

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
August 8, 2013

Meeting called to order at 6:08 p.m.

Board Members Present: Tom Emerson, Deborah Driscoll, Mark Alesse, Ann Grinnell, Rich Balano

Members absent: Susan Tuveson, Bob Melanson

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes: Not reviewed

June 27, 2013

July 11, 2013

July 25, 2013

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

D. Allen Kerr, Colonial Road: Requests the Board implement parking at the John Paul Jones Park, and include signage to identify the Park for its historical significance. Mr. Emerson stated in a workshop with the DPW Commissioner, this issue came up and the process is underway following review by the Fire and Police departments. Ms. Driscoll suggested a workshop be held regarding the Park area including the potential traffic problems with the opening of the bridge.

PUBLIC HEARING/OLD BUSINESS

ITEM 1–68 Chauncey Creek Road Replacement Structure – Shoreland Development Plan Review.

Action: Approve Site Walk minutes and grant or deny final plan approval. John Rummeler, owner and applicant, requests approval to replace and expand an existing structure at the property located at 68 Chauncey Creek Road, Tax Map 45, Lot 72, Residential – Kittery Point Village Zone and Shoreland Overlay Zone. Agent Ken Markley, Easterly Surveying, Inc

Mr. Emerson noted site walks need to be scheduled far enough in advance so minutes can be prepared.

Ms. Driscoll moved to consider approving the site walk minutes of August 6, 2013

Mr. Balano seconded

Ms. Grinnell expressed her concern about receiving information at the last minute. Ms. Wells noted the Conservation Commission is concerned the proposed site construction impact on the tree, and moving the construction out of the shoreland zone. Mr. Mylroie stated this is to discuss the site walk and project comments can be received during the public hearing review of this item.

Ms. Driscoll withdrew her motion.

Ken Markley summarized the proposed site development will include a single family house with a detached garage. The removal of the previous structures and relocation of the proposed structures has improved the side setbacks and is more harmonious with the neighborhood. The new dwelling structure is 56.8 feet from the water; adjacent property structures average 48.6 feet from the water. Prior setbacks of 3.9 feet have been increased to 15 feet; 5.3 feet to 15 feet; and 49.3 feet to 56.8 feet. The equipment that was used to remove the old structures approximately 6 months ago apparently did not damage the tree or its root structure as it is thriving, and the applicant believes construction can be accomplished

without damage to the tree. The impervious area total is 17% where 20% is allowed; building coverage is 29.3% where 30% is allowed; total volume area is 29.9% where 30% is allowed; square footage is 29.3% where 30% is allowed. The septic system has been in place, and needs to be inspected.

The Public Hearing opened at 6:28 p.m.

- Lee Roberts speaking for property owners at 66 Chauncey Creek. Owners are pleased that the abandoned structures have been removed. She understood the tree is the same species as one near the water where a large branch fell off onto her daughter's property, and was not removed by Mr. Rummler. She does not believe the tree in question is healthy or of value. She is concerned about the less than required setback of 100 feet from the Creek, and believes the driveway could be moved.
- Martha Kowall, 62 Chauncey Creek Road. Is the proposed structure replacing an existing structure as the prior home was uninhabitable for over 15 years? The difference between the old footprint and the proposed footprint exceeds 40% not 29.3%. Shouldn't new construction be more conforming at 30 feet from the road and 100 feet from the Creek? Have two test pit locations been determined? What's more important, the tree or the shoreland? The proposed garage calculations appear to be different on the plan.

The Public Hearing closed at 6:39 p.m.

Mr. Markley noted the tree that dropped the branch was not owned by Mr. Rummler at the time though there has been a property line adjustment since and he now owns that tree. There is an existing septic system already approved on the property so additional test pits are not necessary, and it will be inspected prior to use. There was a rumor that waste was left on the site which is not true. The movement of the garage improves the abutter's sight lines. He personally calculated the percentage of impervious cover, volume etc. and they are accurate. Mr. Balano noted the plan calculation vs. the drawings need to be checked for correctness. Ms. Grinnell asked about the need for a reserve septic system. Mr. Markley noted the existing system was installed in 1987, has not been used, and the system has been certified as useable by Michael Cuomo.

Ms. Roberts noted that Mr. Rummler did not provide financial assistance to have the tree branch removed and does not believe the septic system could serve the proposed construction.

Ms. Grinnell noted she is uncomfortable with the plan not being accurate, is concerned about the silver maple, and questions whether they can re-build without leaving up one wall. Mr. DiMatteo noted the Board needs to determine if the proposed construction is as conforming as practicable, but the requirement of leaving up one wall is not referenced in the shoreland zone. Mr. Emerson noted Mr. Cuomo's letter was not included in the packet, the site walk minutes cannot be included, and the plan shows inconsistencies. Ms. Wells asked about the neglect of the property in order to remove the structures. Mr. Balano stated the code speaks to damage or destroyed property and whether neglect should be considered. Ms. Grinnell referenced the Findings noting the requirement for test pits and whether this is needed. Mr. DiMatteo stated Mr. Cuomo will inspect the septic system. Ms. Driscoll noted her concerns about the increased patio area, whether the home can be moved further away from the Creek, and whether the location of the existing septic system will be impacted if the structures are moved. Mr. Mylroie asked if the preference of the Board is to save the tree or move the structure. Mr. Emerson summarized for the applicant: determination if the septic system is adequate; is a standby septic location needed; plan calculations and notations need to be accurate; history of neglect and whether the Board can require a greater conformance of new structures; reconsider the size and extent of the deck. Personally, he would like to see the silver maple protected as the proposed structures are more conforming than the previous structures. Mr. Balano stated he believes the structures trump the tree as the tree will likely be gone before the structure. Ms. Grinnell stated the roots of the tree most likely extend under the proposed structure and will be negatively impacted by the construction, and would like to see the structure moved further back from the Creek.

Ms. Driscoll moved to continue the public hearing for 68 Chauncy Creek

Mr. Balano seconded

Motion carried unanimously by all members present

Ms. Grinnell asked for a consensus regarding the tree. Board members were 4-1 in favor of removing the tree.

ITEM 2 – Rt. 236 Commercial Lot Development— Paolucci Realty –Subdivision Preliminary Plan Review. Action: Grant or deny preliminary plan approval. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

Mr. Mylroie explained the Board should decide whether to approve the plan with existing vegetation and await a specific site plan presentation or allow the applicant to clear the property in order to market the vacant site. Ms. Grinnell also asked why this project and the Fernald Road project is not being viewed as one as this was not divided after the four year minimum. Mr. Mylroie explained there are two separate applicants with adjoining lots, but will be sharing the stormwater management, and potentially other issues relating to the two lots. Ms. Grinnell stated the two lots are owned by the same person who created separate legal entities. Mr. Emerson agreed there are two legal entities but where we are talking about stormwater management, the Board needs to see both properties together. Mr. Emerson asked why the applicant would not be allowed to clear and grade.

The Public Hearing opened at 7:17 p.m.

Tom Harmon, Civil Consultants explained the property is wooded with slopes and various soils. Peter Paul purchased the entire property that fronts 236 and Fernald Road. Under state law property can be split once every five years without Planning Board review. This property was split and is owned by two different real estate trusts. The Route 236 property was then divided into two lots. The applicant wishes to clear and grade the property to market to potential buyers. There is municipal water to the site, and there will be on site sewer, with both lots served by one driveway. The wetland area will need to be filled, but they are essentially drainage ditches. If the applicant is charged \$4 per square foot they will not fill them. Wetland setbacks have been illustrated on the plans. He presented the soils map and grading plan. Prior to approval of this project, easements will be created regarding stormwater management between the two lots. A stormwater management plan will be developed. He explained there are a number of uses permitted on this commercial site, and the applicant would like to prepare the site for sale, with the future owner of the site appearing before the Board for site development. He addressed staff issues:

- Landscape strip along the front of the property cannot be moved further onto the property as it is not a buffer and the lot is relatively small for a commercial property.
- Buffer between the commercial and residential properties is the set-back area, but they will re-vegetate if the Board requires additional buffering.
- The applicant would like to receive preliminary approval for grading as they will not be removing material off the site, but will be reusing it.

Earldean Wells, Conservation Commission, noted the Commission's concern regarding clearing the property without any idea of a potential use. Route 236 has divided wetlands in this area, and the wetlands on this property should not be filled.

Castania Lane, 21 Alder Lane, Eliot noted her concern about the wetland and potential water runoff onto their property.

The Public Hearing closed at 7:33 p.m.

Ms. Grinnell moved to table this discussion until the Fernald Road project is discussed

Mr. Alesse seconded

Mr. Emerson agreed the stormwater and wetland issues do need to be discussed together, but feels the site design would be better discussed when there is an applicant with a specific use before the Board. He is not in favor of removing the trees and complete grading, but feels some preparation may be needed to make the property marketable. He has no issue with the division of the property. Ms. Driscoll noted she is not comfortable with the amount of tree removal without a drainage plan. Mr. Harmon stated it is difficult to develop a stormwater plan without the grading plan. Ms. Grinnell stated she would be comfortable with the division but feels both properties need to be reviewed together to assess the wetland and stormwater issues. Mr. Balano felt clearing and grading is needed for the commercial lot. Ms. Driscoll stated fill from the commercial site cannot be used on the residential site. Mr. Harmon stated he was not aware this was being considered.

Motion carried unanimously by all members present

[Note: This item was continued by Board action under Item #5]

OLD BUSINESS

ITEM 3 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review.

Action: Continue Review of Preliminary Plan Application. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 79 sites on 50 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lots 24, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.

Mr. Myroie summarized the Board requested a full Findings of Fact at the prior meeting on this item. Staff sought Town Counsel's advice which was to proceed in the same direction, or request the applicant to either modify their plan or obtain a mineral extraction permit. The applicant would like to go forward with the plan as is, and has filed a mineral extraction permit with the CEO. The CEO is consulting with the Counsel and will draft a report to the Planning Board relative to the permit request. The Board will then take the CEO's report to make a determination through a Findings of Fact tailored to this specific application. There is no action for the Board at this time.

Ms. Grinnell moved to continue this item

Ms. Driscoll seconded

Mr. Balano noted this is the second mineral extraction permit request. Mr. Emerson explained the first went to the Board of Appeals and, procedurally, it needs to be brought to the Planning Board.

Motion carried unanimously by all members present

ITEM 4 – Stone Meadow Cluster Subdivision, Brave Boat Harbor Rd. – Subdivision Preliminary Plan Review.

Action: Continue with preliminary plan review, schedule a second public hearing. Owner Acadia Trust, N.A, and applicant Harbor Street LP, is requesting approval of their plan for a 27-lot subdivision on a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural and Shoreland and Resource Protection Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Mr. Alesse recused himself. Mr. Emerson noted the Board was down to four members, with four like votes required for action. He asked the Board not to reconvene the same issues that will be discussed at the second public hearing.

Mr. Myroie noted there has been substantial information submitted since the last meeting, and the Board

needs to decide if the information is sufficient to move forward.

Ms. Grinnell requested the Board review and discuss the Cluster ordinance as she does not believe this project meets the ordinance criteria. She cited Title 16.8.11.6.C *Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with Section 16.8.11* noting shared septic systems have never been discussed. She noted the length of the road with houses on either side, stating the natural environment is not protected with this level of development, including separate wells and leach fields. The objectives in Title 16.8.11.1 are subjective, but shared septic and municipal water is specifically required in a cluster development. This property is not suitable for cluster development.

Mr. Balano noted dimensional standards may be modified in exchange for open space, which is the intention of cluster design. All issues need to be reviewed by the Board and then Board determines if the objectives of cluster development have been met. Mr. Emerson noted the Mitchell-Harrison piece and whether this will be included in the open space.

Durwood Parkinson, Attorney for the applicant, noted that procedurally the Board is to schedule a second public hearing, and these are the very issues that would be discussed at the public hearing. It is premature to pass judgment on the application. Ms. Grinnell stated she is not passing judgment but asking why the Board has not discussed a shared septic system as noted in the ordinance.

Jeff Clifford, Altus Engineering, summarized the information presented since the last meeting on this project, and other consultants will be available for a more detailed discussion at the next public hearing:

- Geohydrologic report (RW Gillespie) which assesses groundwater nitrate levels which, at 200 feet from the septic site, were measured at less than 10 milligrams per liter, which is very conservative; a water demand and supply assessment demonstrated adequate water on the site, at less than 39% recharge;
- Traffic study (Vanesse and DPW) measured 316 trips during the week. The analysis found there is sufficient capacity on Brave Boat Harbor Road, classified as a primary collector, and the intersection could function at a Level Service A, and site lines meet or exceed minimum requirements with clearing to the north. One minor accident was reported in the past three years.
- Following an on-site assessment, no rare plants were found.
- Wild life assessment has been illustrated on plans showing development has been located away from the higher ranked wildlife areas.
- The archeological study found the Mitchell Garrison site was actually the Mitchell-Grant Farmstead and there is a no disturb protection line in place as part of the ADT stormwater buffer in this area.
- Septic. Systems must be designed to meet required depths. Each lot was investigated and found they meet state requirements for individual septic systems.
- Maine DEP has determined significant vernal pools on the site and 750-foot radius' have been established around each pool.
- Cut and fill analysis indicate fill would need to be brought in, though a majority of the cut will be screened and re-used on site, including crushing of rock for road base.
- Blasting is rarely done and the ledge on the site can be broken up.
- The cemetery can be removed from the net residential density calculations as 70% open space has been identified.
- The road was originally designed as a cul-de-sac, but the Fire Chief prefers a hammerhead so the plan was changed.
- Connections to abutting properties are not proposed, but need to be addressed by the Board.
- A proposed road is 2,300 feet. A road waiver request for 800 feet beyond the 1500 feet as allowed in the ordinance has been made.
- The applicant has demonstrated a willingness to work with the Board, including:
 - a 100-foot buffer to maintain the rural character of Brave Boat Harbor Road;
 - abutting property survey; and
 - reduction from 40 to 27 lots.

He will be prepared to review the cluster ordinance and address each item to demonstrate how this project meets the cluster ordinance criteria.

Mr. Emerson stated a second public hearing will be held as there has been significant information submitted since the last public hearing, at the request of the Board and abutters. In the next public hearing he requests that the discussion addresses those issues for which the second hearing is being held, and not re-hash everything that has been previously discussed. He asked that a municipal impact study be prepared for discussion. Ms. Driscoll asked if the traffic study also measured week-end trip generations as Brave Boat Harbor Road is much busier on weekends. Ms. Grinnell asked for a list of waivers.

Mr. Emerson summarized topics for discussion at the next public hearing:

1. each study will be discussed;
2. each waiver will be discussed;
3. water and septic services;
4. how the development meets the cluster ordinance;
5. municipal impact study;
6. roadway length;

Mr. Balano noted the Board has not requested an impact study for other developments. Ms. Driscoll suggested the distance from municipal services may be a reason to consider requesting this study. Ms. Grinnell noted her concern regarding stormwater runoff from the development. Mr. Clifford stated a final plan has not been designed at this stage, but woodland buffers are the primary method and the final analysis will be reviewed by the DEP. To finalize the stormwater plan, the roadway length needs to be determined. If a road waiver is not granted, emergency access options are a possibility, but not desirable. He noted two possible locations for emergency access. Ms. Grinnell noted she is not in favor of granting waivers and the length of the road seems to disregard the intent of a cluster development. Mr. Clifford explained that 70% of the areas and habitats have been preserved by providing the developer flexibility to place the subdivision where it makes the most sense, and placing lots on each side of the road reduces the road length and preserves more space. Mr. Mylroie explained the applicant has provided the preliminary information needed for the Board to provide guidance toward more substantial studies leading to final approval. Mr. Emerson suggested the staff request input from Emergency Services and DPW regarding municipal impact.

A Public Hearing on the project will be held on Thursday, August 29 at 6:00 p.m.

A site walk will be held on Tuesday, August 20 at 5:00 p.m.

Break

ITEM 5 – Fernald Road Residential Cluster Subdivision, AMP Realty Holdings LLC – Sketch Plan Review. Action: Continue Sketch Plan Review and determine conformance with Code. Owner and applicant Peter J. Paul Trustee of AMP Realty Trust, is requesting consideration of plans to develop a multi-family cluster subdivision. The approximately 18 acre parcel is located on a portion of Tax Map 28, Lot 14, in Residential Suburban Zone with portions in the Commercial C-2 zone and Resource Protection Overlay Zone. Agent is Tom Harmon, Civil Consultants.

Tom Harmon summarized the application before the Board. The plan includes a 22-foot wide by 800-foot long road to a cul-de-sac; 9 residential units with 1 triplex and 3 duplexes. There is a wooded buffer that will be utilized as part of the stormwater treatment to be shared with the abutting commercial project, and required easements will be developed. He discussed their proposed layout and staff recommendations, concluding their plan works better for grading and septic locations. He spoke to soil classifications and density allowances. The Soil Suitability Guide for Land Use Planning in the State of

Maine is out-of-date. The ordinance states soils identified as poorly or very poorly drained may not be used for development and density calculations. Civil Consultants looked at the soils and the ‘drainage class’, noting the ratings refer to poorly drained and somewhat poorly require. They have removed all of the scantic soils and other poorly drained soils to arrive at their net residential density totals. They would like the Board’s concurrence with their methodology of determining soil ratings prior to moving forward with grading and drainage plans. Areas for sidewalks have been set aside for future consideration. Mr. Emerson suggested 22 feet was too wide for the size of the project; he would prefer not to move the structures further from the roadway in order to preserve open areas; natural, meandering walking paths or trails are preferable to asphalt sidewalks. Mr. Harmon suggested erosion control material (site materials ground up) for paths. Ms. Grinnell asked the two projects be reviewed together. Mr. DiMatteo stated this project would still need a preliminary plan application for the two projects to be reviewed together. Discussion followed regarding the soils issues. Mr. Emerson suggested this be reviewed by the Board with input from the Town engineers, CMA. Mr. Harmon noted that awaiting a final decision will delay the project for more than two months. Mr. Emerson felt the plan is sufficient to be accepted at this level, and could have some Board consensus in two weeks regarding the soils issue. Mr. Paul asked what the density difference would be between the soil types. Mr. Harmon stated two units on 18 acres. Mr. Mylroie stated the Board can accept the sketch plan so the applicant can present the preliminary plan for review in tandem with the Route 236 application. Ms. Driscoll asked why the applicant does not adjust the lot line between the two properties to retain the drainage area. Mr. Harmon stated that area will be used for open space calculations.

Mr. Balano moved to accept the sketch plan
Ms. Driscoll seconded
Motion carried unanimously by all members present

Discussion followed regarding simultaneous review of this item and Route 236.

Mr. Emerson re-opened Item 2:

Ms. Driscoll moved to continue review of the Route 236 project to the September 12 meeting.
Ms. Grinnell seconded
Motion carried unanimously by all members present

ITEM 6 – Board Member Items:

- A. Sowerby- Reconsideration of Closing Motion – This issue will be moved to the August 22, 2013 meeting.
- B. Comments and Discussion – No Discussion

ITEM 7 – Town Planner Items – No Discussion

- A. Miscellaneous;
- B. Other

NEW BUSINESS

ITEM 8 – Pearson Meadow Cluster Subdivision off Wilson Rd – Acceptance Review of Prelim. Plan Application.

Action: Accept or Deny Preliminary Plan Application, schedule a Site Walk and/or a Public Hearing.
Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their plans for a cluster subdivision, ten new lots and one reserved lot on a 24.5 acre parcel at 60 Wilson Road.,

Tax Map 54, Lot 14, Residential-Rural, with and Resource Protection Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Mr. DiMatteo explained the applicant is before the Board with a sketch plan and the Board needs to be determined if the submitted information meets ordinance requirements. Ms. Driscoll suggested the applicant may want to receive the Board's input regarding the road location. Mr. Emerson noted the application does appear to be complete, but he has concerns about the road location and lot locations. Discussion continued regarding the road location and site distances and buffering. Ms. Grinnell stated she will be interested in the applicant addressing the common sewer system. Mr. Clifford stated it was his understanding this was a meeting to determine the completeness of the application and to schedule a public hearing.

Ms. Grinnell moved to accept the preliminary plan and schedule a public hearing.

Mr. Balano seconded

Motion carried unanimously by all members present

The public hearing will be schedule for the September 12, 2013 meeting.

ITEM 9 – Knight Ave Shoreland Development Plan Review – Acceptance Review of Plan Application.

Action: Accept or Deny Plan Application, schedule a Site Walk and/or a Public Hearing. Owner and applicant Knights of Kittery LLC, requests approval to replace and expand an existing structure located above an existing pier on the property located at 4 Knight Avenue, Tax Map 4, Lot 67, Mixed Use-Kittery Foreside Zone and Shoreland and Commercial Fisheries Overlay Zones.

Ken Markley, agent, summarized the existing structure on a pier is being used for storage and commercial fisheries office. The proposal is to rebuild the structure on the pier with minor expansion, with an area and volume increase of 27%. The applicant has received approval to replace the pier. The structure's foundation cannot be salvaged so the entire building will be removed and replaced.

Mike McCuddy, owner, found they had to replace the dock because it was below flood level and then found the building and services are in such disrepair it needs to be removed. The prior owner lives in the structure, but will be leaving. They intend to rehab and then sell the property.

Mr. Markley noted there is a sewer easement in front of the dock and there is no location upland where the building can be located.

Mr. Balano moved to extend the meeting to 10:30 p.m.

Ms. Grinnell seconded

Motion carried unanimously by all members present

Mr. Balano moved to accept the application, schedule a site walk and public hearing

Ms. Driscoll seconded

Motion carried unanimously by all members present

A site walk was scheduled for August 27, 2013 at 5:00 p.m.

ITEM 10 – Whipple Road – Shoreland Development Plan Review – Acceptance Review of Plan Application. Action: Accept or Deny Plan Application, schedule a Site Walk and/or a Public Hearing.

Owner and applicant Jeffrey & Deborah Kolod requests approval to replace and expand an existing structure and construct associated improvements on the property located at 92 Whipple Road, Tax Map10, Lot 19, Residential–Urban Zone and Shoreland Overlay Zone.

Ken Markley, agent, summarized the project, noting the proposed remodeling of the home includes lowering the structure by two feet, though it will still be higher than 35 feet. A new garage will be located further from the water, install a swimming pool and move the driveway to the opposite side of the lot. The impervious coverage will be reduced from 33.6% to 22.8%. Pervious concrete pavement is

proposed for the driveway. The garage set back is currently 4.4 feet with a proposed setback of 4.7 feet; shoreland setback is currently 89.4 feet with a proposed setback of 92 feet, and the area within the setback will be reduced from 591.5 sf to 525 sf. Runoff will be to a dry well outside of the 100 foot setback. [unidentified] stated the footprint of the home has not changed.

Ms. Grinnell moved to accept the plan and schedule a site walk and public hearing
Mr. Balano seconded
Motion carried unanimously by all members present

A site walk was scheduled for Tuesday, August 27, 2013 at 6:00 p.m.

Mr. Alesse moved to adjourn
Ms. Grinnell seconded
Motion carried unanimously by all members present

The Kittery Planning Board meeting of August 8, 2013 adjourned at 10:08 p.m.
Submitted by Jan Fisk, Recorder, August 13, 2013