

**TOWN OF KITTERY
PLANNING BOARD MEETING
Council Chambers**

APPROVED
Thursday, July 23, 2009

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

Members Present: Russell White, Michael Luekens, Ernest Evancic, Joseph Carleton
Members absent: D. Scott Mangiafico, Douglas Muir, George Burke
Staff: Sandra Mowery, Town Planner

Minutes: Planning Board Meeting, July 9, 2009

Mr. Luekens moved to accept the minutes as amended

Mr. Evancic seconded

Motion carries unanimously

PLANNERS TIME:

1. Village Green Drive, off US Route 1 – Request to remove the island and replace with a pavement patch because snowplows have torn it up and ruined the landscaping. Remaining plants will be replanted on the property and the area will be cleaned up. There are no safety or traffic concerns, as the island was for decorative purposes only. The Town Planner asked if administrative review and approval can be given. Board members agreed that the Planner can approve the request administratively.
2. Badger's Island walking paths – Paths are not clearly defined and pedestrians are walking across lawns instead of along the pathways. Board members discussed the original plans for the walking paths, easement language on the original plan approval, and suggested that homeowners wishing to allow walking paths on their property clearly define the path areas and use no trespassing signage where needed. While there are other easements in legal existence, the purported easement that the landowner was concerned about is not in legal existence because it is conditioned upon similar easements being established over abutting properties.
3. Ordinance review committee – A Council sub-committee to study Planning Board ordinance recommendations prior to full review will be established by Council.

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Amendment to Title 16 Land Use and Development Code - *Public Hearing (continued)* - The mandatory Shoreland Zoning Act (Act), 38 M.R.S.A. Section 435-449 and the guidelines for the Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines set forth in the Act and by the Board. This amendment to Title 16 incorporates the most current State shoreland zoning ordinances into the Kittery Ordinance. The Town administration, endeavoring to incorporate State recommendations for the Shoreland Zoning ordinance proposes the following:

Amendment to Chapter 16.04 – General;
Amendment to Section 16.08.20 – Definitions;
Amendment to Chapter 16.16 – Administration and Enforcement;
Amendment to Chapter 16.24 – Special Exceptions and Variances;
Amendment to Chapter 16.28 – General Development Requirements;
Delete Section 16.32.490 – Shoreland Zoning; and
Add Chapter 16.34 – Shoreland Zoning.

The Town Planner summarized changes to version 7 as requested at the July 9, 2009 meeting, and provided Board members with a copy of changes requested by Councilor Dennett.

Mr. Carleton moved to send version 8 of the Amendment to Title 16, Shoreland Zoning Act, as amended by comments provided by Councilor Dennett, to the Council for review, with a recommendation for approval.

Mr. Luekens seconded

Motion carries unanimously

Break

ITEM 2 – An Amendment to Title 16 Land Use and Development Code – Accessory Dwelling Units (ADU). Workshop: This amendment proposes to delete the accessory dwelling unit definition in Section 16.08.020 and add a new Article for accessory dwelling units. Accessory dwelling units are an important form of housing that contributes to the character and diversity of housing opportunities. The intent is to provide more affordable housing at below average market rental rates within existing neighborhoods, to protect the character of the neighborhoods, and to respond to the Comprehensive Plan in regards to diversity in housing, as well as affordable housing.

There was general discussion regarding the ADU ordinance as passed by voter referendum. There have been few inquiries for accessory dwelling units to date. **Chairman White** stated that the existing ordinance is unenforceable. **Mr. Carleton** stated that if an individual came in today asking for an accessory dwelling unit, the request cannot be denied. The impact on zoning density cannot be underestimated. **Chairman White** agreed and further asked, what is the potential build-out if this ordinance is applied to every lot in town? What is the effect of this ordinance on municipal services, schools, roads, population density, etc. Why doesn't the Council have this information before asking that this ordinance be developed? These are policy questions that we cannot answer. **Earldean Wells** voiced concern about the impact of this ordinance on stormwater runoff with new construction. **Mr. Evancic** stated that an ADU may well require an upgrade of a septic system, and the cost may be prohibitive, resulting in an illegal ADU and possible system failure. **Mr. Carleton** noted that, though the Town's attorney recommended "... that you take no action on requests for building permits for ADU's until such time as the Town Council adopts the necessary Ordinance amendments relative to the issuance of ADU building permits", that if an individual pushed it, they would probably receive a permit because the ordinance allows ADUs. The ordinance as written does allow the town to limit the number of units to 10 per year.

Rosemary Charlesworth noted that some people who are empty nesters would like to use existing homes to develop income producing units in their homes to help offset property taxes and keep their homes. New permits may not affect the population density, but merely replace former occupants. **Mr. Carleton** noted that the difference between former family members and ADUs, is that the ADU is physically separated, creating two entirely different living units with their own kitchens, entrances, parking, etc. **Mr. Evancic** noted that new kitchens and baths, again, impact the septic system if not connected to public sewer. **Mr. Carleton** stated that his initial reaction is to repeal this ordinance. This ordinance has an enormous potential impact on the community and would prefer to start over with something less sweeping. Perhaps the ordinance should limit the building of new structures on lots, allowing only ADUs within existing structures. **Mr. Luekens** commented that increases in parking, sewer and traffic will still impact a neighborhood. Members discussed temporary, workforce and affordable housing. **Mr. Luekens** suggested that a recommendation to repeal the existing ordinance be sent to Council. **Mr. Carleton** agreed, but feels the Council wants the Board's opinion and suggested they wait until they have full Board representation. **Chairman White** requested that this item be included as a joint Planning Board and Council workshop item, first on the agenda, for 45 minutes, at the August 27, 2009 meeting. The **Town Planner** will provide the information to the Town Manager for Council invitation.

Mike Asciola, presented the first draft of the new Official Shoreland Zoning map for review and comment, clearly identifying the new shoreland zones and noting the corrected setback areas in the

General Development zone and Residential zones. Board members were particularly concerned with the commercial fishery areas. Research of existing uses within the shoreland has been performed by staff to more particularly define the new General Development zone. Mike will continue work on the map so that Council may complete review of the map simultaneous to its review of the amendment to the shoreland zoning ordinance. Staff will provide copies of the prepared maps on discs and include in the PB packets.

ITEM 3 – An Amendment to Title 16 Land Use and Development Code – *Workshop* – This amendment proposes to add a new section to Title 16 that would provide standards for the conversion of singularly owned properties to properties owned in common.

A Memo to the Planning Board on Condominium Conversion was created by Mr. Carleton and provided to the Board for review. **Mike Asciola** stated that the Assessor requested this ordinance because property owners were not notifying him when conversions occurred or lots were split, and this ordinance would require plans be submitted, allowing assessment of the property before conversion occurs. **Mr. Carleton** stated that the assessor should receive copies of deeds and transfer tax statements that indicate when a property is converted. The assessor can tell by the deed if a property has been divided and if the assessor's maps need to be changed. Reasons to enact condominium conversion ordinances include the protection of housing stock for renters who cannot afford to purchase a converted rental unit, monitoring of seasonal units in specific communities (as in Kennebunkport and Ogunquit), and the protection of purchasers from substandard units, for example. Illegal lot splits to create condominiums is a zoning or code enforcement issue. **Chairman White** stated a workshop with the Assessor is warranted if the Board continues to consider this ordinance. Board members discussed aspects of the Maine Condominium Act and whether another ordinance is warranted in Kittery.

In preparation of the departure of the Town Planner, Board members asked what ordinances remain to be reviewed and finalized. The Town Planner suggested that the following be prioritized:

1. Shoreland map
2. Road standards
3. Floodplain ordinance, State mandated
4. ADU

The Town Planner will provide a list of projects and their status for the Board.

Mr. Luekens motioned to adjourn

Mr. Carleton seconded

Motion carries unanimously

The Planning Board meeting of July 23, 2009 adjourned at 8:20 pm

Submitted by Jan Fisk, Recorder - July 27, 2009.