

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

APPROVED
Thursday, October 8, 2009

Meeting called to order at 6:09 p.m.

Board Members Present: Russell White, Joseph Carleton, Ernest Evancic, Doug Muir, Michael Luekens

Members absent: George Burke

Staff: Gerry Mylroie, Town Planner

Other: Earledean Wells, Kittery Conservation Commission

Minutes: September 24, 2009 Planning Board Meeting

Mr. Carleton moved to accept the minutes as amended

Mr. Luekens seconded

Motion carries unanimously

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Cutts Ridge Lane – Right of Way Extension/Wetland Alteration, Public Hearing. Ann M. Colson, Owner, proposes to extend Cutts Ridge Lane and enable the creation of 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 application and review to date, outlining Board action. **Michael Livingston**, agent, discussed plan notes and asked for Board direction regarding illustration of lines on the plan, where the Board is not approving lot division. The **Town Planner** explained that the applicant can divide the parcel without Board approval as it is a homestead lot [applicant has lived on the property more than 5 years], and the granting of the ROW creates frontage, enabling the applicant to divide the property. **Mr. Livingston** noted there is a restriction allowing only three lots on the ROW. **Mr. Muir** and **Mr. Carleton** agreed this review is for a ROW, and the lines illustrating a hypothetical division of land should be removed, along with note number 3.

Mr. White opened the public hearing at 6:30 p.m. and asked if there was anyone wishing to speak regarding this project. **Earledean Wells** asked where the proposed snow storage would be located on the plan. **Mr. Livingston** stated the snow storage location will be included under note 12 of the plan. There being no further testimony, the public hearing closed at 6:47 p.m.

Following continued discussion, **Chairman White** asked if the Board was prepared to entertain a motion on the proposal. **Mr. Carleton** stated that he would prefer to see a final, corrected plan before approving. **Chairman White** stated that he would like to have this item back before the Board this month, before there is another change in the Board's membership. The **Town Planner** suggested the waivers be acted upon and the Findings of Fact would be prepared and submitted for inclusion on the plan mylars and approval at the next meeting.

Mr. Carleton moved to grant a waiver of the erosion control report and stormwater analysis.

Mr. Luekens seconded

Motion carries unanimously

Mr. Carleton moved to grant a waiver of Section 16.32 – Figure 1, Road Standards, to allow the applicant a roadway of 450 feet and a slope of .5% instead of 1%.

Mr. Luekens seconded

Members discussed slope percentages with Mr. Livingston to better understand the impact on drainage.

Motion carries unanimously

Board members and applicant discussed the waiver request, and why the location of the homes should be excluded on the final plan. **Mr. Livingston** indicated the locations can be easily determined using a laser.

Mr. Carleton moved to deny the waiver request of Section 16.36.060.B.2.f., requiring the location of adjacent homes be shown on the plan.

Mr. Muir seconded

Motion carries unanimously

Mr. Carleton moved to grant waivers for a wetland mitigation plan, hydrologic analysis and wetland photographs.

Mr. Luekens seconded

Motion carries unanimously

Mr. Carleton moved to continue this item to the next meeting

Mr. Evancic seconded

Motion carries unanimously

Applicant will revise note 3 on the plan to specify that a lot line could be added to the plan without returning to the Planning Board providing the division is in accordance with subdivision law.

ITEM 2 – B&F Development - Amendment to an Approved Site Plan-Public Hearing B & F Land Development, Owner, proposes to amend the approved 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.

Christopher Baudo summarized his request for changes to the approved plan, including:

1. extending the NE side buffer area to the front.
2. elimination of the proposed loading space at the front of the building as it is not required in the ordinance (16.32.550.A.2) because the warehouse and manufacturing area is less than 9,000 square feet, and move to the side of the building, per ordinance requirement 16.12.110.E.c.2.
3. changing the height of the building by removing or altering the shed roofs.

Applicant stated landscaping will be provided along the front and side of the property by removing existing vegetation and asphalt and replacing with low growing shrubbery and red maples.

The Public Hearing opened at 7:25 p.m.

Bill McCarthy, abutter, noted the buffer is 40', not 50' as described. **Mr. Baudo** corrected his statement, noting it is a 40' buffer alongside the property, and 50' along the rear of the property. **Mr. McCarthy** asked where the deliveries will be made and the products removed. **Mr. Baudo** explained the sidewalk along parking spaces 36-47 will be used to access doors at the side of the building. **Chairman White** summarized that raw materials will enter through these side doors and the finished product will be removed from the same doors. The applicant agreed. **Chairman White** asked about hours of operation and discussion followed regarding the ZBA decision. The applicant agreed to include that decision on the plans. **Mr. McCarthy** asked why overhead doors are included on the front of the building if deliveries will be made to the side. Discussion followed regarding off-street loading standards, ordinance requirements, etc. Board members agreed that they do not review architectural designs, and if the applicant violated the off-street loading standards, the Code Enforcement Officer should be contacted. **Eileen McCarthy** asked if delivery of manufacturing materials will use a fork lift. **Mr. Baudo** explained most materials will be delivered directly to the job site and there will be minimal production, more an e-commerce business, with display space. **Mr. McCarthy** suggested that the parking requirements may not have been met for a business that is display. There being no further testimony, the public hearing closed at 7:45 p.m.

Mrs. McCarthy asked to be heard again, and the public hearing re-opened at 8:47 p.m. **Mrs. McCarthy** provided handouts to the Board from the Design Handbook, noting that new construction must be compatible with existing structures and meet “good neighbor” standard. She illustrated at a white board that the mass of the proposed building was not compatible with the neighborhood. **Chairman White** stated the location and height of the building has been reviewed and previously resolved, and the Board is only reviewing the amendments to the approved plan at this meeting. Additionally, the Design Handbook provides guidelines, but is not the ordinance. The Board is bound to follow the ordinance, and not everyone receives the result they want, but the Board spent considerable time and attention on this project before rendering a decision. **Mr. Muir** noted the ordinance does include language that limits the mass of buildings in some zones, and changes to the ordinance can be made through citizen input and dialogue.

The Public Hearing closed at 8:55 p.m.

Mr. Carleton read the Findings of Fact as follows:

The Board makes the following factual findings as required by Section 16.36.070.C.1:

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

Conformity with Local Ordinances and Plans. The proposed development conforms to duly adopted subdivision regulations and ordinances, the comprehensive plan, and the land use and development codes. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Vote of 5 in favor; 0 against; 0 abstained

Now, therefore, on the 8th day of October 2009, the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines the proposed project will have no significant detrimental impact, and **the Kittery Planning Board hereby votes to grant Site Plan Amendment approval to B&F Land Development** to extend the buffer on the east side to Route 1, and move the driveway one parking space to the west; eliminate the loading area located in the front of the building; and revise the roof line design, contingent upon the following conditions:

1. In addition to the Conditions of Approval identified below, the conditions of approval imposed with the June 11, 2009 approval must be followed.
2. Grading or construction of driveway entrances, grading of the site, building demolition or construction is prohibited until such time as the final plans have been duly prepared, submitted, reviewed, approved and endorsed, and until a complete set of the final plans so approved and endorsed are duly recorded in the York County Registry of Deeds, and a mylar copy of the signed and recorded plans is submitted to the Kittery Planning Department for archive.
3. A vegetated buffer area as shown on the site plan must be maintained by the owner(s) of the property, unless or and until the abutting property owner(s) petition the Kittery Planning Board to reconsider the buffer requirement.
4. The improvements shown on the landscape plan must be maintained throughout the life of the developed site.
5. The hours of operation must be added to the plan in accordance with ZBA approval;
6. The Code Enforcement Officer will issue no building permits until all conditions of this agreement are satisfied.
7. This approval by the Planning Board constitutes an agreement between the Town and the developer, incorporating as elements the project plans and reports, Board of Appeals and Planning Board Findings of Fact, and any Conditions of Approval imposed herein by the Planning Board.
8. Signing of this agreement by the Planning Board constitutes approval and sets forth the guaranty time period of one year within which requirement improvements must be completed.

9. By vote of the Planning Board herein, the Chairman is authorized to sign the final plan and this Findings of Fact on behalf of the Planning Board.

Vote of 5 in favor; 0 against; 0 abstained

Break

ITEM 3 – Cutts Ridge Lane – Right of Way Extension/Wetland Alteration-Final Review – Ann M. Colson, Owner, proposes to extend Cutts Ridge Lane and 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 of Anderson, PE, Livingston Engineers.

This item will be continued at the next Planning Board Meeting.

ITEM 4 – Long View Farms (Condominiums)-Major Subdivision-Request for Continuation of Time Prior to Final Plan Submittal – Spruce Creek Ventures II, LLC, Developer and part Owner, proposes to amend the River Knoll Farm plan, an approved 1988 cluster residential development. The proposed amended plan dated October 9, 2008 consists of four (4) existing condominium units and ten (10) new condominium units at 9 Cook Street, Map 3 Lots 74, 77 and 77A, in the Urban Residential District. The owner's agent is Oak Point Associates Engineers and Architects.

Mr. Carleton moved to extend the final plan review of Long View Farms to March 8, 2010

Mr. Luekens seconded

Mr. Evancic asked what happens if the applicant returns in 6 months needing another extension. **Mr. Mylroie** stated the Board has the discretion to deny the request, requiring the applicant to start the process over from the beginning. **Mr. Muir** stated the Board's denial would require the application meet new ordinance requirements, if any.

Motion carries unanimously

ITEM 4 – Amendment to Title 16 Land Use and Development Code – (Status Report - Public Hearing Scheduling) - 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 Municipal Code. In working with the Town Council's Ordinance Review Committee to improve administrative efficiency, clarity and eliminate redundancy, re-formatting of the Planning Board's recommended amendments is proposed. Additionally some substantive changes are recommended to improve the working relationship between the Planning Board and Zoning Board of Appeals. Finally the Zoning Map must be amended consistent with the Planning Board's recommendation to the Council. Overall, incorporating State recommendations for the Shoreland Zoning involves:

- 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
- Amend previously recommended Chapter 16.34 – Shoreland Zoning.

The **Town Planner** summarized the Ordinance Committee's actions and amendments to date regarding shoreland ordinance language, organization and formatting, and multiple Board responsibilities. Members

will take the revised ordinance and review the amendments to date so any additional changes can be discussed at the public hearing. **Mr. Carleton** and **Mr. Luekens** requested a clean, stand alone copy of the ordinance be provided, without strikethroughs and other tracking history.

Mr. Carleton moved to schedule a public hearing to hear the proposed amendments to Title 16.

Mr. Evancic seconded

Motion carries unanimously

Planner's Time

The Town Planner summarized the status of the York Hospital application before the Board. Members and Planner discussed the applicant's interest in removing much of the shrub plantings along the front of the building, making the sidewalk more pedestrian friendly, and presenting the new building as a focal point. Board members concurred this solution would open up the area, and the Planner will forward the Board's view to the applicant.

Mr. Evancic moved to adjourn the meeting

Mr. Carleton seconded

Motion carries unanimously

The Planning Board meeting of October 8, 2009 adjourned at 9:50 p.m.

Submitted by Jan Fisk, Recorder – October 13, 2009