

Staff suggests, after review of the draft findings and determining there are no questions related to the content, that the Board can consider a motion (suggestion below) and proceed to reading and voting on the Findings of Fact.

Move to grant conditional approval for the request for adjustment of common boundary lines of nonconforming lots 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42), application dated February 11, 2015, for owner/applicants Mary Thron and Raymond J. Arris.

Conditions are provided in the following draft Findings as a suggestion and the Board may add, amend or remove as they see necessary.

M58 L42 & M58 L42-A

**KITTERY PLANNING BOARD
 FINDINGS OF FACT**

**For
 Thron & Arris, 71 & 73 Tower Road
 Adjustment of Common Boundary Line of Nonconforming Lots**

Note: This approval by the by the Planning Board constitutes an agreement between the Town and the Applicant incorporating the development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

Mary Thron and Raymond J. Arris, owners and applicants (for The Mary Thron Revocable Trust and The Raymond Arris Revocable Trust), requested approval to adjust a common boundary line of nonconforming lots at 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42) in the Residential – Rural Conservation, Shoreland Overlay, and Resource Protection Overlay Zones.

The Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following:

Request for Adjustment of Common Boundary Line of Nonconforming Lots	Mary Thron and Raymond J. Arris	Rec'd 2/11/15
Proposed Reconfiguration of Lots – Approved Land Swap	Anderson Livingston Engineers, Inc., dated March 28, 2013	Rec'd 2/11/15 Approved by Board of Appeals February 26, 2013
Proposed Reconfiguration of Lots – Lot Line Adjustment Requested	Anderson Livingston Engineers, Inc., dated January 20, 2015	Rec'd 2/11/15
Minutes of Approved Land Swap	Town of Kittery Board of Appeals, approved minutes of February 26, 2013 meeting	Rec'd 2/11/15

1. The subject land is located at 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42).
2. Lots 42 and 42-A share a common boundary line.
3. Both lots are co-owned by Mary Thron and Raymond J. Arris, and the principal use of each lot is a legally created single family residential unit.
4. Both lots are located in the Residential – Rural Conservation Zone (R-RLC), as well as the Shoreland Overlay (OZ-SL-250') and Resource Protection Overlay (OZ-RP) Zones.
5. Per 16.3.2 Zone Definitions, Uses, and Standards, dimensional standards for lots in the Residential – Rural Conservation and Shoreland Overlay Zone include:
 - a. Minimum Lot Size: 80,000 square feet
 - b. Minimum Road Frontage: 200 feet
 - c. Minimum Shore Frontage: 250 feet
 - d. Maximum Building Coverage: six percent
6. Both lots are nonconforming with the required dimensional standards.

M58 L42 & M58 L42-A

7. Ms. Thron and Mr. Arris submitted an application to the Town of Kittery Planning and Development Department on February 11, 2015.
8. Per the requirements of 16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots, the Planning Board reviewed the plan for a proposed reconfiguration of lots on March 26, 2015.
9. The proposed dimensions for Lot 42 are:
 - a. Lot Size: 30,469 square feet
 - b. Road Frontage: 196.14 feet
 - c. Shore Frontage: 151 feet
 - d. Building Coverage: 7.6 percent
10. The proposed dimensions for Lot 42-A are:
 - a. Lot Size: 20,100 square feet
 - b. Road Frontage: 123.07
 - c. Shore Frontage: 151 feet
 - d. Building Coverage: 7.3 percent
11. The Code Enforcement Officer determined that the proposed lot line adjustment makes Lot 42 *more nonconforming* with the dimensional standards in the R-RLC zone.
12. The proposed lot line adjustment makes Lot 42-A *less nonconforming* with the dimensional standards in the R-RLC zone.
13. Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage, and therefore each adheres to State Minimum Lot Size Law (12 M.R.S. sections 4807-A through 4807-D).
14. Each resulting lot is conforming to the Maine DEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses and will remain conforming to those requirements.

Conclusion

The Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection Mandatory Shoreland Zoning minimum lot standards for principal structures and uses as well as the requirements of the Town of Kittery Land Use Development Code, section 16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.

The Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Plan will have no significant detrimental impact, and the Kittery Planning Board hereby grants approval for the Plan and Request at the above reference properties, including any waivers granted or conditions as noted.

Waivers: None

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan (Title 16.10.9.1.2).
2. All Notices to Applicant contained in the Findings of Fact (dated: March 26, 2015).

M58 L42 & M58 L42-A

Notices to Applicant: (not to be included on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. **The approved plan must be recorded at the York County Registry of Deeds.** State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of __ in favor __ against __ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON March 26, 2015

Ann Grinnell, Planning Board Chair

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 KITTEERY
CODE ENFORCEMENT
OFFICE**
200 ROGERS ROAD, KITTEERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

MAP & LOT	M58 L42-#42
DATE SUBMITTED	2/11/15
DATE COMPLETE	
DATE SCHEDULED	3/12/15
APPLICANT FEE	100
PAYED	✓

*PLANNING BOARD (PER 16,7,3,5,12, A,3
ORD. 1/28/15)*

~~BOARD OF APPEALS~~

Application

TYPE OF APPLICATION			
<input checked="" type="checkbox"/> MISCELLANEOUS VARIATION	<input type="checkbox"/> ADMINISTRATIVE APPEAL	<input type="checkbox"/> SPECIAL EXCEPTION	<input type="checkbox"/> VARIANCE

APPEALING THE STANDARDS OF:									
TITLE	16	CHAPTER	3	SECTION	2	SUBSECTION	6D	PAGE	56
TITLE	16	CHAPTER	3	SECTION	2	SUBSECTION	17D	PAGE	117
TITLE		CHAPTER		SECTION		SUBSECTION		PAGE	

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING, THE FOLLOWING MUST BE MET:
APPLICATIONS MUST BE COMPLETE, FEES MUST BE PAID, TEN SETS OF ALL SUPPORTING DOCUMENTS**

PROPERTY INFORMATION					
LOCATION (ADDRESS)	71 + 73 Tower Rd				
MAP	58	LOT	42 + 42A	LOT SIZE	50,569 sq. ft total 2 lots
BASE ZONE(S)	R-RLC			OVERLAY ZONE(S)	

PROPERTY OWNER INFORMATION			
MAILING ADDRESS	Mary Thron Tester + Raymond J. Aris Tester PO Box 96		PHONE NUMBER-ALT 207-439-4136
			EMAIL marythron@comcast.net
CITY	Kittery Point	STATE	ME 03905
			WEBSITE

APPLICANT INFORMATION			
NAME	Same		PHONE NUMBER
MAILING ADDRESS			PHONE NUMBER-ALT
			EMAIL
CITY		STATE	WEBSITE

BRIEF NARRATIVE OF PROPOSED PROJECT

See attached

BUILDING COVERAGE		NON-VEGETATIVE COVERAGE <small>(For properties in the shoreland zone only)</small>		SETBACKS					
MAXIMUM BUILDING COVERAGE		MAXIMUM NON-VEG COVERAGE	20 % <i>42 42A</i>		YARD FRONT	YARD SIDE-L	YARD SIDE-R	YARD REAR	WETLANDS
EXISTING		EXISTING	<i>10.2 13.6 %</i>	REQUIRED					
PROPOSED		PROPOSED	<i>11.9 10.4 %</i>	EXISTING					
Building coverage is the maximum horizontal area of all buildings on the lot including accessory buildings. The calculation for building coverage is done by dividing the total square footage of the property by the square footage all buildings on the lot.		Non-vegetative coverage is the maximum area on the property that is not vegetated. This includes the square footage of all buildings, structures (patios and walkways), etc. The calculation for non-vegetative coverage is done by dividing the total square footage of the property by the square footage of all non-vegetated areas on the lot.		The setbacks are measured from the proposed new construction/activity to the each of the property lines and to any wetlands or water bodies on the property.					

ADDITIONAL REQUIRED INFORMATION

ALL APPLICATIONS SUBMITTED TO THE BOARD OF APPEALS MUST BE ACCOMPANIED BY A PLOT PLAN. THE PLOT PLAN MUST BE AN ACCUARTE PLAN, SHOWING THE ENTIRE LOT. THE PLOT PLAN MUST SHOW THE EXISTING AND PROPOSED CONSTRUCTION / ACTIVITY, ROADS, WATERBODIES, RIGHTS OF WAY, WELLS, SEPTIC SYSTEMS, LOT LINES, WETLANDS AND FLOOD PLANES. ACCURATE MEASUREMENTS FROM THE ABOVE TO ANY PROPOSED CONSTRUCTION / ACTIVITY MUST BE SHOWN ON THE PLOT PLAN.

MISCELLANEOUS VARIATION REQUEST	NONCONFORMANCE AS PERSCRIBED IN ARTICLE 11 OF CHAPTER 16.7 STANDARDS CONTAINED IN ARTICLE IX OF CHAPTER 16.8, OR SECTION 16.8.10.3 ACCESSORY DWELLING UNIT STANDARDS PER ARTICLE XXV OF CHAPTER 16.8 SPECIAL EXCEPTION USE REQUEST (NOT REQUIRING PLANNING BOARD REVIEW)
ADMINISTRATIVE DECISION APPEAL	HEAR AND DECIDE ON AN ADMINISTRATIVE DECISION APPEAL WHERE IT IS ALLEGED BY AN AGRIEVED PARTY THAT THERE IS AN ERROR IN ANY ORDER, REQUIREMENT, DECISION OR DETERMINATION MADE BY THE CODE ENFORCEMENT OFFICER IN REVIEW OF AN ACTION ON A PERMIT APPLICATION UNDER THIS CODE.
VARIANCE	HEAR AND DECIDE ON A VARIANCE REQUEST WITHIN THE LIMITATIONS SET FORTH IN THIS CODE AND 30-A MRSA 4353

Title 16 Chapter 6: DECISION APPEAL, VAIRANCE and OTHER REQUESTS is attached to this application. This ordinance should be reviewed prior to completion of the Board of Appeals application.

I hereby attest that this application and all information submitted to the Board of Appeals is accurate to the best of my knowledge.

Richard S. Curtis
 PROPERTY OWNER'S SIGNATURE DATE *2-4-15*

Richard S. Curtis
 APPLICANT'S SIGNATURE DATE *2-4-15*

Application for Lot Line Change / 73 Tower Rd 58/42 & 71 Tower Rd 58/42A
 Applicants & Owners: Mary Thron Trustee & Raymond J Arris Trustee

- 12/26/2012 Submitted to Town
- 1/24/2013 Denied by Code Enforcement and Planning offices
- 1/31/2013 Submitted to Board of Appeals
- 2/26/2013 Board of Appeals approves Land Swap
- 5/22/2013 Code Amendment Change Submitted to Town
- 1/26/2015 Code Amendment 16.7.3.5.12 Adopted by Town Council
- 2/26/2015 Code Amendment 16.7.3.5.12 Effective

Request: Move Lot Line per Anderson-Livingston 1/20/15 File 4502.021 Plan 2416.150101A.

Background: In 1950 Island Acres Inc recorded a plan of the neighborhood establishing house lots of about 1/2 acres each. Since that time, local code has become more restrictive to where many of the properties in this neighborhood are now non-conforming. In 1972 Raymond J Arris purchased 73 Tower (58/42). In November 2012 Mary Thron and Raymond J Arris purchased 71 Tower (58/42A). Existing septic system for 71 Tower has not yet failed, but if it did a replacement system would require more land than is available in the existing lot. Ray and Mary applied to move the lot line, and although it appeared that the Board of Appeals would have liked to approve the request, the Board concluded that the local code provided no exception allowing an already non-conforming lot to become more non-conforming, and that the hardship in this case did not rise to the level required to approve a variance. Instead, they came up with and approved a land-swap which provided sufficient land for a septic system without making a non-conforming lot less conforming, but resulting in a highly irregular lot line. Instead of immediately implementing the irregular lot line, Ray and Mary have been working with the town to amend the code to allow a lot line adjustment in cases such as this.

Neighboring Properties:

	Parcel	58/44	58/43	58/42 current	58/42A current	58/42 proposed	58/42A proposed
	Street Address	79 Tower	77 Tower	73 Tower	71 Tower	73 Tower	71 Tower
	Owner	Price & Steffen	Dauphinais	Arris & Thron	Thron & Arris	Arris & Thron	Thron & Arris
16.3.2.6D	Lot Size (1.84 min)	.70 acres	.62 acres	.81 acres	.35 acres	.70 acres	.46 acres
16.3.2.6D	Road Front (200' min)	115.43'	132.12'	210.92'	108.29'	196.14'	123.07'
16.3.2.17D	ShoreFront (min 250')	110	125	202	100	151	151
16.3.2.6D	Bldg Cov (max 6%)	9.4%	8.7%	6.6%	9.5%	7.6%	7.3%

Summary: Requested change allows eventual new septic system to be contained within the lot at 71 Tower without requiring an easement. It also makes a tiny lot much closer to conforming while the larger lot remains the most conforming among the four oceanfront properties on this section of Tower Road. As required by 16.7.3.6.12, the larger lot becoming less conforming still meets state minimums of 150' ocean frontage and 30,000 sq ft minimum lot size, while the smaller property becomes conforming with the 150' state minimum ocean frontage while meeting the 20,000 sq ft minimum standard. The proposed lot line follows what an onlooker would assume the lot line to be instead of the current strange diagonal.

Attachments:

- 1/20/2015 Survey by Anderson Livingston showing current and proposed lots.
- 3/28/2013 Survey by Anderson Livingston showing land swap approved 2/26/13.
- 2/26/2013 Board of Appeals Minutes approving land swap.

Note: PDFs of surveys have been provided to Chris DiMatteo to enable more detailed viewing.

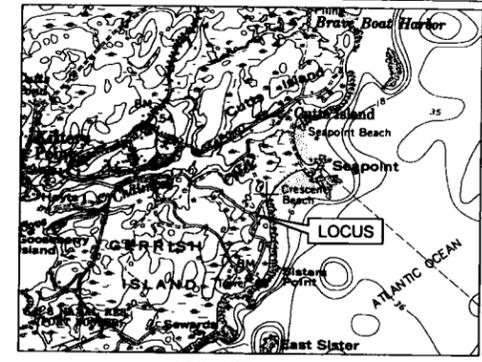
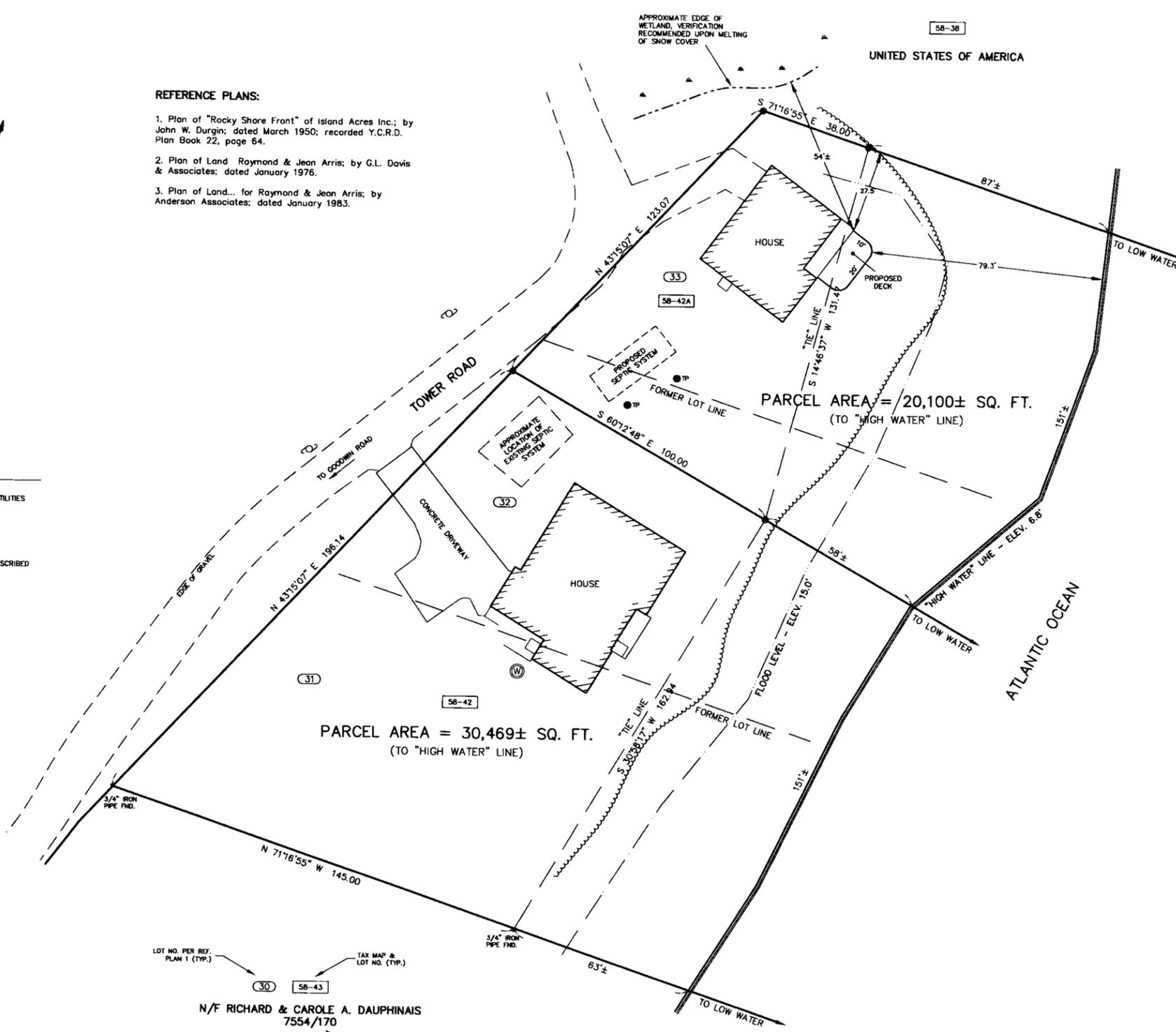


REFERENCE PLANS:

1. Plan of "Rocky Shore Front" of Island Acres Inc.; by John W. Durgin; dated March 1950; recorded Y.C.R.D. Plan Book 22, page 64.
2. Plan of Land Raymond & Jean Aris; by G.L. Davis & Associates; dated January 1976.
3. Plan of Land... for Raymond & Jean Aris; by Anderson Associates; dated January 1983.

LEGEND

- UTILITY POLE
- OH— OVERHEAD ELECTRICAL UTILITIES
- WELL
- CHAIN LINK FENCE
- N/F "NOW OR FORMERLY"
- TP SOILS TEST PIT
- MONUMENT FOUND AS DESCRIBED
- 3/4" IRON PIPE SET



VICINITY MAP

NOTES:

1. The boundaries as delineated are the opinion of this surveyor and are based on record information and physical evidence. This plan does not purport title or ownership.
2. Field measurements for this survey were made using a Leica total station with electronic data collection. The relative precision of the unadjusted control traverse is better than 1 in 15,000.
3. The existence or non-existence, depth, size, and location of underground utility lines, tanks, and structures was not verified by this survey. Any locations and sizes shown are approximate. Exact location should be further investigated before any excavation takes place on this lot.
4. All iron pipes marked "set" or "recov." are identified with yellow caps stamped "Anderson PLS 1197".
5. Test pits and septic system design by Michael Cuomo, SE #211.

REFERENCE DEEDS:

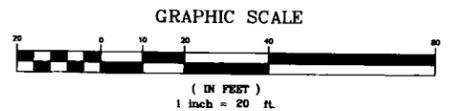
1. Raymond Aris and Mary Thron to The Raymond Aris Revocable Trust and The Mary Thron Revocable Trust; dated December 14, 1999; recorded Y.C.R.D. Book 9830, page 250.
2. The Thomas S. Kane Revocable Trust of 1997 to The Mary Thron Revocable Trust and The Raymond Aris Revocable Trust; dated November 7, 2012; recorded Y.C.R.D. Book 16457, page 394.

(A)

PROPOSED RECONFIGURATION OF LOTS FOR RAYMOND J. ARRIS AND MARY THRON TOWER ROAD KITTERY, MAINE

ANDERSON LIVINGSTON ENGINEERS, INC. Suite 401 Cottage Place 433 U.S. Route One York, Maine 03909	Scale: 1 in = 20 ft. Date: January 20, 2015
	OWNERS: The Raymond Aris Revocable Trust The Mary Thron Revocable Trust P.O. Box 98 Kittery Point, ME 03905-0098

CERTIFICATION:
 This survey conforms to the Maine Board of Licensure for Professional Land Surveyors Chapter 90 Standards of Practice, effective April 1, 2001 except as noted on this plan.

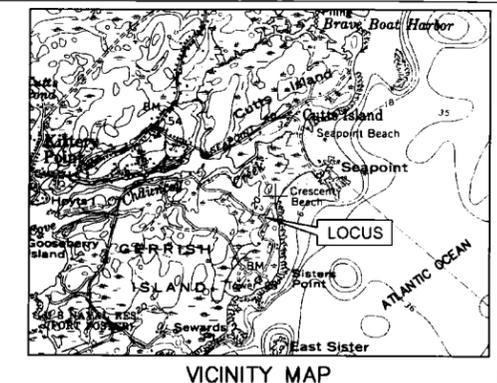


STATE OF MAINE
 YORK SS. REGISTRY OF DEEDS
 RECEIVED _____
 AT ___H___M___M. AND
 Filed in Plan Book ___ Page ___
 ATTEST _____
 REGISTER

LOT NO. PER REF. PLAN 1 (TYP.) → 30
 TAX MAP & LOT NO. (TYP.) → 58-43
 N/F RICHARD & CAROLE A. DAUPHINAIS 7554/170
 REGISTRY BOOK & PAGE NO. (TYP.) →

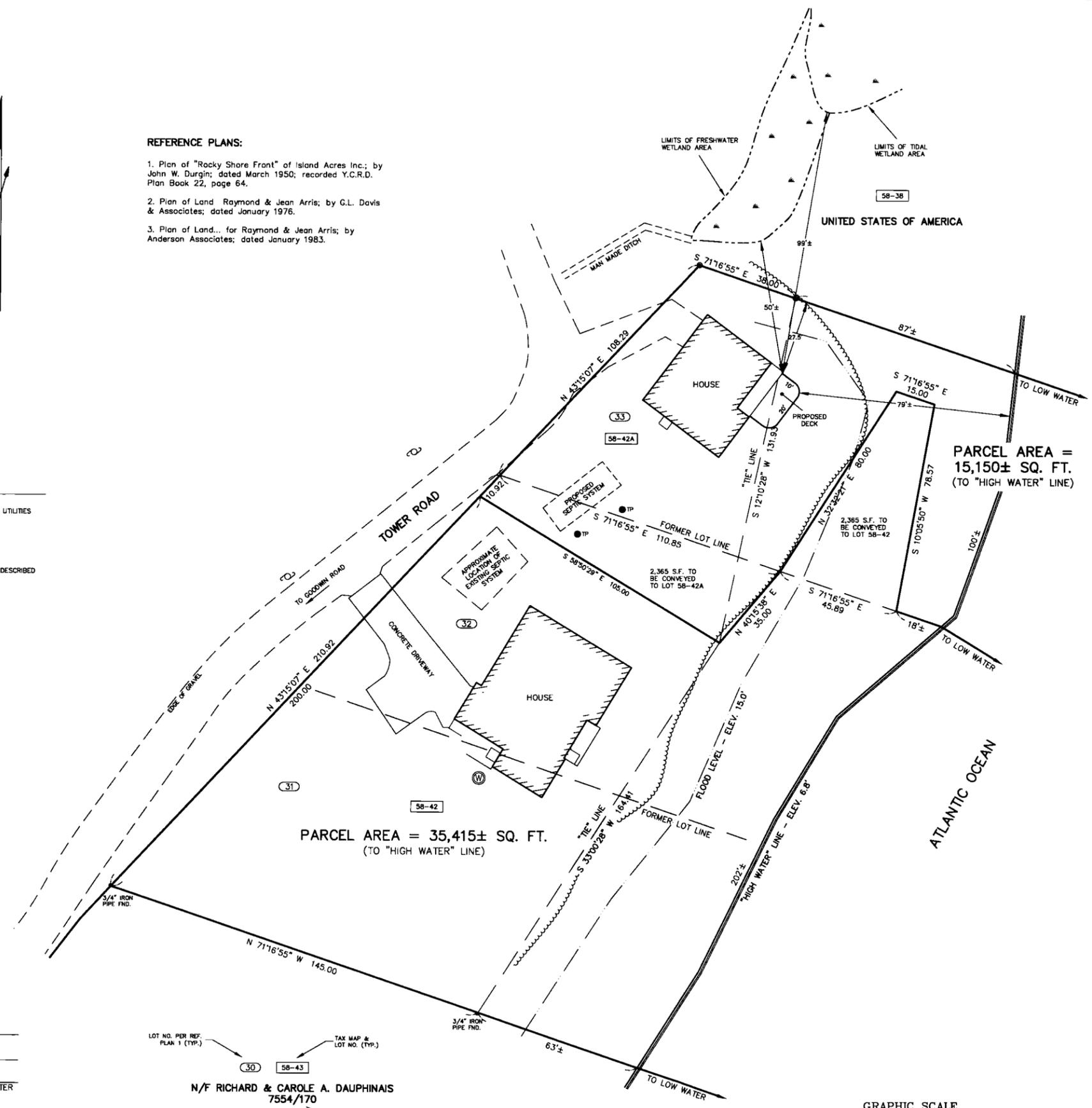
FILE NO: 4502.021
 PLAN NO: 2416.150101A

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- REFERENCE PLANS:**
1. Plan of "Rocky Shore Front" of Island Acres Inc.; by John W. Durgin; dated March 1950; recorded Y.C.R.D. Plan Book 22, page 64.
 2. Plan of Land Raymond & Jean Arris; by G.L. Davis & Associates; dated January 1976.
 3. Plan of Land... for Raymond & Jean Arris; by Anderson Associates; dated January 1983.

- LEGEND**
- UTILITY POLE
 - OVERHEAD ELECTRICAL UTILITIES
 - WELL
 - CHAIN LINK FENCE
 - N/F "NOW OR FORMERLY"
 - SOILS TEST PIT
 - MONUMENT FOUND AS DESCRIBED
 - 3/4" IRON PIPE SET



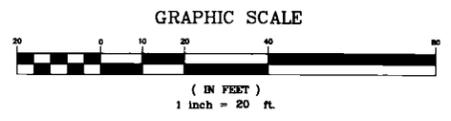
- NOTES:**
1. The boundaries as delineated are the opinion of this surveyor and are based on record information and physical evidence. This plan does not purport title or ownership.
 2. Field measurements for this survey were made using a Leica total station with electronic data collection. The relative precision of the unadjusted control traverse is better than 1 in 15,000.
 3. The existence or non-existence, depth, size, and location of underground utility lines, tanks, and structures was not verified by this survey. Any locations and sizes shown are approximate. Exact location should be further investigated before any excavation takes place on this lot.
 4. All iron pipes marked "set" or "recov." are identified with yellow caps stamped "Anderson PLS 1197".
 5. Wetland delineation, test pits, and septic system design by Michael Cuomo, SE #211.

- REFERENCE DEEDS:**
1. Raymond Arris and Mary Thron to The Raymond Arris Revocable Trust and The Mary Thron Revocable Trust; dated December 14, 1999; recorded Y.C.R.D. Book 9830, page 250.
 2. The Thomas S. Kane Revocable Trust of 1997 to The Mary Thron Revocable Trust and The Raymond Arris Revocable Trust; dated November 7, 2012; recorded Y.C.R.D. Book 16457, page 394.

PROPOSED RECONFIGURATION OF LOTS FOR RAYMOND J. ARRIS AND MARY THRON TOWER ROAD KITTERY, MAINE

STATE OF MAINE
YORK. SS. REGISTRY OF DEEDS
RECEIVED _____
AT _____ M. AND _____
Filed in Plan Book _____ Page _____
ATTEST _____
REGISTER

LOT NO. PER REF. PLAN 1 (TYP.)
TAX MAP & LOT NO. (TYP.)
N/F RICHARD & CAROLE A. DAUPHINAIS 7554/170
REGISTRY BOOK & PAGE NO. (TYP.)



CERTIFICATION
This survey conforms to the Maine Board of Licensure for Professional Land Surveyors Chapter 90 Standards of Practice, effective April 1, 2001 except as noted on this plan

ANDERSON LIVINGSTON ENGINEERS, INC. Suite 401 Cottage Place 433 II U.S. Route One York, Maine 03909	
Scale 1 in = 20 ft Date March 28, 2013	OWNERS: The Raymond Arris Revocable Trust The Mary Thron Revocable Trust P.O. Box 96 Kittery Point, ME 03905-0096
REVISIONS	Sheet 1 of 1

FILE NO: 4502.021
PLAN NO: 2416.130301

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Niles Pinkham, Brett Costa
Members absent: None

Staff: Heather Ross, Assistant Code Enforcement Officer

The meeting was called to order at 7:04 p.m.
Pledge to the Flag

ITEM 1 – Mary Thron and Rayond Arris requesting a variance to the terms of Title 16 Section 3.2.6.D and Title 16 Section 3.2.17.D in order to change a property line between properties located at 17 Tower Road, Map 58 Lot 42, and 73 Tower Road, Map 58 Lot 42A, zoned Residential-Rural, Conservation, Shoreland and Resource Protection.

Mr. Wilson noted that according to Title 16.1.5.2.F.3 the Board of Appeals has the authority to hear this item.

Ms. Thron explained the home they wished to move into needs to have the septic system replaced for a three-bedroom use, requiring more area in the yard. They do not want to burden the future owner at 73 Tower Road with an easement, and are requesting a property line movement to provide more room for the septic system. The 73 Tower Road lot is more conforming than other lots on the road and would continue to be so, with more than 200 feet of road frontage.

There was no public comment for or against the request. The CEO provided:

1. The applicants are requesting a variance to the terms of Title 16.3.2.6.D and Title 16.3.2.17.D. in order to change property lines between properties located at 17 Tower Road, Map 58 Lot 42, and 73 Tower Road, Map 58 Lot 42A, zoned Residential-Rural, Conservation, Shoreland and Resource Protection.
2. These are two non-conforming lots located within the Residential-Rural Conservation, Shoreland and Resource Protection zones.
3. The residential-Rural conservation zone requires a minimum 80,000 sf land area per dwelling unit.
4. The lot located at 71 Tower Road is currently a nonconforming lot at 17, 424 sf in land area.
5. The lot located at 73 Tower Road is currently a nonconforming lot at 33, 976 sf in land area.
6. The proposal is to change the lot line between these two nonconforming lots. The result would make one lot more non-conforming, and the other lot less non-conforming.
7. Title 16.3.2.17.D.1.c, Shoreland Overlay Zone Standards, requires a minimum 250 feet of minimum shore frontage per lot and dwelling unit. It appears the proposed line change would result in the property located at 71 Tower Road, becoming more non-conforming as to the shore frontage for the lot.
8. Title 16.7.2.1, Conformity Required, states:
No building structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved or altered and no new lot may be created except in conformity with all of the regulation herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use, or a variance is granted.
9. Title 16.6.4.2, Variance, states:
 - A. A variance may be granted only by the Board of Appeals under the following conditions:

1. *For a reduction in dimensional requirements related to height, area and size of structure, or size of yards and open spaces;*
2. *The use is not prohibited by the Code; and*
3. *Only if the strict application of the terms of the Code would result in 'undue hardship'. The term undue hardship means the applicant must demonstrate all of the following:*
 - a. *The land in question cannot yield a reasonable return unless a variance is granted.*
 - b. *The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.*
 - c. *The granting of a variance will not alter the essential character of the locality.*
 - d. *The hardship is not the result of action taken by the applicant or prior owner.*

Ms. Thron stated when initially purchased, there were two lots comprising 73 Tower Road and some of the lot was added to 77 Tower Road in 1983, though both lots remained nonconforming. Mr. Gardner asked about 16.7.3.1.C, *Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.* Ms. Thron stated the town has incorrect lot sizes. A recent survey shows 71 Tower is 15,150 square feet and 73 Tower is 35,415 square feet [referenced hand written figures on survey in application packet].

Mr. Pinkham stated he felt it was something that should be done, but how to accomplish it? He is not in favor of easements for septic systems. Mr. Wilson stated he did not think it was possible to grant the variance based on the four hardship tests required. Mr. Gardner asked if there was another way to address this issue. The CEO suggested if it was no more non-conforming, an equal land swap, the Board could address it that way, but the shorefront minimum requirements needed to be met. Discussion followed regarding how the lot dimensions would change and how the Board could then review under a miscellaneous variation appeal. Mr. Gardner explained to the applicant granting a variance for their request could not happen, however, if the applicant changed their appeal, the Board could consider their request. Mr. Wilson provided a sketch illustrating how the property would have to be divided to be considered. The CEO stated the sketch by Mr. Wilson could be approved under a miscellaneous appeal. Discussion followed with the applicant regarding view easements over the portion of 73 Tower Road. Mr. Wilson read, *The Maine Supreme Court has stated in numerous cases that a Board of Appeals must grant zoning variances sparingly, they are the exception rather than the rule. The test for undue hardship outlined above is a very strict one and very difficult to meet, no matter how harmless the variance request may seem. The Board must remember its decision is governed by the legal requirements of undue hardship in 30 M RSA 4352 for zoning variations...*

Mr. Gardner stated the applicant is getting what they need, though the property line is not a straight one, but a ragged one. Mr. Wilson stated the shore frontage at 71 Tower Road cannot be diminished. Discussion followed regarding easements, restrictions and other lot line delineations to accomplish the desire of the applicant, and further explanation as to why this application could not meet variance requirements.

The applicants agreed to have the application reviewed as a miscellaneous variation. Mr. Wilson suggested a motion stating that land can be swapped as long as neither lot becomes more non-conforming, and the applicant can choose whatever configuration they wish. Mr. Pinkham concurred and added the applicant could also choose to take the easement route. Mr. Boyle stated frontages must remain the same.

Mr. Boyle moved that under Title 16.6.6.1 Conditions and Title 16.6.6.2 Factors for Consideration, and finding the application for a miscellaneous variation conforming to those sections, the Board of Appeals grants to Mary Thron and Raymond Arris a miscellaneous variation for lots located at 73 and 71 Tower Road, Map 58 Lot 42 and Lot 42A, in the Residential-Rural, Conservation, Shoreland and Resource Protection zones, and further requiring that land may be swapped between the two lots as desired so long as neither lot is made more non-conforming than they presently are, and all dimensional requirements including but not limited to shore and road frontage and setbacks be retained.

Mr. Costa seconded

Motion carries unanimously

Findings of Fact:

1. Mary Thron and Raymond Arris (Applicants) came before the Board with a variance to three sections of Title 16. After discussion, applicants decided to change appeal to a miscellaneous variation in order to have a septic system for 71 Tower Road not be on property of 73 Tower Road.
2. Applicants' household is at 73 Tower Road; applicants wish to scale down and purchased 71 Tower Road; no changes to this property since the 1960s; functioning septic system needs to be replaced, requiring land area not available at 71 Tower Road; applicants felt a septic easement would not be an enhancement to 73 Tower Road. 73 Tower Road has 200 feet of road frontage.
3. Zone requirements are 80,000 sf per dwelling unit; 71 Tower Road has 15,170 sf; 73 Tower Road has 35,415 sf. Both are nonconforming lots in size and in shore frontage, where 250 feet are required.
4. There was no public comment.

Mr. Pinkham moved to accept the Findings as read

Mr. Costa seconded

Motion carries unanimously

Conclusion

Board has authority under Title 16.7.3.1.A. *Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.* The Board finds the proposal to swap equal square footage from one lot to another makes neither more nonconforming and the Board granted the appeal.

Mr. Boyle moved to accept the Conclusion as read

Mr. Costa seconded

Motion carries unanimously

Minutes - December 12, 2012

Mr. Wilson moved to accept as amended

Mr. Costa seconded

Motion carries unanimously

Mr. Costa moved to adjourn

Mr. Pinkham seconded

Motion carries unanimously

The Kittery BOA meeting of February 26, 2013 adjourned at 8:00 p.m.

Submitted by Jan Fisk, March 4, 2013