

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

**APPROVED
June 11, 2015**

Meeting called to order: 6:00 p.m.

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Secretary Deborah Driscoll Davis, Mark Alesse, Robert Harris, David Lincoln, Deborah Lynch

Members absent: Ms. Grinnell arrived at 6:30 and Ms. Kalmar chaired the meeting until then.

Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner; Duncan McEachern, Town Attorney

Pledge of Allegiance

Minutes: May 28, 2015

Ms. Davis moved to approve the minutes of May 28, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Minutes: June 2, 2015 Site Walk at Yankee Commons

Ms. Davis moved to approve the minutes of June 2, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Minutes: June 2, 2015 Site Walk at 9 Mill Pond Road

Ms. Davis moved to approve the minutes of June 2, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Minutes: May 28, 2015 Workshop (Cluster Development)

Ms. Davis moved to approve the minutes of May 28, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Public Comment: Ms. Kalmar opened the public comment section. Hearing none, she closed it.

ITEM 1 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review

Action: hold a public hearing, approve or deny preliminary plan. Owner/applicant Real Property Trust Agreement requests consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home Park for the property located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential – Rural (R-RL) Zones. Agent is Thomas Harmon, Civil Consultants.

Mr. Harmon introduced himself, applicant's agent Gary Beers, Jay Stephens of Civil Consultants, and Brian Rayback of Pierce Atwood. He provided an overview of the project, including the following points:

- 77 lots for mobile homes plus one for offices and common space are proposed
- Will be served by public water and sewer
- There will be 4,200 feet of paved road, 20 feet wide with two-foot shoulders
- The question of providing sidewalks is unresolved; they request a waiver
- Significant amount of open space
- Wetlands on site will be buffered

- A “significant amount of material” will be taken off site from the “ledge knoll” to create a “consistent, shallow grade”
- Have changed alignment of existing road to avoid wetland but have 900 square feet of wetland impact
- Have Maine DEP approval for the site
- There is a vernal pool near Route 1, decided to avoid it and provide a divided road instead of two roads
- Maine law allows a 25% disturbance within 250-foot setback from vernal pool
- Stormwater treatment has been approved by DEP
- There will be a “considerable amount” of blasting, the DEP must approve a blasting plan
- The Army Corps of Engineers has reviewed as part of DEP application, approval was received in 2011, and development is nowhere near the 75-foot buffer they required; the only species of concern in the vernal pool is fairy shrimp, which do not use the uplands

Ms. Kalmar opened the public hearing.

Don Moore of the Conservation Commission asked about vernal pool information. Mr. Harmon explained that the approval letter contains some. Mr. Moore asked for more information. He said they have reviewed the DEP’s letter and while it looks at separate issues, it does not look at the big picture. He wants to know about the impact of blasting on groundwater and wetlands. Mr. Harmon said drainage patterns will not be altered from the existing condition, as shown on the grading plan.

Ms. Kalmar closed the public hearing.

Town Attorney Duncan McEachern was asked to address legal questions surrounding the proposal, particularly the meaning of “environmental suitability” from state statute, as well as the court order regarding the Board’s earlier denial of the project.

Mr. McEachern provided background and described several legal aspects and considerations, including:

- The Court heard an appeal of the Planning Board’s denial, two major issues were the amount of ledge removal and whether it is incidental, and that mobile home parks are not a permitted use in the Mixed Use Zone
- The Board found that the earth removal was not incidental; the Court found that the removal is incidental to the expansion and is to be treated as such, and remanded back to the Board
- *Bangs v. Town of Wells* established the need to give “due consideration” to a mobile home park *expansion*
- State statute pre-empts Town regulation, in particular mobile home park lot sizes
- The applicant has the burden of proof regarding meeting standards
- The Board must make findings that the development meets local standards, particularly the findings required by 16.10 [16.10.8.3.4]
- For example, although ledge removal was deemed incidental to the project, the Board must still look at noise, dust, traffic, etc.
- The Court found the Town’s prohibition of expansion of a mobile home park in the Mixed Use Zone invalid based on the State statute
- It doesn’t mean the Town must permit all mobile home and manufactured housing project in the Zone, but they need to be given “reasonable consideration”
- “Environmental suitability” is not defined, although there are some standards described in the statute, but requires factual findings by the Board
- Although ledge removal does not require a mineral extraction permit, “the quantity and character” of materials to be removed is still relevant to the Town’s consideration of the expansion

Ms. Kalmar asked about setbacks. Mr. McEachern explained that the State statute says a municipality cannot use setbacks to require larger lots than the minimum, or that would exclude mobile homes. On the other hand, an applicant could argue that larger (double-wide, triple-wide) homes cannot fit, but there is no guarantee that a municipality must accommodate homes that large. Ms. Davis added that planning for outbuildings doesn't require the Town to decrease setbacks.

Mr. Lincoln asked about the volume of material being removed and the traffic impact.

Mr. McEachern responded that he's seen 200,000 cubic yards, but that CMA engineers point out that it expands. He said the Board has to consider traffic impact based on evidence provided by the applicant.

Mr. Alesse asked Mr. McEachern to expand on the Court's conclusion that the Board didn't give "reasonable consideration" to the proposal. Mr. McEachern explained that by ending the process with the question of mineral extraction, full consideration was not given. *Bangs v. Wells* was very similar as an existing nonconforming use expansion. Although a mobile home park is not an allowed use, *expansion* must be given consideration.

Mr. Di Matteo described how due consideration would have been given if the Board had approved rather than denied the preliminary plan and made findings on each standard at the final plan review.

Mr. McEachern explained that the Legislature was mindful that there are communities that would do everything they could to prevent mobile home parks. He read from the section of the law regarding "reasonable consideration."

Mr. Alesse used the Conservation Commission's concern about groundwater as an example of determining environmental suitability.

Mr. Di Matteo explained his understanding with the help of the Maine Municipal Association that "environmental suitability" was intended to prevent municipalities from forcing mobile homes to marginal areas.

Mr. Alesse said that it "stretches his understanding of those words" when the volume of mineral extraction "suggests strongly" that the location is environmentally unsuitable.

Mr. Lincoln wants to know cubic yards and number of truckloads.

Mr. Di Matteo referred to a guide to the "new mobile home park law" published in 1989 and excerpted in notes to the Board. He found that Kittery's setbacks match those in the State's model ordinance. Mr. Di Matteo withdrew his comment #1 in the staff review notes regarding density, as it is addressed in the statute.

He added that the findings of fact at final review stage will also consider subdivision law, a traffic impact analysis should answer some questions, and that he learned from the Army Corps of Engineers that a general permit is required.

Ms. Grinnell brought up the applicant's request for a waiver from providing sidewalks. Ms. Kalmar suggested the Board wait for more information.

Ms. Davis asked about the applicant's statement that the park will be 55-plus. Mr. Beers said the park will be 55-plus and they are willing to state that in a note on the plan. He said they did their best to be consistent with elderly housing, cluster residential, and Mixed Use Zone standards but only mobile home

park standards apply. Ms. Davis suggested certain provisions for the elderly be considered. Mr. Beers agreed to commit to a 55-plus development with a note on the plan.

Mr. Kalmar summarized the need for an Army Corps of Engineers permit for the vernal pool, for a traffic impact analysis, for comment from the Maine Department of Transportation regarding truck traffic, and to address the Conservation Commission's concerns regarding groundwater.

Ms. Davis moved to continue the preliminary plan review for a 78-lot expansion of the Yankee Commons Mobile Home Park located at US Route 1, for owner/applicant Real Property Trust Agreement, Tax Map 66, Lot 24 and 25, not to exceed 90 days.

Mr. Lincoln seconded.

Motion carried: 7-0-0

ITEM 2 – 9 Mill Pond Road – Shoreland Development Plan Review

Action: hold a public hearing; approve or deny plan. Owners/applicants Eric Stites and Katherine Peternell request consideration of a shoreland development plan for an addition to and second story expansion of an existing, nonconforming single-family dwelling located at 9 Mill Pond Road, Tax Map 23, Lot 6A in the Residential – Urban (R-U), Shoreland Overlay (OZ-SL-250'), and Resource Protection Overlay (OZ-RP) Zones. Agent is Tom Emerson, Studio B-E.

Mr. Emerson provided an overview of the project.

Ms. Kalmar moved to accept the Shoreland Development Plan application dated April 23, 2015 from Eric Stites & Katherine Peternell for 9 Mill Pond Road (Tax Map 23, Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones.

Ms. Davis seconded.

Motion carried: 7-0-0

Ms. Grinnell opened the public hearing. Hearing no comment, she closed it.

Ms. Kalmar asked for clarification about the requested revision to the plan. Mr. Di Matteo explained that the lower third of the expansion analysis table included on the plan contains unnecessary and confusing numbers, and so a condition of approval should be to revise that table.

Ms. Kalmar moved to grant conditional approval for the Shoreland Development Plan application dated April 23, 2015 from Eric Stites and Katherine Peternell for 9 Mill Pond Road (Tax Map 23, Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones.

Mr. Lincoln seconded.

Motion carried: 7-0-0

Ms. Kalmar read the Findings of Fact *[portions highlighted below]*.

FINDINGS OF FACT For 9 Mill Pond Road Shoreland Development Plan Review

WHEREAS: Eric Stites and Katherine Peternell request approval of their Shoreland Development Plan for an addition to and second story expansion of an existing, nonconforming structure located at 9 Mill Pond Road (Tax Map 23, Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones, hereinafter the “Development,” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

Shoreland Development Plan Review	5/14, 6/11
Site Walk	6/2
Public Hearing	6/11

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Development Plan Application, April 23, 2015.
2. Shoreland Development Plan, Easterly Surveying, April 22, 2015; revised May 28, 2015.
3. Architectural Plans, Studio B-E, received April 23, 2015.

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town 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 footprint of 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: Existing conditions on the 12,370-square-foot lot include 4,045 square feet of devegetated area (32.7%). The applicant proposes to replace a paved walkway with pervious pavers. Although for regulatory purposes this is still counted as devegetated area, in effect it lessens the existing impact of the development.

The existing nonconforming condition is 32.7% devegetated and must not be increased.

Conclusion: This standard appears to have been 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 condition must not be permitted to become more nonconforming.

Finding: This is an existing, nonconforming lot with an existing single-family dwelling structure located entirely within 100 feet of a coastal wetland. It appears to be nonconforming to one side setback.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

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 proposed development is no more nonconforming than the existing condition.

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:

A. This proposal is the only expansion of the structure since January 1, 1989. The proposed increase in floor area is 28.47%. The proposed increase in volume is 29.54%.

Conclusion: 16.7.3.6.1.A appears to be met. B and C are not applicable.

Vote: 7 in favor 0 against 0 abstaining

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. (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2, #3, 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 dwelling is served by public sewer.

Conclusion: The 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: 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: Shore cover is not affected by this development. There are no points of access.

Conclusion: The requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

6. Protect archaeological and historic resources;

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: The 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 appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use;</i> Finding: The proposed development is not within the floodplain. Conclusion: This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i> Finding: The proposed development appears to be in conformance with the provisions of this Code. Conclusion: This requirement appears to be met.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i> 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: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

Based on the foregoing Findings, the Planning Boards finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application for Eric Stites and Katherine Peternell, owners and applicants, for an additional to and second story expansion of an existing, nonconforming single family dwelling located at 9 Mill Pond Road (Tax Map 23, Lot 6A) subject to any conditions or waivers, as follows:

Waivers: None

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

1. Minor plan revisions as described in staff review notes will be made prior to signing.

Conditions of Approval (to be included 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. All Notices to Applicant contained herein (Findings of Fact dated 6/11/15).

The Planning Board authorizes the Planning Board Chair 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 KITTELY PLANNING BOARD ON _____ 6/11/15 _____

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 3 – State Road Mixed Use Development – Preliminary Site Plan Completeness Review

Action: accept or deny preliminary plan application, schedule a public hearing. Owner/applicant Aaron Henderson, HGC, LLC requests consideration of plans for a mixed use development consisting of three (3) commercial office units and five (5) single family residential units at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone. Agent is Jeff Clifford, Altus Engineering, Inc.

Jeff Clifford, owner Aaron Henderson, and landscape architect Woodburn & Company were in attendance.

Mr. Clifford provided a history and overview of the project, including:

- The sketch plan was approved and the Board held a site walk
- Creating enough parking for both uses was a concern but has been resolved without using shared parking
- Three existing lots will be combined
- The standards for the zone require the building to be close to the road
- The entrance on Love Lane will be one-way-in, while the entrance on State Road will be two-way
- Commercial is accessed from the front of the building and residential from the back
- Parking provided totals 32 spaces, which meets the needs of both uses
- There is a grade change from front to back necessitating a retaining wall at the side, and either a retaining wall or cut ledge at back property line
- All stormwater in back parking lot will be collected in pervious pavers, which flow to the side lot where there are underground storage chambers, which drain across State Road
- The applicant is providing an easement to the Town for stormwater drainage along State Road
- The front yard landscaping includes stone walls, plantings, and street trees; guywires in the front will blend in

- A buffer will be maintained on the residential property line
- A lighting plan is provided and the project is at final design level

Ms. Davis asked about a sidewalk on Love Lane. Mr. Clifford said it is not proposed, partly because of the paved stormwater drainage swale in that area. Mr. Di Matteo suggested “no parking” signage. Mr. Clifford and Mr. Di Matteo recall that the Public Works Commissioner was not in favor of a sidewalk. Ms. Kalmar supports the idea of striping and signing that area. Mr. Lincoln suggested that as an arterial way, sidewalks may be prohibited on Love Lane. He asked how exiting from the Love Lane entrance will be prevented. Mr. Clifford said only a sign is proposed.

Ms. Davis asked about the ownership of TD Bank as compared to the Town records used to generate a mailing to abutters.

Ms. Kalmar asked whether there will be dedicated parking for residents. Mr. Clifford explained that it is generally better to start without designated parking and establish it if needed.

Ms. Kalmar asked when the decision will be made whether to leave cut ledge or create a retaining wall at the back of the property. Mr. Clifford said it will be decided during construction and that it may be addressed with a condition of approval. Mr. Di Matteo noted that there is a provision in the ordinance dealing with changes in the field. Ms. Kalmar would like to make sure it returns to the peer review engineer.

Mr. Di Matteo asked about the provision of seating for pedestrians as required by ordinance. Mr. Clifford said that there is a seat wall. Mr. Di Matteo explained to the Board that because there is already a very complete set of plans, the Board can consider a preliminary and final plan approval at the next meeting.

Ms. Davis asked whether the applicant has considered a bike rack and Mr. Clifford said they would look at it.

Ms. Kalmar moved to accept the preliminary plan application and schedule a public hearing for consideration of Aaron Henderson, HGC, LLC’s proposed mixed residential/commercial development at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone for July 9, 2015.

Mr. Lincoln seconded.

Motion carried: 7-0-0

ITEM 4 – 28 Island Avenue – Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner/applicant Diane Knight requests consideration of a shoreland development plan for a second story expansion of an existing, nonconforming single-family dwelling located at 28 Island Avenue, Tax Map 1, Lot 9 in the Residential – Urban (R-U) and Shoreland Overlay (OZ-SL-250’) Zones. Agent is Anne Whitney, Architect.

Ms. Whitney explained that only volume will increase, as the dormer additions are within the existing roofline. Floor area and devegetated area will not change. The plan is being updated to contain more information for being recorded at the Registry of Deeds. 1,456 cubic feet will be added for an 8.8% increase in volume.

Ms. Whitney said she has added a note to the revised plan that any future increase in building area or impervious area will require a registered survey.

Ms. Kalmar moved to accept the plan application and grant conditional approval for the Shoreland Development Plan Application dated May 7, 2015 from Diane Knight for 28 Island Avenue (Tax Map 1, Lot 9) in the Residential – Urban and Shoreland Overlay Zone.

Ms. Davis seconded.

Motion carried: 7-0-0

Ms. Kalmar read the Findings of Fact [*highlighted sections below*].

FINDINGS OF FACT

APPROVED

For 28 Island Ave

Shoreland Development Plan Review

WHEREAS: Diane Knight requests approval of a shoreland development plan for the addition of two second story dormers to an existing, nonconforming structure located at 28 Island Avenue, Tax Map 1, Lot 9 in the Residential – Urban (R-U) and Shoreland Overlay (OZ-SL-250’) Zones, hereinafter the “Development,” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted:

Planning Board Review	June 11, 2015
Approval	June 11, 2015

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Overlay Zone Project Plan Application, May 7, 2015.
2. Shoreland Development Plan, Anne Whitney Architect, May 6, 2015
3. Dormer Addition, Knight Stone Residence, Anne Whitney Architect, May 6, 2015

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town 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
<i>1.d The total footprint of 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...</i>
Findings: The proposed development does not increase devegetated areas on the lot.
Conclusion: This standard appears to have been 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 condition must not be permitted to become more nonconforming.

Finding: This is an existing, nonconforming lot with an existing single family dwelling structure that is nonconforming to the 100-foot setback from the protected resource. The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

Conclusion: The requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

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.

See 16.6.6.1 and its reference to 16.6.6.2 below.

Finding: The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

Conclusion: The requirement appears to be met.

Vote: 7 in favor 0 against 0 abstaining

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] 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.

Finding: The proposed development does not pose a concern.

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 Overlay 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 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 of 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 16.7.3.5.4 and Section 16.7.3.5.6 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, expanded 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 decisions on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, 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: A. Staff confirmed that there are no recorded expansions of the portion of the structure within the setback since 1989. The proposed expansion represents a 8.8% increase in volume. B & C. Does not apply.

Conclusion: The 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:

11. 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

12. 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

<p>13. Adequately provide for the disposal of all wastewater; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>14. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; <u>Finding:</u> 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. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>15. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; <u>Finding:</u> Shore cover is conserved in accordance with this Code. There are no points of access. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>16. Protect archaeological and historic resources; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>17. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>18. Avoid problems associated with floodplain development and use; <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>19. Is in conformance with the provisions of this Code; <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
<p>20. Be recorded with the York County Registry of Deeds. <u>Conclusion:</u> 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.</p>
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> 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 Diane Knight requests approval of a shoreland development plan for the addition of two second story dormers to an existing, nonconforming structure located at 28 Island Avenue, Tax Map 1, Lot 9 in the Residential – Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones subject to an conditions or waivers, as follow:

Waivers: None

Conditions of Approval (to be included 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. All Notices to Applicant contained herein (Findings of Fact dated June 11, 2015).
4. Future expansions will require the applicant to obtain a new Boundary Survey with Highest Annual Tide Information for Staff review.

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

5. Revise plan per staff comments

The Planning Board authorizes the Planning Board Chair 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 KITTELY PLANNING BOARD ON June 11, 2015

Notices to Applicant:

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 of final mylar.
6. 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.
7. 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.
8. 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 – 89 Route 236 – Sketch Site Plan Review

Action: approve or deny sketch plan. Owner/applicant Rockwell Homes, LLC requests consideration of a sketch site plan for a single, 2,520-square-foot building containing business and professional offices and a drive-through-only restaurant at 89 Route 236, Tax Map 28, Lot 14-2 in the Commercial 2 (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering & Surveying, LLC.

Mr. McCarthy introduced the owners of Rockwell Homes and provided an overview of the project, including:

- The lot was recently subdivided from a larger parcel and reviewed by the Planning Board
- The proposed building is 42 feet by 60 feet, containing three offices and an Aroma Joe's drive-thru with no internal seating or service
- Because there is no seating associated with the restaurant, they propose no parking in relation to seating, only parking for employees
- Office space parking is provided and the applicant would like to explore a reduction in the future to only 15 spaces, considering that much of the "office" space is showroom space
- There is a shared entrance with the lot next door and the circulation is designed as a one-way loop
- A buffer will be maintained at the back of the lot but the applicant wishes to perform selective cutting at the front of the lot to improve visibility
- The property will be serviced by public water
- There is no sewer available; an on-site septic will serve the development
- There has been some initial coordination with the next-door owner, especially with consideration to the shared entrance and how it will suit them in the future

Ms. Davis asked about the proposed sign location and whether they have considered a shared sign for the shared entrance. Mr. McCarthy said they would look into it.

Mr. Alesse asked whether access or egress on Fernald Road was considered. Mr. McCarthy said they haven't completed a traffic assessment yet but the entrance permit was approved by the Department of Transportation to line up with the other end of Fernald Road, opposite. Mr. Lincoln asked about the width. Mr. McCarthy said the current DOT permit is for 30 feet. Mr. Lincoln shares Ms. Davis' concern about the sign.

Ms. Kalmar asked about the easement for a sidewalk required by the previous subdivision plan. Mr. McCarthy is interested in the Town's plans for that section of road. Mr. Di Matteo said that the need for the sidewalk depends on what happens with the other lot and the plan should show that the sidewalk can be accommodated when needed.

Mr. McCarthy asked for guidance on parking and a possible reduction. Mr. Di Matteo explained that there is some flexibility, and they may provide parking information from other locations to substantiate the argument.

Ms. Davis suggested an interior crosswalk between parking and the building.

Ms. Kalmar moved to approve the sketch plan application dated May 21, 2015 from Rockwell Homes, LLC for 89 Route 236 (May 28, Lot 14-2) in the Commercial -2 Zone.

Mr. Lincoln seconded.

Motion carried: 7-0-0

ITEM 6 – 73 Tower Road – Shoreland Development Plan Review

Action: accept or deny plan application, approve or deny plan. Owner/applicant Robert Ramos requests consideration of a shoreland development plan to demolish an existing, non-conforming single-family dwelling and construct a new, more conforming single-family dwelling at 73 Tower Road, Map 58, Lot 42 in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250') and Resource Protection Overlay (OZ-RP) Zones. Agent is Robert MacDonald, Detail Design Builders, LLC.

Mr. McDonald provided an overview of the project and described the proposal as less nonconforming than the existing structure. He explained how the building design has been modified and the calculations have been corrected since receiving staff notes the previous week.

Ms. Kalmar noted 16.7.3.5.6.C and its requirement to reconstruct a structure within the setbacks if possible. Discussion ensued regarding its applicability and practicality. Mr. MacDonald suggested that moving the house back from the shore would put it in FEMA's future floodplain.

Ms. Davis moved to accept the Shoreland Development Plan application dated May 21, 2015 from Robert and Megan Ramos for 73 Tower Road (Tax Map 58, Lot 42) in the Residential – Rural Conservation and Shoreland Overlay Zones, schedule a public hearing for July 9, and schedule a site walk for June 30 at 9:00 a.m.

Mr. Alesse seconded.

Motion carried: 7-0-0

ITEM 7 – Board Member Items / Discussion

A. Committee Updates

B. Other

None.

ITEM 8 – Town Planner Items:

A. TBD

None.

Ms. Davis moved to adjourn.

Mr. Alesse seconded.

Motion carried: 7-0-0

The Kittery Planning Board meeting of June 11, 2015 adjourned at 8:45 p.m.

Submitted by Elena Piekut, Assistant Town Planner, June 15, 2015.