TOWN OF KITTERY, ME
PLANNING BOARD MEETING
Council Chambers

UNAPPROVED
July 14, 2016

Meeting called to order: 6:01 pm

Pledge of Allegiance

Roll Call:
Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Brett Costa, Dutch Dunkelberger, Debbie Driscoll-Davis, Mark Alesse
Board members absent: None
Staff present: Chris DiMatteo, Town Planner

Minutes:

Ms. Kalmar moved to approve the June 9, 2016 minutes. Ms. Driscoll-Davis seconded. Motion passed 7-0-0.

Mr. Alesse moved to approve the June 23, 2016 minutes. Ms. Kalmar seconded. Motion passed 7-0-0.

Public Comment: Chair Grinnell opened the floor for public comment. Rick commented he is glad to see full Board. He feels that town planner has treated him with disrespect and they have been blocked numerous times because they did not have every document in order. Chair closed public comments and responded the project has been complicated since the very beginning. Agenda items are always decided by both Chair and Town Planner.

ITEM 1 – Durgin Pines Nursing Home – Modification to an Approved Plan Review
Action: Accept or Deny plan application. Schedule a public hearing. Owner Kittery Commons, LLC and Applicant Durgin Pines requests approval for a 2nd plan modification to the 2008 approved amended site plan for Durgin Pines nursing home, located at 9 Lewis Road in the Mixed-Use zone.

Ryan Mattuchio stated he wants to add a gym to the property as well as 15 additional parking spaces. Mr. DiMatteo stated the findings of fact have been revised somewhat. Sprinklers will be added during framing. Ms. Kalmar said lighting will be added that is consistent with current lighting. Ms. Driscoll-Davis stated her mother is at Durgin Pines but she doesn't feel that is a conflict. Ms. Kalmar wants four trees mentioned on site plan.

Mr. Costa made a motion to grant preliminary and final approval for the major modification to the Durgin Pines Nursing Home Site Plan, dated June 17, 2016 for owner Kittery Commons LLC, located at 9 Lewis Road (Tax Map 61 Lot 27) in the Mixed-Use Zone upon the review and voting, in the affirmative on the Findings of Fact.
Ms. Kalmar seconded.

Ms. Driscoll-Davis requested capacity letter from water district that water supply was adequate. Mr. DiMatteo said they weren't adding any beds so he didn't think it was an issue. It was added as a condition of approval.

Motion passed 7-0-0.

KITTERY PLANNING BOARD

M61 L27

FINDINGS OF FACT
For Durgin Pines Modification to an Approved Site Plan

{As presented in the plan review notes dated 7/14/2016 and as amended by the Board}

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

WHEREAS: Owner Kittery Commons, LLC and applicant Durgin Pines requests approval for a modification to the previously approved 2008 site plan to include a 50' x 60' building addition, located at 9 Lewis Road (Tax Map 61, Lot 27) in the Mixed-Use Zone (MU). Agent is Ryan Mattuchio, Durgin Pines
Hereinafter the "Development,"

And pursuant to the Plan Review meetings conducted by the Planning Board as noted ;*{in the Plan Review Notes prepared for 7/14/2016}*

Preliminary Plan Application	Accepted	6/9/2016
Site Walk	Not Held	
Public Hearing	Held	7/14/2016
Preliminary / Final Plan Review	Granted	7/14/2016

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following;*{ as noted in the Plan Review Notes prepared for 7/14/2016}* (hereinafter the "Plan"):

1. Application May, 18. 2016
2. Site Plan June 17, 2016
3. Grading and Drainage Plan June 17, 2016
4. Utilities Plan June 17, 2016

(Plans above prepared by Tighe & Bond Engineers)

5. Photometrics and Lighting information from Swaney Lighting)

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 Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

A. Development Conforms to Local Ordinances.
The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
Findings: The Town's peer review engineer and Fire Chie have reviewed the proposed 4,815 square foot addition to the existing structure. The proposed development includes an increase of fifteen (15) parking spaces and one (1) tree. The proposed development appears to conform to the standards of Title 16. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
B. Freshwater Wetlands Identified.
All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.
Findings: Wetlands have been identified and shown on all applicable plans. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
C. River, Stream or Brook Identified.
Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.
Findings: No river, stream or brook is located within or abutting the development area Conclusions: Not applicable.
Vote of 7 in favor 0 against 0 abstaining
D. Water Supply Sufficient.
The proposed development has sufficient water available for the reasonably foreseeable needs of the development.
{and}
E. Municipal Water Supply Available.
The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.
Findings: The site is currently serviced by public water and the proposed development increase in demand is likely negligible. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
F. Sewage Disposal Adequate.
The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Findings: The site is currently serviced by public sewer and the proposed development does not incur a significant increase in demand, however, fee to the Sewer Department for additional fixtures is required.

Conclusions: The requirement appears to be met.

Vote of 7 in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available.

The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

Findings: The facility currently contracts for commercial solid waste pick up and the increase is likely negligible.

Conclusions: The requirement appears to be met.

Vote of 7 in favor 0 against 0 abstaining

H. Water Body Quality and Shoreline Protected.

Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Findings: The proposed development is outside required setbacks and does not adversely affect the adjacent wetlands and stream. An application for a permit by rule has been submitted to MDEP.

Conclusions: The requirement appears to be met.

Vote of 7 in favor 0 against 0 abstaining

I. Groundwater Protected.

The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Findings: The limited size and intensity of the proposed development is not likely to have an adverse effect on the groundwater.

Conclusions: The requirement appears to be met.

Vote of 7 in favor 0 against 0 abstaining

J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

Findings: The proposed development is not located within a flood area as identified on the FEMA FIRM map.

Conclusions: This requirement is not applicable.
Vote of 7 in favor 0 against 0 abstaining
K. Stormwater Managed.
The proposed development will provide for adequate stormwater management.
Findings: The Town's peer-review engineer has reviewed the proposed development and states the scale of proposed addition is small in comparison to the original facility construction. Tighe and Bond has provided justification for a waiver of the requirement for a detailed stormwater management plan addendum for the proposed addition. The waiver request is justified. All drainage from the new structure and its surroundings would flow to the northerly bioretention facility. The rationale is that the new impervious area (5,200 sf) is very small in comparison to the original drainage and impervious areas flowing to it. The addition is about 3%, which is well within the conservative design that was included in the original drainage/stormwater evaluation. Conclusions: the requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
L. Erosion Controlled.
The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
Findings: The site is stabilized both during and after construction using MDEP best management practices. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
M. Traffic Managed.
The proposed development will: *1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and* *2. Provide adequate traffic circulation, both on-site and off-site.*
Findings: The proposed development includes an increase of 15 parking spaces and the proposed development does not incur an increase to required off-street parking per 16.8.4 Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
N. Water and Air Pollution Minimized.
The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered: *1. Elevation of the land above sea level and its relation to the floodplains;* *2. Nature of soils and sub-soils and their ability to adequately support waste disposal;* *3. Slope of the land and its effect on effluents;* *4. Availability of streams for disposal of effluents;* *5. Applicable state and local health and water resource rules and regulations; and* *6. Safe transportation, disposal and storage of hazardous materials.*

Findings: The proposed development adheres to MDEP BMPs for erosion control that pertain to stormwater management. Hazardous materials do not pertain to the proposed development. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
O. Aesthetic, Cultural and Natural Values Protected.
The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
Findings: The site has been developed since 2008 and there is no indication that there are aesthetic, cultural or natural resources that will be impacted by the development. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining
P. Developer Financially and Technically Capable.
Developer is financially and technically capable to meet the standards of this section.
Findings: The developer was involved in the original much larger and complex development through its completion and is likely to have the capability to execute the proposed development. Conclusions: The requirement appears to be met.
Vote of 7 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines that 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.

Waivers:

1. 16.10.5.2.C.6 Erosion and Sedimentation Control Plan Reviewed by York County Soil and Water Conservation District or Town's Engineering Consultant
2. 16.10.5.2.C.7 Stormwater management preliminary plan
3. 16.10.7.2.R. Stormwater management {final} plan

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. The proposed building addition must include a full NFPA 13 fire suppression system.
4. This approval does not supersede any previous planning board conditions of approval

5. Supply a capacity letter from the water district.
6. All Notices to Applicant contained in the Findings of Fact (dated: July 14, 2016).

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

7. 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.

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. 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. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
5. 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 or Vice Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 7 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON July 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 2 – 17 Island Ave – Shoreland Development Plan Review

Action: Hold a public hearing; Approve or deny plan. Owner/Applicant Shelley Wieler requests consideration of plans to demolish and reconstruct, in an expanded footprint, an existing single-family dwelling, located within the 100-foot setback from a protected water body. The site is located at 17 Island Ave in the Residential-Urban and Shoreland Overlay Zones. Agent is Doug Greene, Port City Design.

The Board has met on June 9; a site walk has been conducted. This is final review and decision. Doug Greene stated this is existing lot with nonconforming buildings. There are two existing structures, both residential. Any deck expansion will go no closer than the existing property. Mr. Greene noted this is in the commercial fisheries overlay zone and it was confirmed cabin was inhabited until 2014. Lot coverage should remain the same. The existing asphalt walkway will be removed so coverage does not increase. The volume of the new structure has increased beyond what is allowed. Chair clarified the applicant is only Shelley. Mr. Greene said the footprint increase is 17% and volume calculation is 47% because going from 4 pitch to 10 pitch roof. Chair noted that volume can only increase 30% regardless of footprint increase. Mr. Harris noted pitch isn't for living space so higher volume is not a big deal. Mr. Greene noted steep roofs shed ice and snow better. Mr. Costa asked how measurement is done and his concern is the knee wall. Mr. Costa said there is no knee wall. Chair noted volume is the space inside the structure, according to the regulations.

Mr. Dunkelberger asked about deck, extending three feet into the 15-foot buffer. Mr. Greene explained ordinance allows deck to go into setback.

Ms. Driscoll-Davis asked if possible to lower roof because volume is not a bendable rule. Mr. Alesse noted lower roof line is unattractive and higher pitched roof is more New England style. Mr. DiMatteo noted the State is looking at possibility of measuring floor area only but that is a future change. Mr. Harris asked if possible to create variance. Town planner said there is a conflict in Code with town but harsher rule takes effect. Bret asked if anything would go to Board of Appeals.

Chair takes consensus vote on volume issue. 6-1-0 with Mr. Harris voting no.
Mr. Dunkelberger commented that they should be creative in modifying their roof.

Ms. Driscoll-Davis asked about windows facing driveway. Ms. Kalmar asked about the arborvitae and trees being replanted. Chair notes tree will not survive because the building is within the canopy of oak tree; moving the arborvitae interferes with roots of oak tree. Mr. DiMatteo read notes from ordinance 16.9.2.2 clearing or removal of vegetation (page 255). However, this does not apply to commercial fisheries maritime activities zone. Chair says they can take tree down and plant another tree.

Mr. Alesse made a motion to approve with conditions the Shoreland Development Plan dated June 29, 2016 from owner and applicant Shelley Wieler for 17 Island Ave in the Residential-Rural and Shoreland Overlay Zones, upon the review and voting, in the affirmative, on the Findings of Fact. Ms. Driscoll-Davis seconded.
Motion passed 6-0-1, with Mr. Harris abstaining.

Kittery Planning Board

APPROVED
M1 L8

Findings of Fact
For 17 Island Ave
Shoreland Development Plan Review

WHEREAS: Shelley Wieler requests consideration of plans to demolish and expand an existing single-family dwelling, located within the 100-foot setback from a protected water body. The site is located at 17 Island Ave (Tax Map 1 Lot 8) in the Residential-Urban (R-U) and Shoreland Overlay (SH-OZ-250') Zones, hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 7/14/2016}

Shoreland Development Plan Review	6/9/2016	HELD
Site Walk	7/7/2016	HELD
Public Hearing	7/14/2016	HELD
Shoreland Development Plan Approval	7/14/2016	GRANTED

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"): {as noted in the plan review notes prepared for 7/14/2016}

1. Shoreland Development Plan Application, received 5/19/2016
2. Shoreland Development Plan, Port City Design, dated 5/19/2016
3. Standard Boundary Survey, Great Hill Survey Company, dated 7/15/1999
4. Shoreland Development Plan, Port City Design, revised 6/29/2016, received 7/5/2016
5. Standard Boundary Survey, North Easterly Surveying, dated 7/7/2016

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

FINDINGS OF FACT

Chapter 16.3 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 existing devegetated area is 29%. The proposed development does not increase the lot's devegetated area by revegetating existing devegetated areas, as depicted on the final plan.

Conclusion: The requirement appears to be met.

Vote: _7__ 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 encroach on any front or side yard set backs, nor does it increase the encroachment in the 100-foot setback greater than currently exists. The applicant will revegetate a portion of the asphalt path and/or ramp, in order to avoid an increase to the lot's devegetated area. The proposed development does not increase the nonconformity of any structure or aspect of the lot.

Conclusion: The requirement appears to be met.

Vote: _7__ in favor __0_ against __0_ abstaining

16.7.3.5.6 Nonconforming structure reconstruction

A. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage destruction or removal, may be reconstructed or replaced provided that a permit is obtained with in 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board.

Finding: The proposed reconstruction does not comply with mandatory waterbody setback requirements, however, there is not a location on the property that would encroach less on the required 100-foot or front/side yard setbacks.

Conclusion: The requirement appears to be met.

Vote: _7__ 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 proposed development is the first expansion for this structure, therefore, the existing dimensions are equivalent to the recorded dimensions for January 1, 1989.

a. The existing floor area is 559 square feet. The proposed floor area is 703 square feet. This is an increase of 25.8% and conforms to this standard.
b. Per condition of approval, the plan will be revised to show a volume increase of no more than 30%.

Conclusion: This requirement appears to be met.

Vote: _7__ 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: _7__ 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 to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: _7__ in favor __0_ against __0_ abstaining

3. Adequately provide for the disposal of all wastewater;

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

Conclusion: This requirement appears to be met.
Vote: 7 in favor 0 against 0 abstaining
4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; Finding: The proposed development does not appear to have an adverse impact. Conclusion: This requirement appears to be met.
Vote: 7 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: 7 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: 7 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 proposed development does not adversely impact existing commercial fishing or maritime activities. Conclusion: This requirement appears to be met.
Vote: 7 in favor 0 against 0 abstaining
8. Avoid problems associated with floodplain development and use; Finding: The property is designated Zone C by FEMA Flood Zone standards and is defined as an area of minimal flood hazard. The proposed development does not appear to have an impact on a floodplain or flood-prone area. Conclusion: This requirement appears to be met.
Vote: 7 in favor 0 against 0 abstaining
9. Is in conformance with the provisions of this code; Finding: The proposed development complies with the applicable standards of Title 16, with

the exception of 16.7.3.6.1.A. The proposed volume increase must be less than 30% Conclusion: With consideration of condition of approval #5, this requirement appears to be met.
Vote: __6_ in favor _1__ against _0__ abstaining **Mr. Harris opposing**
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: _7__ 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. With the exception of the 2 arborvitae trees located adjacent to the existing building, 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. The applicant will replace the arborvitae with native species.
4. All Notices to Applicant contained herein (Findings of Fact dated 7/14/2016).

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.
6. Applicant will provide proof to staff that the property has been inhabited in the last 5 years.

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

Vote of _6__ in favor_0__ against _1___ abstaining
Mr. Harris abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON July 14, 2016

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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

ITEM 3 – 43 Thaxter Lane – Shoreland Development Plan Review

Action: Hold a Public Hearing; 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 in the Residential – Rural Conservation and Shoreland Overlay and Resource Protection Zones. Agent is Thomas Harmon, Civil Consultants.

Mr. Harmon is proposing to construct single family dwelling. Boundary survey and site walk were completed. The buildings size have been reduced. Question at site walk about access to site. House is setback beyond limit of clearing. Well is close to roadway so there is proper access without additional clearing. Clearing will need to be done to clear line from well to house but it will be replanted. Contour intervals show there are areas where there is no 20% slope. Chair asked about devegetation to get leach field. Power is to come down roadway to pole and then into house underground. Ann Whitney, architect for the project, talked about adding two power poles. There are no problems with easement or access. Right of ways for utilities are granted in general. Flood zone has been added to plan.

The Chair opened the public hearing. Dean Richerson, Kittery Point, expressed support of proposal. Earl Dean asked about wetland updates. Recertification of wetlands has not been done but it can be a condition of approval. Ms. Driscoll-Davis asked about installation of essential services and special exception grant. Ms.

Kalmar said special exception was properly granted. The Chair asked if anybody in the audience was from abutter's property; they were notified by postcard.

Chair closed public hearing.

Mr. Dunkelberger made a motion to approve with conditions the Shoreland Development Plan application dated March 24, 2016 from William Kules for 43 Thaxter Lane in the Residential Rural Conservation, Shoreland Overlay and Resource Protection Zones, upon the review and voting, in the affirmative, on the Findings of Fact. Seconded by Mr. Alesse.

Slope issue is not 20% across the site so applicant will have to move structure. Any particular spot needs to be 20%. Mr. Harmon pointed out the topographic survey done by the builder to determine slope using one-foot contours but no slope issues if using five-foot contours. The Code does not specify contour intervals.

Consensus vote – Does the Board believe building can be built on site shown on map? Does it meet Code? 6-1-0 with Ms. Driscoll-Davis voting no.

Motion passes 7-0-0.

Kittery Planning Board

APPROVED
M64 L11A

Findings of Fact
For 43 Thaxter Lane
Shoreland Development Plan Review

WHEREAS: 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) Shoreland Overlay (OZ-SH-250') and Resource Protections (OZ-RP) Zones, hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 7/14/2016}

Shoreland Development Plan Review	4/14/2016,
Site Walk	4/28/2016
Public Hearing	7/14/2016
Review and Approval	4/14/2016, 7/14/2016

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"): {as noted in the plan review notes prepared for 7/14/2016}

1. Shoreland Development Plan Application, received 3/24/2016
2. Shoreland Development Plan, Civil Consultants dated 3/23/2016
3. Subsurface Wastewater Disposal System Application, dated 2/12/2008
4. Warranty Deed, received 3/24/2016

5. Zoning Board of Appeals Minutes, dated 5/22/2007
6. Roofline Drip Edge Filter Detail, Civil Consultants, dated 3/23/2016
7. Floor and Building plans, Anne Whitney Architect, dated 3/17/2016
8. Aerial Photo, Civil Consultants, dated 3/23/2016

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

FINDINGS OF FACT

Chapter 16.3 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 includes a devegetated area of 9.95% of the lot.

Conclusion: The requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

Chapter 16.6 DECISION APPEAL, VARIANCE AND OTHER REQUESTS

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above and 16.6.5.6 Special Exception Referral] **must use the following criteria as the basis of a decision:**

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

The Board must also give consideration to the factors listed in 16.6.6.2. (attached)

Conclusion: The requirement appears to be met.

Vote: 7 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 lot does not meet the minimum lot size, or minimum land area per dwelling unit for the Residential – Rural Conservation zone. The lot is a legal nonconforming lot of record, and is therefore permits a dwelling unit provided all other space and dimensional standards are met for the property. The development does not create or increase any nonconformity on the lot.

Conclusion: The requirement appears to be met.

Vote: _7__ in favor __0_ against _0__ abstaining

345
346 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS –BUILT ENV.**
347 **Article XXVIII Single and Duplex Family Dwellings**

16.8.28.1 Single and Duplex Family Dwellings in the RP and SL Overlay Zones

In addition to the criteria specified in Section 16.6.6 and 16.10.8.3.4, applicable to the granting of a special exception use request, the Planning Board may approve an application for a single or duplex family dwelling special exception use request, where applicable, provided the applicant demonstrates all of the following conditions are met:

A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where a single family dwelling can be built, or similarly for a duplex in the Shoreland Overlay zone.

B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

C. All proposed buildings, sewage disposal systems, other than municipal sewer, and other improvements are located:

1. on natural ground slopes of less than 20%,

2. outside the floodway of the 100-year flood-plain along rivers, and

3. outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.

D. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-

plain soils

E. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be ½ the width of the 100-year flood-plain.
F. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of fifteen hundred (1,500) square feet. This limitation may not be altered by variance.

G. All structures, except functionally water-dependent structures, are set back from the normal high water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than seventy five (75) feet, horizontal distance. In determining the greatest practical extent, the Planning Board must consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to the wetlands.

Finding: The location of the floodplain is located at a considerable distance away from the proposed building site making items C-2, C-3, D and E not applicable. As to the other items: A, the entire lot is within the RP Overlay Zone; B, the property is a legally nonconforming lot of record from 1965; C-1, The Board concluded the total building footprint did not exceed the 20% slope; F, The ground floor area must include the roof eaves ("cantilevered or similar extensions") and the shed area. It is not clear if the current design is conforming to the maximum 1,500 s.f. of ground floor area allowed; G, The proposed building and associated development appears to be as far from the protected resource as possible while still observing the side, rear and front yard setbacks.

Conclusion: The requirement appears to be met with conditions #9.

Vote: _6__ in favor __0_ against _1__ abstaining
Ms. Driscoll-Davis 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: With the proposed development set back to the greatest practical extent from the protected resource as represented in the plans and application it does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: _7__ 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: _7__ in favor __0_ against _0__ abstaining
3. Adequately provide for the disposal of all wastewater; Finding: The development includes the 1,000 gallon low profile tank and leach field. A septic application has been submitted with the application. Conclusion: This requirement appears to be met.
Vote: _7__ 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: _7__ 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: With the proposed development set back to the greatest practical extent from the protected resource as represented in the plans and application it does not appear to have an adverse impact on shore cover. Conclusion: This requirement appears to be met.
Vote: _7__ in favor __0_ against _0__ abstaining
6. Protect archaeological and historic resources; Finding: There does not appears to be any resources impacted, however this has not been addressed or confirmed by the applicant. Conclusion: This requirement appears to be met with condition of approval #6.
Vote: _7__ 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: _7__ in favor __0_ against _0__ abstaining
8. Avoid problems associated with floodplain development and use; Finding: A flood zone is located approximately more than 100 feet from the proposed development and the proposed building approximately 20 feet higher in elevation. No structures or other development is proposed in the flood zone. Conclusion: This requirement appears to be met.
Vote: _7__ in favor __0_ against _0__ abstaining
9. Is in conformance with the provisions of this code; Finding: The proposed development complies with the applicable standards of Title 16, with the exception of what has been highlighted in this draft findings of fact. Conclusion: This requirement appears to be met.
Vote: _7__ in favor __0_ against _0__ abstaining
10. Be recorded with the York county Registry of Deeds. Finding: 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: _7__ 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 of Owner/applicant William Kules 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. 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 and approved area of disturbance. 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. No trees, other than what lies within the approved area of disturbance shown on the plan, 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.
5. Trees removed for the access to the proposed well must be replaced using the criteria outlined in 16.7.3.5.4.C.1
7. Prior to any earthwork and tree removal Applicant must confirm with the Maine Historic Preservation Commission that there are no archeological or historic resources that may be impacted by the development.
8. All Notices to Applicant contained herein (Findings of Fact dated 7/14/2016).

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

9. 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.
10. Prior to final plan mylar is signed the Applicant must demonstrate the proposed ground floor area includes the roof eaves ("cantilevered or similar extensions") and the shed area and the total area does not exceed the allowed 1,500 s.f. of ground floor area in the Resource Protection Overlay Zone. Information to be depicted on the plan.

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

Vote of ___ in favor___ against ___ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON July 14, 2016

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final mylar.

2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.

3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.

4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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

OLD BUSINESS

ITEM 4 – 2 Follett Road – Shoreland Development Plan Review

Action: Accept or Deny application. Approve or Deny Plan. Owner /Applicant Don and Merry Craig request consideration to expand a single-family dwelling within the 100-foot setback from a protected water body located at 2 Follett Road in the Residential-Kittery Point Village and Shoreland Overlay Zones. Agent is Deane Rykerson, Rykerson Architecture.

Mr. Rykerson noted a different structure was there in 1989 that had more volume than present structure. The present expansion is for less than 30%. Ms. Kalmar noted the application was complete.

Mr. Dunkelberger moves to accept the Shoreland Development Plan application dated June 23, 2016 from Don and Merry Craig for 2 Follet Lane in the Residential-Kittery Point Village and Shoreland Overlay Zones and Moves to approve with conditions the Shoreland Development Plan application dated May 19, 2016 from Don and Merry Craig for 2 Follett Lane in the Residential-Kittery Point Village and Shoreland Overlay Zones, upon the review and voting, in the affirmative, on the Findings of Fact.
Ms. Kalmar seconded.
Board voted 7-0-0.

Kittery Planning Board

APPROVED
M18 L36

Findings of Fact
For 2 Follett Lane
Shoreland Development Plan Review

WHEREAS: Don and Merry Craig request to expand a single-family dwelling located within the 100-foot setback from a protected water body. The site is located at 2 Follett Lane (Tax Map 18 Lot 36) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (SH-OZ-250') Zones, hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 7/14/2016}

Shoreland Development Plan Review	6/9/2016 & 7/14/2016
Approval	7/14/2016

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"): {as noted in the plan review notes prepared for 7/14/2016}

1. Shoreland Development Plan Application, received 5/19/2016; revised 6/23/2016
2. Square foot and volume calculations, Rykerson Architecture, received 6/23/2016
3. Existing conditions, Rykerson Architecture, received 6/23/2016
4. Craig Residence Architecture plan set, William Ross Design, dated 9/6/1994, received 5/19/2016

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

FINDINGS OF FACT

Chapter 16.3 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 lot's devegetated area. Conclusion: The requirement is not applicable.
Vote: _7__ 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 is a vertical expansion on the existing structure that is within the allowable expansion in volume, less than 30%. The proposed development is in conformance with zone standards and does not increase nonconformity of any structure or aspect of the lot.

Conclusion: The requirement appears to be met.

Vote: _7__ 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 1989 floor area and volume is 7,272 square feet and 60,816 cubic feet, respectively. The existing floor area is 6,934 square feet. No additional floor area is proposed. The proposed volume is 53,216 cubic feet, a decrease of 12.5%.

Conclusion: This requirement appears to be met.

	Vote: _7__ 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: _7__ 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 to avoid impact on adjacent surface waters. Conclusion: This requirement appears to be met
Vote: _7__ 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: _7__ in favor __0_ against _0__ abstaining
4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; Finding: The proposed development does not appear to have an adverse impact. Conclusion: This standard appears to be met.
Vote: _7__ 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: _7__ 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: _7__ 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: _7__ in favor __0_ against _0__ abstaining
8. Avoid problems associated with floodplain development and use; Finding: The location of the proposed development is designated Zone C by FEMA Flood Zone standards and is defined as an area of minimal flood hazard. The proposed development does not appear to have an impact on a floodplain or flood-prone area. Conclusion: This requirement appears to be met.
Vote: _7__ in favor __0_ against _0__ abstaining
9. Is in conformance with the provisions of this code; Finding: The proposed development complies with the applicable standards of Title 16, including Chapter 7, Article III Nonconformance. Conclusion: This requirement appears to be met.
Vote: _7__ 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: _7__ 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 7/14/2016).

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, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: _7__ in favor __0_ against _0__ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON July 14, 2016

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning

Department.

4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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

ITEM 5 – 32 Seapoint Road – Shoreland Development Plan Review – Ken Markley
Action: Accept or deny plan application; approve or deny plan. Owner / applicant Pop Held, Inc. requests consideration of plans to remove a screened porch and expand an existing kitchen located within the setback from a tidal wetland, and modify their previously approved plan, located at 32 Seapoint Road in the Residential-Rural Conservation and Shoreland Overlay Zones. Agent is Ken Markley, North Easterly Surveying.

Applicant wants to tear off the porch and add a landing outside the door. Their kitchen will expand by four feet.

Ms. Kalmar made a motion to accept the Shoreland Development application dated 6/22/2016 from Pop Held Inc for 32 Seapoint Road in the Residential-Rural Conversation and Shoreland Overlay Zone. Ms. Kalmar moved to grant approval with conditions for the Shoreland Development Application dated 6/22/2016 from Pop Held Inc for 32 Seapoint Road in the Residential-Rural Conservation and Shoreland Overlay Zones upon the review and voting, in the affirmative upon findings of fact.
Mr. Alesse seconded.
Motion passed 7-0-0.

Kittery Planning Board

APPROVED
M64 L27

Findings of Fact
For 32 Seapoint Road
Shoreland Development Plan Review

WHEREAS: Pop held, Inc requests approval of their Shoreland Development Plan to remove a screened porch and expand an existing kitchen located at 32 Seapoint Road (Tax Map 64 Lot 27) in the Residential-Rural Conservation (R-RLC) and Shoreland Overlay (SH-OZ-250') Zones, hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 7/14/2016}

Shoreland Development Plan Review	7/14/2016	Held

Shoreland Development Plan Approval	7/14/2016	Granted

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"): {as noted in the plan review notes prepared for 7/14/2016}

1. Shoreland Development Plan Application, received 6/23/2016.
2. Shoreland Development Plan, North Easterly Surveying, dated 6/22/2016
3. Shoreland Development Plan, North Easterly Surveying, revised 1/19/2016

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

FINDINGS OF FACT

Chapter 16.3 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 existing devegetated area is 15.2%. The proposed development does not increase devegetated area.

Conclusion: The requirement appears to be met.

Vote: _7__ 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

16.7.3.5 Types of Nonconformance
16.7.3.5.5 Nonconforming Structure Repair and/or Expansion
A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

Finding: The existing structure is set back 35.6' from the road and does not meet the 40-foot front yard setback required in the R-RLC zone. The proposed development, however, results in a setback of 36', 0.4' greater than existing, and therefore does not increase nonconformance.

The existing structure does not meet the 20' side setback standard on the northerly edge of the lot. The proposed development does not result in a further encroachment and therefore does not increase nonconformance.

The Residential – Rural Conservation zone has a 6% maximum building coverage standard. The applicant was granted a hardship variance by the Board of Appeals on December 8, 2015 to increase the maximum building coverage standard to 6.3%. In order to maintain a 6.3% building coverage, the applicant proposes to remove a screened-in porch to off-set the expanded kitchen. The proposed development does not increase the building coverage

Conclusion: The requirement appears to be met.

Vote: _7__ 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 majority of the existing structure is located within the 100-foot setback from the upland edge of the tidal wetland where volume and area calculations are required. Development on structures located within the required setback from a protected resource is subject to a lifetime limit of no more than thirty percent (30%) increase in volume and floor area after January 1, 1989. The proposed development does not exceed these limits and results in an amended increase of 24.9% and 10.5% for volume and floor area, respectively.

Conclusion: This requirement appears to be met.

Vote: _7__ 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 does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: _7__ 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 to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: _7__ 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 appears to be met.

Vote: _7__ 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 to avoid impact on adjacent surface waters.

Conclusion: The proposed development does not appear to have an adverse impact. With conditions #2 and #3, this standard appears to be met.

Vote: _7__ 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: _7__ in favor __0_ against _0__ abstaining

6. Protect archaeological and historic resources;

Finding: There does not appears to be any resources impacted.

Conclusion: This requirement appears to be met.

Vote: _7__ 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 proposed development is not in the commercial fisheries/maritime use zone.

Conclusion: This requirement is not applicable.

Vote: _7__ in favor __0_ against _0__ abstaining

8. Avoid problems associated with floodplain development and use;

Finding: The proposed development is not located within a flood zone

Conclusion: This requirement appears to be met.

Vote: _7__ in favor __0_ against _0__ abstaining

9. Is in conformance with the provisions of this code;

Finding: The proposed development conforms to Title 16 with the exception of building coverage. The Residential – Rural Conservation zone has a 6% maximum building coverage

standard. The existing building coverage is 6.3%. The applicant was granted a hardship variance through the Kittery Board of Appeals to increase the maximum building coverage standard from 6% to 6.3% at the December 8, 2015 meeting. The proposed development may not exceed a building coverage of 6.3%. Conclusion: This requirement appears to be met.
Vote: _7__ in favor __0_ against _0__ abstaining
10. Be recorded with the York county Registry of Deeds. Finding: 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: _7__ 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 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. 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. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 7/14/2016).

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

6. 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, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: _7__ in favor __0_ against _0__ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____July 14, 2016____

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. 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 of final mylar.

2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.

3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.

4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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

ITEM 6 – 450 US Route 1 – Sketch Plan Review

Action: Accept or deny application; Approve or deny sketch plan. Owner / Applicant Boston Pie, Inc. requests consideration to develop a two-unit commercial building on a 19.58 vacant lot located at 450 U.S. Route 1 in the Mixed Use Zone. Agent is Paul Avery, Oak Consulting Group LLC.

Paul Avery wants to create single commercial building for Dominos and coffee shop with tenant yet to be determined. Initial meeting discussed recertification of wetlands, which had gone back to 2007. Wetlands lines have moved out so they may increase parking. Entry and exit points are to be determined. Ms. Driscoll-Davis asked about landscaping on Route 1 but that has not been determined yet. Dominos will have eat-in service for 30-40 people. Right now, this is the only building planned for this property.

Mr. Dunkelberger moved to accept he sketch plan application dated June 21, 2016 from owner/applicant Boston Pic, Inc for 450 US Route 1 in the Mixed Use Zone. Ms. Driscoll-Davis seconded.

Motion passed 7-0-0.

Ms. Kalmar moved to approve the sketch plan application dated June 21, 2016 from owner/applicant Boston Pie, Inc. for 450 US Route 1 in the Mixed Use Zone. Mr. Dinkelburger seconded.

Motion passed 7-0-0.

Item 7 – 91 Route 236 – Major Modification to an Approved Plan – Completeness Review
Action: Accept or Deny plan application; Schedule a public hearing. Owner, Synergy Storage Structures, LLC and applicant, Camall LLC requests approval for a plan modification to the 2014 approved plans to construct a single, 25,200 square foot building containing a self-storage business office and storage area located at 91 Route 236 in the Commercial Zone. Agent is Ken Wood, Attar Engineering.

Ms. Kalmar moved to accept the plan application for owner Synergy Storage Structures LLC and applicant Camall LLC located at 91 Route 236 in the Commercial 2 Zone. Mr. Dinkelberger seconded.

Motion passed 7-0-0.

Mr. Dinkelberger moved to schedule a public hearing for owner Synergy Storage Structures, LLC and applicant Camall, LLC located at 91 Route 236 in the Commercial 2 Zone. Mr. Kalmar seconded.

Motion passed 7-0-0.

Item 8 – Town Planner Items

Mr. DiMatteo has two requests for extensions.
Mr. Dunkelberger moved to grant one-year extension to the approval date for the proposed Hampton Inn applicant. Seconded by Mr. Costa. Motion passed 7-0-0.

Move to grant second 90-day extension of sketch plan review date of approval for Betty Welch Subdivision. Seconded by Mr. Costa. Motion passed 7-0-0.

Motion to adjourn – 8:39

Submitted by Jennifer Scrafford, Minutes Recorder, on August 9, 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.