

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

APPROVED
Thursday, September 10, 2009

Meeting called to order at 6:20 p.m.

Members Present: Russell White, D. Scott Mangiafico, Joseph Carleton, George Burke and Ernest Evancic

Members absent: Michael Luekens, Doug Muir

Staff: Gerry Mylroie, Interim Town Planner

Planning Board, August 27, 2009 Minutes:

Mr. Mangiafico motioned to accept the minutes as amended

Mr. Evancic seconded

Motion carries, 4 in favor, 1 abstention (Carleton), 0 opposed

PUBLIC COMMENT – There was no public comment.

ITEM 1 – Sluiceway Condominiums - Minor Subdivision – Preliminary Review (continued) – Tudor and James Austin, Owners, propose a four (4) unit condominium development on a 6.25 acre parcel located at 37 Pepperrell Road, situated on Map 18 Lot 22 in the Kittery Point Village (**KPV**) Zoning District. The owner's agent is Thomas Harmon with Civil Consultants.

Mr. Carleton recused himself from this item due to a conflict.

Mr. Mylroie discussed the following issues that remain to be resolved:

1. As stated by the Town Attorney in a 9/2/09 memo, this request for review as a condominium subdivision can be considered, providing the Board complies with all provisions of the Maine Condominium Act and Kittery's subdivision standards, including:
 - a. Definition of the unit as the building envelope, including horizontal and vertical dimensions, as may be limited by Town code.
 - b. Definition/delineation of limited common areas;
 - c. Definition/delineation of common areas;
 - d. Delineation of screening area and maintenance;
 - e. Delineation of shoreland setback areas and use.
2. How many units will the Board consider for approval? The plan shows 4 units with a reserve for a fifth, but with no indication of the location of the fifth unit.
3. Completed Declaration of Covenants and Restrictions.

These decisions by the Board will allow the applicant to move forward toward the next stage of review.

Mr. White reminded the Board that the front yard vs. side yard setback issue along the Tredwell property has not been resolved. **Mr. Mylroie** explained that there are three possible scenarios: 40 feet, as a front yard setback; 20 feet as a buffer/landscape strip; or to treat the area as open space in a landscape plan.

Mr. Mangiafico stated that he was not convinced this should be considered a front yard setback and the opinion from the CEO is still needed, regarding determination of a front yard setback. Because the applicant has no access to Sparhawk Lane, a front yard setback should not be required. **Mr. White** stated that receiving the attorney's opinion on the covenants and restrictions will help resolve many of the questions before the Board. He is not in favor of providing approval for an unknown fifth building envelope/unit, and that any changes in the future to the proposed plan would require Board review, as part of the conditions of approval. **Mr. Mylroie** noted that a fifth unit would create a major subdivision from what is now a minor. **Mr. White** noted that under subdivision review there are BMP requirements and engineer inspections, and asked how these safeguards will be handled under the proposed plan. This is a sensitive area and assurances are needed that the project is completed to plan. **Tom Harmon** stated that the work would be as if they were building on a lot, outside the purview of CMA or the public works department, with a building permit through the CEO. The issues that come before the town for review

such as public streets and utilities, have been resolved through CMA review. The Water District will change the water lines and, because it's not a public infrastructure, would not require CMA inspection. **Mr. Mylroie** stated that the owner/developer is responsible for implementing all the requirements such as BMPs and stormwater management, as incorporated in the covenants and restrictions. The same level of management can be achieved through the association documents. **Mr. White** noted that he would like to see how these issues will be addressed within the documents and on the plans. **Mr. Burke** asked about design guidelines for the project. **Mr. Harmon** stated that there are no design guidelines, but that the developer has the right to approve the construction design and the association will have the right to accept any future design changes. **Mr. White** noted that very clear definitions of the Limited Common Areas and Common Areas must be included on the plan and in the documents. **Mr. Mylroie** explained how the difference has to do with the ongoing maintenance of the area where the responsibilities lie with the owner (limited common area) or the association (common area). **Mr. Harmon** noted that landscaping in limited common areas is frequently maintained by the association, with a limit as to what the association will provide. The buffer areas will be maintained by the association. **Mr. White** suggested that common sense can be used. In areas such as the 100' shoreland setback, the association is responsible for its preservation and maintenance, as would be the case for any area that must exist in perpetuity or be protected. The use of an overlay may be a method to protect these areas. **Mr. White** asked if a single pier on the front lot is still the intention? **Mr. Mangiafico** stated that it is an individual pier on an individual lot, and the applicant would have to present to the Port Authority any changes to the use by more than one property owner, as the approval for the pier was granted to a single user only. **Earldean Wells** noted that a number of trees, shrubs and ground cover had been removed in the shoreland area and should be replaced. Additionally, trees removed in the building envelope should be replaced. Finally, the buffer plan using mission arborvitae and should show more than one type of tree, per ordinance. **Mr. Harmon** stated that the singular use of arborvitae has been re-designed to include other trees [inaudible]. **Mr. Mangiafico** suggested that the developer may wish to include the interests of the abutters regarding landscaping choices. **Mr. White** stated that single use of the pier, per the Port Authority, should be noted on the plan.

Kathy Conner, 31 Pepperell Road, thanked the Board for their time and work. She stated that the concept of an overlay is well taken to protect the buffer and shoreland areas. The Conservation Commission is correct in requesting vegetation restoration, and a diversity of planting materials would be appreciated by the abutters as well as the condominium owners.

Bill Tredwell, Sparhawk Lane, commented that the setback should extend the full distance along Sparhawk Lane.

Patrick Bedard, attorney, representing abutters, spoke to the setback issue noting that Sparhawk Lane serves several residences, is therefore a street, and two frontyard setbacks are required if a parcel is bordered by two streets. This primary issue is that this project cannot be divided into four parcels of land, creating a subdivision. Instead, the applicant creates a condominium project and ignores condominium law that requires horizontal and vertical boundaries of the unit. The developer is proposing to deed out the units separately to allow buyers to build on them. This is not legal under condominium law, 1602.101B of the code states, *no interest in any unit can be conveyed to a purchaser until the unit is substantially completed as evidenced by a certificate or statement of substantial completion executed by an engineer or architect or until a certificate of occupancy is issued by the municipal inspector of buildings*. The law does not limit to this section only large buildings of 50 units, it makes no distinction. It looks like a subdivision of land, and that is not allowed under Kittery's ordinances. The applicant also wants to reserve the right to develop another unit, but does not include it on the plan, which is required under condominium law. **Mr. Harmon** approached the Board and presented a GIS photograph stating that the rear area of Sparhawk Lane services only two lots and is therefore a driveway. [Discussion with Board members and abutters followed, but was not audible] **Mr. Harmon** further noted that the buffer definition is a neutral area between two conflicting uses. He will ask the client to re-consider the 15' setback. **Mr. White** stated he wants to hear from the CEO and believes the Board needs to keep in mind the KCC observations, and asked the applicant if a landscape plan will be forthcoming. **Mr. Harmon** stated a separate sheet would be provided.

This item will continue to a future meeting as scheduled by the planner.

ITEM 2 – Spruce Creek Subdivision – Major Subdivision – Cluster Development - Preliminary Review – Terry Gagner, Owner, proposes to construct a 10-lot cluster residential development consisting of single-family dwelling units on ±15.2 acres, Tax Map 38 Lots 13 B through 13 F, situated in the Rural Residential (**RR**) zoning district. The owner’s agent is Thomas Harmon of Civil Consultants.

Mr. Mylroie reported that he met with the applicant regarding the design of the access way to the proposed development, and that discussions are continuing. There is no further discussion or review on this item at this time. The planner will reschedule review of this item at a future date.

ITEM 3 – Cutts Ridge Lane – Right of Way Extension - Determination of Completeness/ Preliminary Review – Ann M. Colson, Owner, proposes to extend Cutts Ridge Lane right of way and possibly create Parcels A, B and a remaining parcel. The property located off 2 Cutts Ridge Lane is situated on Map 65 Lot 13 in the Kittery Rural Residential (**RR**) Zoning District. The Owner’s agent is Michael Livingston, PE with Anderson Livingston Engineers.

Mr. Mylroie summarized the proposal, noting that the minutes of the site walk need to be approved at this meeting. This is not a division of land, but the extension of the right of way (ROW) could help create new building lots under Homestead Exemption, which would not require additional Board review.

Michael Livingston explained the creation of the original ROW from a previously approved subdivision and that the request is to extend the ROW to allow for creation of parcels A and C. Up to three lots may be created within a five year period, without review, if one lot has been the owner’s primary residence for more than 5 years. There are two waivers requested in association with the ROW extension. The ordinance limits the ROW to 400 feet and the applicant is requesting a 450 foot ROW to alleviate additional wetland filling. There is a minimum 1% slope on the road and there is a small section where they need a .5% slope, again to limit wetland impacts. **Earldean Wells** stated that the wetland alteration fee is \$4 per square foot.

Mr. Carleton motioned to find both the Right of Way extension and wetland alteration applications substantially complete, and to schedule this item for a public hearing.

Mr. Burke seconded

Motion carries unanimously by all members present

Additional review and a public hearing will be scheduled at a future date by the planner.

Minutes of Site Walk of July 9, 2009 at Cutts Ridge Lane

Mr. Burke motioned to accept the minutes as amended

Mr. Mangiafico seconded

Motion carries unanimously by all members present

ITEM 4 – B&F Land Development - Amendment to An Approved Site Plan — Preliminary Review: B & F Land Development, Owner, proposes to amend the approved site plan by moving the most northerly driveway to the south and adding landscaping to the amended area. The proposed development is situated on 1.29 acres at 240 US Route 1, located on Map 22 Lot 13 in the Commercial 1 (**C-1**) zoning district. The owner’s agent is Christopher Baudo, RA.

Gerry Mylroie summarized the applicant’s request, noting that the Board may determine the application as substantially complete in order to continue preliminary review and whether to schedule a public hearing. The applicant is proposing the following changes:

1. Extend buffer on the east side to Route 1 and move the driveway one parking space to the west. The required number of parking spaces (52) is still met.
2. The loading area at the front of the property has been removed as no longer needed.
3. Elevation revision.

Chris Baudo discussed the widening (to 50') and extension of the buffer to the front property line, the addition of landscape materials (maple and spruce) to vegetate an existing parking lot. Removal of the loading space meets ordinance requirements (16.32.550), as the business is less than 10,000 sf, and curbside delivery is permitted. Deliveries that may arrive during off peak hours will use parking spaces 48-52 as temporary delivery areas. Elevation revisions were identified on plans.

Mr. Burke motioned to determine the application substantially complete, and to schedule this item for a public hearing.

Mr. Carleton seconded

Motion carries unanimously by all members present

Bill McCarthy, Adams Drive, stated that the basement is actually a story above grade and that the project does not comply with code.

Mr. White asked that the CEO review the elevations and determine if the building height complies with the ordinance.

The planner will schedule further review of this item.

Planners Time

1. Appreciation to retiring Public Works Commissioner, Rick Rossiter.
2. Member Scott Mangiafico has submitted his resignation from the Board, effective upon replacement.
3. Next meeting will be 9/24/09 and will include a joint workshop with Council regarding Accessory Dwelling Units.
4. FEMA floodplain map revisions.
5. Review of the Shoreland ordinance continues by the Council Code Review Committee, and they are recommending a Shoreland Overlay Zone and related provisions.
6. The CEO is developing a program to insure compliance with sign regulations.
7. Planning Board decision matrix. **Mr. White** stated he appreciates the Project Tracking Sheet on each project to remind them that thresholds have been met in the review process. **Mr. Carleton** noted that the inclusion of minutes to the staff notes helps in meeting preparation, especially if the project has not been in front of the Board for some time.

Mr. Mangiafico reiterated his request that the CEO clarify how she determines a side yard setback of 40', aside from the obvious corner lot with access to two streets.

Earldean Wells asked if she could request that any trees replaced in the shoreland zone in the Sluiceway project be a minimum of 6 feet tall. **Mr. White** noted that it is a reasonable request, but could not say how the Board would decide.

Mr. Carleton motioned to adjourn

Mr. Mangiafico seconded

Motion carries unanimously by all members present

The Planning Board meeting of September 10, 2009 adjourned at 9:05 p.m.

Submitted by Jan Fisk, Recorder – September 16, 2009