

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

APPROVED
December 17, 2009

Meeting called to order at 6:06 p.m.

Board Members Present: Russell White, Michael Luekens, Ernest Evancic, George Burke, Scott Lincoln, David Kelly

Members absent: Joseph Carleton

Staff: Gerry Mylroie, Town Planner

Conservation Committee: Earle Wells

Minutes: December 3, 2009 Planning Board Meeting

Mr. Luekens moved to accept the minutes as amended

Mr. Kelly seconded

Motion carries 6 in favor, with 1 abstention (Burke)

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Municipal Salt Shed – Modification to Previously Approved Site Plan – Waiver/Decision – Town of Kittery, Owner, requests a waiver of sprinkler installation within the approved Salt Shed currently under construction. The Owner's agent is Ken Wood, PE, Attar Engineering.

Ken Wood, Attar Engineering, summarized the waiver request, described the building materials proposed and location of hydrants on the Public Works lot, and noted he is not aware of any salt storage facilities equipped with a sprinkler system. **David O'Brien**, Fire Chief, stated he required a sprinkler system because the ordinance requires one in a building of this size. However, for this use where there are no people working inside the structure, he agrees a sprinkler system is not warranted.

Mr. Lincoln moved to approve the modification to the previously approved site plan and grant a waiver of a sprinkler system in the Town's salt shed.

Mr. Luekens seconded

Motion carries unanimously

ITEM 2 - Frog Hollow Lane – Amendment to Right of Way and Division of Land Plan-

Amendment to Finding of Facts/Waivers - Peter Thomas, Owner, proposes to gain planning board approval for the division of the remaining land, approved January 8, 1998 by the Planning Board, to bring the amendment creating parcels B and C, approved by the Kittery Code Enforcement Officer on January 18, 2007, into compliance with the Kittery Ordinance; and then proposes to construct 2 dwelling units on parcel C. The property located at 2 Frog Hollow Lane is situated on Map 57 Lot 7 in the Kittery Rural Residential (**RR**) Zoning District. The Owner's agent is Michael Livingston of Anderson, PE, Livingston Engineers.

Mr. Mylroie explained the Findings were approved, but the requested waivers were not acted upon by the Board prior to preliminary plan approval as required. There was a lengthy period of time between Board review of the plan, and the waiver requests were overlooked. The waiver requests require Board approval and an amendment to the Findings of Fact previously read and adopted by the Board on December 3, 2009.

Chairman White noted he is concerned about the waiver request reducing the width of the private ROW from 18 feet to a 12 foot gravel drive as he does not recall ever granting such a narrow width. Discussion followed regarding the width of the drive and safety issues. It was unclear whether the Fire Chief accepted this particular waiver, and members concurred they could approve the length and width of the proposed ROW if the Fire Chief specifically accepts the waiver request.

Mr. Luekens moved to approve waiver requests A-F as listed in the revised Findings of Fact for Frog Hollow Lane, dated 12/15/09, with the following conditions:

1. waiver request A.b. (traveled pavement width reduction to 12' gravel) be contingent upon the Fire Chief's review and acceptance;

2. waiver request C (ROW construction details) be provided to the Fire Chief for review and acceptance; and
3. amend the Findings of Fact as such, with conditions as stated.

Mr. Burke seconded

Board discussion followed.

Chairman White amended the motion requesting the plan revision date be changed to 12/17/09, and such Planning Board action be reflected in the Findings of Fact.

Mr. Kelley seconded the amended motion

Motions carry unanimously

ITEM 3 - When Pigs Fly/Pizza Restaurant – Site Plan Review – Completeness/Preliminary Site Plan Review and Schedule for a Public Hearing. Owners, Andrew and Ron Siegel, propose an approximately 2,000 square foot addition to an existing building with 1,000 square feet for a limited seating restaurant as an extension of the When Pigs Fly retail business. The proposed expansion is located on 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 stated the Board's action would be to determine the plan before them substantially complete and schedule a public hearing.

Chairman White asked if there were any waiver requests submitted. **Tom Harmon** stated the applicant is requesting a waiver to the YCCS endorsement, only. He explained they are still tinkering with the lighting fixtures and landscape plan, and have rearranged the parking area.

Chairman White motioned to accept the plan as substantially complete and schedule a public hearing to proceed with review.

Mr. Lincoln seconded

Motion carried unanimously

Mr. Mylroie stated a public hearing would, most likely, be held on January 14, 2010.

ITEM 4 - Amendments to Title 16 Land Use and Development Code – Shoreland, Resource Protection and Related Zoning Provisions - Workshop - The mandatory Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt shoreland/resource protection zoning law consistent with, or no less stringent than, the minimum requirements in the Act and guidelines. A proposed amendment to Kittery's Title 16 Land Use Development Code including the Zoning Map incorporates the requirements into the Kittery Municipal Code. The amendment must reviewed by the Planning Board and recommended to the Town Counsel for adoption. 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 includes:

- Amendment to Chapter 16.04 – General;
- Amendment to Section 16.08.20 – Definitions;
- Amendment to Section 16.12.010 – Purpose
- Amendment to Section 16.12.020 – Establishment of Zones
- Amendment to Section 16.12.090 – Conservation Zone
- Amendment to Section 16.12.160 - Shoreland Overlay Zone,
- Amendment to Section 16.12.170 - Commercial Fisheries/Maritime Uses Overlay Zone
- Amendment to Section 16.12.180 - Resources Protection Overlay Zone;
- Amendment to Chapter 16.16 - Administration and Enforcement;
- Amendment to Chapter 16.24 - Appeals, Special Exceptions and Variances;

Amendment to Chapter 16.32 - Design and Performance Standards;
Amendment to Chapter 16.28 - General Development Requirements;
Delete Section 16.32.490 - Shoreland Zoning; and
Amend previously recommended Chapter 16.34 – Shoreland Zoning.
Amendment to Chapter 16.37 - Marine Related Development.

Mr. Lincoln left the meeting at 7:15 p.m.

Mr. Mylroie updated the Board based on comments received since the 12/3/09 meeting. The plan is to have a final public hearing on January 14, 2010, including a public hearing on resource protection, then forward to Council for adoption. Changes included suggested amendments to the section on Mining, Exploration and Extraction, permitted/special exception uses in zones within shoreland or resource protection zones, grammar and punctuation. The addition of a new area on the zoning map, Transportation Zone, was presented. **Mr. Mylroie** advised the Board that Kittery's shoreland protection zone is 250 feet wide, but the existing ordinance states, where this width is divided by a roadway, the shoreland protection zone is then measured 75 feet to the centerline of the roadway. In discussions with the DEP it was found this is not allowed.

Also presented and discussed were proposed revisions to the development application and review language and requirements, the State's requirement for documenting actions and permits issued in the shoreland zone, threshold review criteria for site vs. subdivision review, etc.

ITEM 5 - Amendments to Title 16 Land Use and Development Code – Plan Review Processes and Related Provisions - Workshop – To update and improve the current plan review process, possible Code amendments will be discussed.

Board members discussed this item in conjunction with Item 4. **Mr. Mylroie** explained how he proposes to prepare staff and peer review notes to dovetail with the Findings of Fact.

PLANNER'S TIME –

(Reminder: Public Hearings and Decisions, Thursday, January 14, 2010 on Resource Protection Overlay Zone and other Shoreland Zoning related amendments to Kittery Title 16 – Land Use and Development Code.

Earldean Wells reported on the tree removal at Shepherds Cove.

Mr. Evancic updated the Board on the activities of the Open Space Committee and their interest in working with other Committees and Board's in updating the Comprehensive Plan. **Earldean Wells** stated these Committees will be working together to update the complex Comprehensive Plan maps.

Mr. Mylroie announced the Council is conducting a strategic planning meeting on January 4, 2010 and will address the process for updating the comprehensive plan and goals for 2010, including economic development, pedestrian access, and more.

Chairman White suggested the Board hold a workshop to discuss goals and **Mr. Luekens** suggested the Board prioritize these goals in workshop.

The Ordinance Review Committee will meet on December 21, 2009. The Council will meet on December 28, 2009 to adopt proposed ordinance amendments, including definitions, ZBA and Board powers and duties, and Accessory Dwelling Units.

Mr. Luekens moved to adjourn
Mr. Kelly seconded
Motion carries unanimously

The Planning Board meeting of December 17, 2009 adjourned at 8:18 p.m.

Submitted by Jan Fisk, Recorder – December 27, 2009