TOWN OF KITTERY, ME
PLANNING BOARD MEETING
Council Chambers

UNAPPROVED
APRIL 14, 2016

Meeting called to order: 6:00 pm

Pledge of Allegiance

Roll Call:
Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Debbie Driscoll-Davis, Deborah Lynch, Mark Alesse, Dutch Dunkelberger
Board members absent: Debbie Driscoll-Davis
Staff present: Chris Di Matteo, Town Planner

Chair Ann Grinnell noted that Ms. Lynch has resigned from the Planning Board and thanked her for her work.

Minutes: March 24, 2016
Line 218 – replace "17" and "154" with "72" and "54, respectively.
Line 285 – replace "curve" with "curb"

Mr. Dunkelberger moved to approve the March 24, 2016 minutes, as amended.
Ms. Kalmar seconded.
Motion passed 6-0-0.

Public Comment: Ms. Grinnell opened the floor for public comment. Hearing none; Ms. Grinnell closed the floor for public comment.

PUBLIC HEARING

ITEM 1 – 93 Picott Road – Right of Way Plan Review
Action: Hold a public hearing; Approve or deny plan. Owner Herbert and Carolynn Marsh and Applicant Graystone Builders, Inc. propose a Right-Of-way to access two new lots located at 93 Picott Road (Tax Map 49 Lot 7) in the Residential-Rural (R-RL) Zone. Agent is Bill Anderson, Anderson Livingston Engineers.

Mr. Anderson's testimony included the following statements:

- The issue in regards to the cemetery was the only bit not discussed at the recent site visit. The area is surrounded by a small fence to keep the cattle out of the area. The new ordinance defines cemeteries without a fence require a 10-foot radius from the head stones. Thus, they've added a fence. The new plan shows that this is in compliance with the ordinance.
- The Right-of-Way was shifted slightly and the plan added a 39.7-foot tie from the nearest head stone.
- The rest of the plan remains unchanged since the last Planning Board meeting.

Mr. Di Matteo noted that Mr. Anderson did not submit any narrative of CMA comments and to assume that there exists no additional information requested from CMA. Mr. Anderson replied that the only item still in question was whether more detail is required regarding a storm water plan. Mr. Anderson added that given the situation, everything drains from the road to the rear of the site which is all on the owner's property. Mr. Di Matteo clarified that CMA may have been only seeking additional details or analysis. Mr. Anderson replied that in some circumstances this would be necessary, but in this case where no drainage issues exist it is unnecessary.

Ms. Kalmar questioned the soil suitability. CMA suggested a high intensity soil suitability study. This could be waived, but it would require a thorough examination. Mr. Anderson confirmed that the test bits on the plan

did pass and he did submit a medium intensity which was included in the plan.

Ms. Kalmar asked if the subdivision plan may be mislabeled. Mr. Anderson noted that it could be altered to read a more conceptual subdivision plan, but nothing official.

Mr. Dunkelberger asked if a street naming application was submitted. Mr. Anderson could not recall and will follow up with whether that paperwork was submitted. Mr. Di Matteo noted that the Planning Board has to approve that application.

Mr. Anderson confirmed to Mr. Harris that there were no issues with Public Water Works.

Ms. Kalmar made a motion to continue the Right-Of-Way plan review until May 12, 2016.
Mr. Dunkelberger seconded.
Motion passed 6-0-0.

Mr. Di Matteo asked if the high intensity soil study is still required. Ms. Grinnell asked to make sure that CMA receives the information they are requesting.

OLD BUSINESS

ITEM 2 – Seward Farm Lane – Major Subdivision Sketch Plan Review

Action: Approve or deny sketch plan. Owner/Applicant Gary Seward et al requests consideration of a 15-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4).

Ken Markley, North Easterly Surveying
Mr. Markley described the sketch plan consists of a 12-lot subdivision, soccer fields, and some land to be sold to Kittery Land Trust.

Mr. Markley asked if the 15% open space requirement of the portion is based on what is being developed or the entire parcel. Ms. Grinnell understood that the requirement is based on the entire parcel. Ms. Driscoll-Davis asked if that would change after dividing some of the lot. Mr. Markley answered that would be considered a subdivision which can only happen after 5 years. Mr. Markley asked if the agreement with the Town is devalued by considering some area open space. Ms. Grinnell asked if the land agreed upon with the Town will be deeded. Mr. Markley confirmed it will be deeded.

Ms. Kalmar asked Mr. Di Matteo if an anticipated future agreement with the Town could be taken into account. Mr. Di Matteo mentioned he would need to refer to the ordinance before determining what the 15% rule applies to specifically. Ms. Grinnell asked if the land that will be deeded to the Town could be incorporated into the open space calculation. Mr. Di Matteo reiterated that it is difficult to make a determination before the agreement is finalized.

Mr. Markley added that the whole parcel spans 69 acres and 7.8 acres will be deeded to the Town. Ms. Driscoll-Davis noted that piece of land to be deeded will make a difference in determining open space.

Mr. Dunkelberger asked if it is in the Planning Board's purview to decide if the soccer field is considered open space. Mr. Di Matteo replied that it depends if it will be a part of the entire parcel. Mr. Dunkelberger

suggested it may be beneficial for the applicant to determine at what time it is best to turn over the land to the Town.

Mr. Markley added that the wetlands are currently being delineated.

Mr. Dunkelberger asked whether Lot 15 is the proposed soccer field area or not. Mr. Markley responded that will be addressed.

Mr. Di Matteo suggested that Lot 39 be cleaned up prior to submitting the plan since it is essentially exempt from the subdivision.

Ms. Driscoll-Davis asked if Lot 9 and 10 meet the minimum land area requirement. Mr. Markley noted that the revised plan addresses that.

Ms. Grinnell asked about the width of the road. Mr. Markley noted that the Planning Board agreed to 50 feet at the last meeting. Therefore, the existing gravel will be paved over. A waiver will be submitted for 60 to 50 feet.

Mr. Di Matteo asked if a plan has been formulated to address storm water. Mr. Markley noted that there is a 50% runoff rate for gravel. There are retention ponds in place, but coordination with Maine DEP will need to be had.

Ms. Kalmar made a motion to approve the sketch plan application dated February 17, 2016 from owner/applicant Gary Seward et al for a 15-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4).
Mr. Alesse seconded.

Mr. Markley clarified to Mr. Dunkelberger the current lot numbers since the plan recently was renumbered.

Motion passed 6-0-0.

ITEM 3 – 24 Williams Ave – Shoreland Development Plan; Major Modification to an Approved Plan
Action: Accept or deny application; Approve or deny plan. Owner/Applicants Doug and Karen Beane request to modify an approved plan to include a larger breezeway located at 24 Williams Ave (Tax Map 9 Lot 16) in the Residential-Urban (R-RU) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Ken Markley, North Easterly Surveying.

Mr. Markley mentioned the proposed breezeway has been changed from 10 to 4 feet.

Mr. Dunkelberger made a motion to accept the application dated April 4, 2016 and approve the modification to the previously approved Shoreland Development Plan dated September 24, 2015 from Doug and Karen Beane for 24 Williams Ave (Tax Map 9 Lot 16) in the Residential-Urban (R-RU) and Shoreland Overlay (OZ-SL-250') Zones and to amend the findings of facts dated October 22, 2015.
Ms. Driscoll-Davis seconded.
Motion passed 6-0-0.

FINDINGS OF FACTS

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone
1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones… Findings: The proposed development creates a devegetated area of 16.8% Conclusion: The requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits *D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:*

9. Is in conformance with the provisions of this code; Finding: The proposed amendment increases the property's building coverage to 11.7%, within the zone limit of 20%. The development appears to comply with all other zoning and design standards of Title 16. Conclusion: This requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining

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

Vote: 6 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON October 22, 2015
FINGINGS OF FACT AMENDED BY THE KITTERY PLANNING BOARD ON April 14, 2016

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.

ITEM 4 – 23 Whippoorwill Lane – Shoreland Development Plan Review

Action: Accept or deny application; Approve or deny plan. Owner/Applicant Christopher Baudo request consideration for plans to demolish and reconstruct and existing two-story duplex in an expanded footprint, and install a pool on his property located at 23 Whippoorwill Lane (Tax Map 33 Lot 2) in the Residential-

Rural (R-RL) and Shoreland Overlay (OZ-SH-250') Zones. Agent is Albert Frick, Albert Frick Associates, Inc.

Mr. Baudo stated the footprint of the structure is intended to be made smaller in a more condensed area. The portion of the footprint will be removed from the property will be re-vegetated. Albert Frick Associates has worked with Town staff to address erosion mitigation and vegetation. The septic system for the existing and proposed duplex was evaluated. The staff made certain recommendations and Mr. Baudo has made minor modifications to the plan in response to that. The revised plan requires further review.

Mr. Di Matteo noted that the Planning Board should discuss whether a site walk and public hearing is necessary.

Ms Driscoll-Davis noticed a staff note on Page 3 indicating the plan does not include the garage calculations. Mr. Baudo noted the garage is no longer part of the application.

Ms. Kalmar suggested that a public hearing be held.

A site visit was scheduled for Thursday, April 28, 2016 at 5:00 PM.

Ms. Kalmar made a motion to accept the Shoreland Development Plan application dated October 1, 2015 from owner/applicant Christopher Baudo for 23 Whippoorwill Lane (Tax Map 33 Lot 2) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SH-250') Zones , schedule a site walk on Thursday, April 28, 2016, and schedule a public hearing for Thursday, May 12, 2016.
Ms. Driscoll-Davis seconded.
Motion passed 6-0-0.

Ms. Driscoll-Davis asked that the applicant provides a written response to staff questions and the new prior to the site walk. Mr. Di Matteo requested Mr. Baudo mark the area to help facilitate the site walk.

ITEM 5 – 6 Moores Island Lane – Shoreland Development Plan Review
Action: Accept or deny application; Approve or deny plan. Owner/Application Jackie Ellis requests consideration for plans to expand a second floor dormer on an existing structure located at 6 Moores Island Lane (Tax Map 27 Lot 36) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SH-250') Zones. Agent is Kevin Beane.

Mr. Paul Burke is working with contractors and Jackie Ellis to comply with the addition on the owner/applicant's house. Deane Rykerson certified the increase in square footage and cubic volume of the house. The Town staff found consensus that the plan did not exceed the 30% requirement. The elevation drawing in the packet is illustrated to easily identify what the addition entails.

Mr. Di Matteo added that the staff is comfortable working with the owner/applicant to solidify the formatting of the plan.

Ms. Kalmar made a motion to accept the Shoreland Development Plan application dated March 24, 2016 from owner/applicant Jackie Ellis for 6 Moores Island Lane (Tax Map 27 Lot 36) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SH-250') Zones.
Mr. Alesse seconded.
Motion passed 6-0-0.

Mr. Dunkelberger made a motion to approve the Shoreland Development Plan application dated March 24, 2016 from owner/applicant Jackie Ellis for 6 Moores Island Lane (Tax Map 27 Lot 36) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SH-250') Zones upon the review and voting in the affirmative of the findings of facts.
Ms. Driscoll-Davis seconded.
Motion passed 6-0-0.

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone
1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones… Findings: The proposed development does not include changes to the site and so it does not increase the lot's devegetated area. Conclusion: The requirement is not applicable.
Vote: 6 in favor 0 against 0 abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS
Article III Nonconformance

16.7.3.1 Prohibitions and Allowances
A. Except as otherwise provided in this Article, a nonconforming conditions must not be permitted to become more nonconforming Finding: The proposed development does not increase nonconformity of any structure or aspect of the lot. Conclusion: The requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining
16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones **16.7.3.6.1 Nonconforming Structure Expansion** *A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs* [A through C] *below.* *A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.* *B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.*

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

Finding: The recorded floor area in January 1989 was 1733 square feet. The structure had one addition of 36 square feet and the proposed development results in an additional 98 square feet, a total increase from 1989 of 134 square feet, 7.7%. The recorded volume in January 1989 was 11,939 cubic feet. The structure had one addition of 144 cubic feet and the proposed development results in an additional 493 cubic feet, a total increase from 1989 of 637 cubic feet, 5.3%.
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits
D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Finding: The proposed development as represented in the plans and application does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The proposed development does not have an impact on the existing wastewater disposal system.

Conclusion: This requirement is not applicable.

Vote: 6 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.
Vote: 6 in favor 0 against 0 abstaining
5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters; Finding: Shore cover is not adversely impacted Conclusion: This requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining
6. Protect archaeological and historic resources; Finding: There does not appear to be any resources impacted. Conclusion: This requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining
7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district; Finding: The property is not located in the Commercial Fisheries / Maritime Use Zone. Conclusion: This requirement is not applicable.
Vote: 6 in favor 0 against 0 abstaining
8. Avoid problems associated with floodplain development and use; Finding: The property is located within a flood hazard zone. The proposed development will not create an adverse impact associated with floodplain management. Conclusion: This requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining
9. Is in conformance with the provisions of this code; Finding: The proposed development complies with the zoning and design/performance standards of Title 16. Conclusion: This requirement appears to be met.
Vote: 6 in favor 0 against 0 abstaining
10. Be recorded with the York county Registry of Deeds. Finding: With consideration of condition # 5, a plan suitable for recording has been prepared. Conclusion: As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
Vote: 6 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review

standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be depicted on final plan to be recorded):

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. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing trees must be in place prior to construction.
4. All Notices to Applicant contained herein (Findings of Fact dated 4/14/2016).

Conditions of Approval (not to be depicted on final plan):

5. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: _6_ in favor _0_ against _0_ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON ___April 14, 2016

_____
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.

ITEM 6 – 43 Thaxter Lane – Shoreland Development Plan Review

Action: Accept or deny application; Approve or deny plan. Owner/Applicant William Kules requests consideration for plans to construct a single family dwelling on a vacant parcel located at 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SH-250') and Resource Protection (OZ-RP) Zones. Agent is Thomas Harmon, Civil Consultants.

Mr. Harmon noted this was previously approved in late 2008 to early 2009 and has now expired due to zoning changes. The original plan remains unchanged except filtered drip edges have been added. The owner received approval from the three abutters. The plan will be recertified for the septic plan to retrieve a building permit.

Ms. Kalmar suggested that a site walk and public hearing is in order.

Ms. Kalmar made a motion to accept the Shoreland Development Plan application dated March 24, 2016 from William Kules for 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SH-250') and Resource Protection (OZ-RP) Zones, schedule a site walk on Thursday, April 28, 2016 at 4:00 PM, and schedule a public hearing on Thursday, May 12, 2016.
Ms. Driscoll-Davis seconded.
Motion passed 6-0-0.

ITEM 6 – Board Member Items / Discussion

Ms. Driscoll-Davis confirmed to Ms. Grinnell that the next Comprehensive Planning Board is scheduled for Tuesday, April 20, 2016 at 6:00 PM in Conference Room A. Ms. Driscoll-Davis that the committee will be reviewing the draft chapters. Mr. Di Matteo added that the consultants are compiling the information received from the forum.

ITEM 7– Town Planner Items:

Mr. Di Matteo felt there are potential ideas for state and federal funding through KAC. Ms. Kalmar mentioned one which was to find existing points of access and reestablishing them. Ms. Driscoll-Davis recalled that initiative was once attempted, but not completed. Ms. Kalmar noted her hope to begin consideration for sea level rise. Ms. Grinnell discussed with Mr. Di Matteo about incorporating the Foreside plan. Mr. Di Matteo noted that he sits on KAC with Kittery Public Works Commissioner which is a committee that is tied to the State. Every two years the committee receives planning funds and Mr. Di Matteo provided two recommendations for use of said funds. The recommendations included reconfiguring the Rte. 1 and Rte. 236 interchange and having a land use study on the Foreside. The committee preferred the Foreside proposal. The next step in the process is for Town staff to formulate a more detailed scope for committee and Planning Board to review before an application is submitted.

The Assistant Town Planner, Rebecca Spitko, will be able to finalize the details for the coastal grants that Ms. Grinnell inquired about.

The next Economic Development Committee meeting is scheduled for Thursday, April 21, 2016 at 6:00 PM.

Ms. Driscoll-Davis asked there has been consideration to developing an access point for kayakers at Eagle Point. The Maine Island Trail had initiated the thought.

Ms. Driscoll-Davis noted that there has been increased concern from the community at Fort Foster regarding lack of canine waste cleanup and welcomed any action pertaining to said issue. Mr. Di Matteo noted that there are various DNA profiling programs that work to alleviate these type of issues.

Mr. Alesse made a move to adjourn.
Mr. Dunkelberger seconded.
Motion carried 6-0-0.

The Kittery Planning Board meeting of April 14, 2016 adjourned at 7:25 p.m.

Submitted by Marissa Day, Minutes Recorder, on April 21, 2016.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at http://www.townhallstreams.com/locations/kittery-maine.