

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

APPROVED
May 13, 2010

Meeting called to order at 6:12 p.m.

Board Members Present: David Kelly, Michael Luekens, Joseph Carleton, Russell White, Scott Lincoln, Ernest Evancic

Members absent: George Burke

Staff: Gerry Mylroie, Town Planner

Minutes: April 22, 2010 Planning Board Meeting

Mr. Luekens moved to accept the minutes as corrected

Mr. Carleton seconded

Motion carries by all members present

PUBLIC COMMENT – There was no public comment.

ITEM 1- Loco Coco's Tacos – Preliminary Site Plan Amendment to a Previously Approved Site Plan – Public Hearing/Review/Decision. – Owner, Luis Valdez proposes to construct a 20 x 30 feet deck for outside seating on the western end of the existing building. The development is located at 36 Walker Street in the Business – Local and Kittery Foreside Zones and recorded as Map 4 Lot 160.

Mr. Mylroie presented the plan to the Board, summarizing action and plan changes to date, including waiver requests.

The Public Hearing opened at 6:20 p.m.

Rex Richards, Love Lane, asked about loud music on the proposed deck, if there is a mitigation plan in place if it becomes too loud and offensive. **Mona Robinson**, co-owner of Loco Coco's, stated there will not be live music on the deck, and what music that is provided will be background only, not above guest conversations. She also invited Mr. Richards to speak with her at any time regarding this issue.

The Public Hearing closed at 6:25 p.m.

Board members discussed the parking arrangements and signage on site. **Mr. Mylroie** told the Board they could act on the preliminary plan utilizing the Findings of Fact provided. **Mr. Carleton** inquired about the traffic flow within the parking area where vehicles entering and exiting converge in between the restaurant and handicapped parking spaces. **Mr. Mylroie** stated the plan met the requirements for two way traffic and it is an existing condition. Two way vehicle passage requires 24-26 feet and it appears the distance is provided. If necessary, one handicapped space could be moved, and incoming traffic could be required to stay to the right. Wheel stops will define the parking spaces without paving the lot. **Mr. Luekens** asked if there was an outside seating area. **Ms. Robinson** said there is, currently, but they will be removed if the deck is approved. However, she may have a picnic table made available for those who use self-serve and want an area to eat outside, since the deck is not self-serve.

Mr. Carleton moved to waive the requirements of Title 16.32.390, stormwater drainage.

Mr. Kelly seconded

Motion carries by all members present

Mr. Carleton moved to waive the requirements of Title 16.32.560.C, off-street parking standards and parking landscaping.

Mr. Luekens seconded

Motion carries by all members present

Mr. Carleton moved to waive the requirements of Title 16.36.060.b.2.d., standard boundary survey; and 16.32.060.b.2.f, detail of structures and accesses located within 100 feet of the property line.

Mr. Kelly seconded

Motion carries by all members present

Mr. Carleton moved to waive the requirements of Title 16.36.060.B.3.d., a plan for the control of erosion and sedimentation endorsed by the York County soil and water conservation district; and 16.36.060.B.3.e., stormwater and other surface drainage plan prepared by a registered professional engineer; and 16.36.060.B.3.f., high intensity soil survey.

Mr. Kelly seconded

Motion carries by all members present

Mr. White asked a landscape maintenance note be included on the final plan. **Mr. Luekens** asked about snow storage, suggesting utilizing the open space area to the left of the deck for snow storage, keeping the handicapped spaces clear and open. **Mr. White** asked if this application is ready for final approval. **Mr. Mylroie** stated the preliminary and final approval could be combined.

Mr. Carleton moved to merge the preliminary and final plan approval.

Mr. Kelly seconded

Motion carries by all members present

Mr. Carleton read the Findings of Fact as follows:

For Loco Coco's Tacos, a modification of an existing developed site, the Project Plans and other documents considered to be a part of the approval by the Planning Board in this ruling consist of the following:

1. Site Plan – Loco Coco's Tacos dated April 2010 with a date stamp of May 13, 2010.
2. Application and Request for Waivers.

NOW THEREFORE, based on the entire record before the Board and pursuant to the applicable standards set out in the Land Use and Development Code, the Board makes the following factual findings as required by Section 16.36.070.C.1.

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| 1. Plan Conforms to Town Code and Plans | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 2. Freshwater Wetlands Identified | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 3. River, Stream or Brook Identified | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 4. Water Supply Sufficient | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 5. Municipal Water Supply Available | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 6. Sewage Disposal Provided | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 7. Municipal Solid Waste Disposal Available | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 8. Water Body Quality and Shoreline Protected | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 9. Groundwater Protected | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 10. Flood Areas Identified and Development Conditioned | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 11. Stormwater Managed | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 12. Erosion Controlled | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 13. Traffic Managed | Vote of <u>5</u> in favor <u>1</u> against <u>0</u> abstaining |
| 14. Water and Air Pollution Minimized | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 15. Aesthetic, Cultural and Natural Values Protected | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |
| 16. Developer Financially and Technically Capable | Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining |

Paragraphs q. through cc. Do not apply

NOW THEREFORE 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 the Amendment to the Approved Site Plan at the above referenced property, contingent upon the following conditions per Title 16.36.070.D., Conditions of Approval.

Conditions of Approval

- i. Prior to the installation of sign structures and prior to the mounting of signs, the Developer shall submit an application for signs to the Code Enforcement Officer and shall acquire approval for signs from the Code Enforcement Officer.
- ii. The gravel parking area must be maintained and repaired to keep a consistently smooth driving surface. The Code Enforcement Officer shall inspect this area in association with the business license renewal inspection.

- iii. 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.
- iv. Signing of this instrument by the Planning Board constitutes approval. A period of one year is hereby set forth for the guaranty time within which required improvements must be completed.
- v. A standard landscaping note shall be included on the final plan
- vi. The open space shall be designated for snow storage

Vote of 6 in favor 0 against 0 abstaining

ITEM 2 - Yankee Green Mobile Home Park - Wetland Alteration - Acceptance/Schedule a Public Hearing/ Review/Decision. – Owner, Real Property Trust Agreement, Stephen Hynes Trustee, of Yankee Green Mobile Home Park proposes to alter a wetland boundary to enable the minor building corner construction of the When Pigs Fly Pizza/Restaurant located at 445 US Route 1 in the Mixed Use (MU)Zone. The property is located at 6 Cutts Road in the Mixed Use (MU) Zone and recorded as Map 60 Lot 22.The owner’s agent is Gary Beers with Hynes.

Mr. Mylroie summarized the status of the application, explaining the request to square off the building for the When Pigs Fly Restaurant, requiring a modification of the abutting wetland to allow for a 100 foot distance between the two. Real Property Trust Agreement is requesting to alter 80 linear feet of wetland frontage (541 square feet of wetland area), a minor modification greater than 500 square feet. Staff finds the application is complete, the Board can waive the public hearing and approve the request. The applicant is not filing the wetland, there is no mitigation. The Kittery Conservation Commission supports the request provided the buffer area be maintained in its undisturbed state. **Mr. White** stated this request is to allow construction closer to the wetland than allowed by ordinance. Because the Board cannot grant construction closer to the wetland, the application is for a wetland alteration. The Board usually allows wetland boundary impacts for road access, but not for development. **Mr. Luekens** suggested this is a variance to the 100 foot setback, as there is no physical alteration to the wetland. **Mr. Carleton** suggested Mr. Beers if the application is consistent with the spirit of the ordinance. **Mr. Beers** stated it is, since Federal and Maine setback from wetlands is 75 linear feet, though the Town has a 100 foot setback. The new version of the ordinance to be passed on May 24 allows the Board some liberty of making decisions that accommodate real circumstances. There is a fence between the two properties, precluding intrusion of the development into the wetland.

Mr. Carleton moved to accept the application
Mr. Kelly seconded
Motion carries by all members present

Mr. Carleton asked if this alteration affects any property other than the two under review. **Mr. Beers** explained that it does not.

Mr. Carleton moved to waive the public hearing
Mr. Kelly seconded
Motion carries by all members present

Mr. Carleton moved to waive Section 16.28.470, mitigation plan
Mr. Kelly seconded
Motion carries by all members present

Mr. Carleton read the Findings as follows:

Per application by Real Property Trust Agreement, Stephen Hynes Trustee, of Yankee Green Mobile Home Park, proposing to alter a wetland boundary abutting When Pigs Fly Pizza/Restaurant located at 445 US Route 1 in the Mixed Use (MU) Zone, the Board finds:

There is no practicable alternative, and the proposed use meets the requirements as set forth in the Findings of Fact dated May 6, 2010 consisting of four sections under sub-paragraph A and seven sections under sub-paragraph B. Does the Board approve the Findings of Fact set forth therein.

Vote of 6 in favor 0 against 0 abstaining

Accordingly, the Planning Board hereby moves to:

1. Approve the Findings of Fact in the Plan Review Notes/Findings of Fact dated May 6, 2010,
2. Acknowledge their reading,
3. Hereby incorporate them into the meeting minutes by reference,
4. Record their unanimous approval by the Planning Board members present (or as may be individually voted upon by the Board),
5. Approve the final Plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final Plan upon confirmation by the Town Planner of final plan compliance with any final plan approval requirements and plan note conditions.

Vote of 6 in favor 0 against 0 abstaining

ITEM 3 - When Pigs Fly/Pizza Restaurant – Site Plan - Minor Amendment - Review/Decision.

Owners, Andrew and Ron Siegel, propose to square off the corner of an approved approximately 2,000 square feet addition resulting in the addition of 160.4 square feet of kitchen space. No wetland will be filled. The proposed expansion is located at 455 US Route 1, in the Mixed Use (MU) zone, and recorded as Map 60 Lot 22. The owner's agent is Thomas Harmon, PE, with Civil Consultants.

Mr. Mylroie **explained the Board's actions needed for this item. The addition of a note as follows:** 25' natural buffer per agreement with abutter to remain undisturbed.

Mr. Carleton moved to:

1. approve the previously approved Findings of Fact as amended with the note the wetland buffer will be undisturbed per the wetland alteration request approval,
2. acknowledge their reading,
3. hereby incorporate them by reference into the meeting minutes,
4. record their unanimous approval by the Planning Board members present,
5. Approve the updated plan with any additional conditions, and
6. Re-authorize the Planning Board Chairman to sign the final plan, upon confirmation by the Town Planner of final plan compliance with any final plan approval requirements and plan note conditions.

Mr. Kelly seconded

Motion carries by all members present

ITEM 4 - Shapleigh Middle School Addition – Site Plan Amendment – Report on Town Council

Action on Conditions/Review/Decision. Owners, Town of Kittery School Board propose an approximately 10,200 square feet gross floor area addition to the existing school building. The proposed expansion is located on Stevenson Road and Manson Road in the Residential – Rural (R-R) and Residential – Suburban (R-S) Zones, and recorded as Map 37 Lot 3. The owner's agent is Ken Wood, PE, with Attar Engineering and Mike Lassel, AIA, with Lassel Associates.

Mr. Mylroie explained this item will be in front of the Board of Appeals for a Special Exception Use for the school addition, because the addition is greater than 5,000 sf. The Planning Board's approval condition included the adoption of the parking policy and annual report, and amendments to Title 10 dealing with on-street parking. The council amended the time period for parking to four hours during the school day. Neighborhood concerns about through traffic control were not supported by the Council, but may be re-considered at a future date.

ITEM 5 - Planning Board Workshop – Growth Management / Comprehensive Planning and Design.
The Board met informally in workshop to discuss the Growth Management Plan.

The Planning Board meeting of May 13, 2010 adjourned at 8:31 p.m.

Submitted by Jan Fisk, Recorder – May 19, 2010