

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

**APPROVED**  
Thursday, April 23, 2009

Meeting called to order at 6:14 p.m.

Mr. Luekens, Board Secretary, called the meeting to order in the absence of the Chair and Vice Chair  
Members Present: Russell White, Ernest Evancic, Michael Luekens, Joseph Carleton, Douglas Muir,  
Megan Kline

Members absent: D. Scott Mangiafico

Staff: Sandra Mowery, Town Planner

**Minutes: April 9, 2009**

**Mr. Carleton moved** to accept the minutes as amended

**Ms. Kline** seconded

**Ms Kline** requested that additional information be included regarding placement of street trees along the road in agenda item 3.

**Motion carries unanimously** by members present

Board members reviewed a request for an extension of Planning Board approval for the Sowerby Mixed-Use project, located at U.S. Route 1. Following review of ordinance language and lengthy discussion,

**Mr. Carleton** moved that the Board extend the time period for initiation of the project to three (3) years from the original approval date of August 1, 2008, with the deadline for completion of the project be changed to five (5) years from the original date of approval.

**Ms. Kline** seconded

**Motion carries unanimously**

**PUBLIC COMMENT** – There was no public comment.

**ITEM 1 – Amendment to Title 16 Land Use and Development Code Zoning Ordinance – *Joint Workshop – Post-Construction Stormwater Ordinance*** – The mandatory Post-Construction Stormwater Management Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Kittery, Maine through review of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by Federal and State law. This Ordinance establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the Federal Clean Water Act and State law. The Town administration, endeavoring to incorporate State recommendations for the Post-Stormwater Ordinance proposes to amend Title 16.28.380 through 16.28.500.

**Mark Bergeron**, Sevee & Mahar Engineers, reviewed ordinance language changes and amendments and advised of recent DEP definition requirements for qualified third-party inspectors. **Mr. Carleton** asked if the definitions in the current ordinance have been compared with the proposed definitions in this ordinance so there are no conflicts. Mr. Bergeron stated that he did not find any conflicts, but because the shoreland zone ordinance is still under development, this issue should be monitored. **Mike Asciola** will check existing definitions against proposed definitions for conflicts. **Gary Beers**, Councilor, participated in review and discussion of the proposed ordinance and recommended changes to language and formatting. **Earldean Wells** inquired about domestic waste and whether that would include pet waste. Mr. Bergeron stated that pet waste would be included in household waste. Discussion followed regarding language amendments for inspection of stormwater and erosion control measures, wetland alteration, and construction standards. It was determined that the section regarding enforcement contained areas that were redundant [already included in the existing ordinance], and included unnecessary information that should be pared down or removed [proposed section 16.35.080 Basis]. Following definition review and recommended changes, the final ordinance will be reviewed for recommendation to Town Council at the May 14, 2009 meeting. The Town Planner requested that Mr. Bergeron be available during Council consideration, but not participate in the next Board review.

Break

**ITEM 2 - Plenary Site Plan – Preliminary Review continued/Discussion with Action - B & F Land Development, Owner,** proposes to remove the existing building and parking lot and to construct two new office buildings and parking lot on 1.29 acres at 240 US Route 1, located on Map 22 Lot 13 situated in the Commercial 1 (C-1) zoning district. The Owner's agent is Christopher Baudo, RA.

**Eileen McCarthy** distributed a copy of a portion of the Findings of Fact for Jeffrey S. Nawrocki from the July 12, 1991 Board of Appeals meeting. Members accepted the submission as a matter of public record, but did not read into the minutes.

**Mr. Mangiafico** arrived at 8:00 p.m.

Board members continued their discussion regarding buffer area, buffer strip and setback definitions. **Ms. Kline** inquired about noise pollution. **Mr. White** stated that he believed there is more traffic noise on Route 1 that would overwhelm any noise created at the proposed development site. He further described how restrictions can be placed on a commercial development, but not a residential development that could have greater negative impacts. **Ms. Kline** suggested that the general definition of buffer strip may allow for Board interpretation, as it is broadened in other areas of the ordinance, but more specific in mobilehome parks [16.32.730V – Buffering in Mobilehome Parks]. **Mr. Luekens** stated that he believed the project required a 40 foot buffer, according to the definitions, and should be neutral of any uses or activities associated with the proposed commercial development, and felt that the proposed driveway does not fit into the definition of a buffer. **Mr. Mangiafico** stated that he had met unknowingly with an abutter and that, when this item goes to vote, requests the Board determine that he has no conflict. He asked if the Board would consider the buffer area an improvement to a project, and would a waiver request be appropriate. He provided previously approved projects (Rite Aid, Cardinali Car Wash, and others) as examples. The applicant would have to apply for the waiver. **Mr. White** noted that the existing lot was previously a gas station, and that a truck repair shop would be an allowed use at that location. There followed discussion of other developments throughout Kittery that abut residential properties or uses. **Ms. Kline** stated that the 40 foot requirement is a standard and cannot be waived by the Board. **Mr. Muir** stated that the buffer is in the design and performance standards (16.32.430) and this section was central to the Board's consideration. **Mr. Mangiafico** commented that he wasn't convinced that moving the driveway to the other side of the building (as the building would still be there) would make that much of a difference to the abutters. He felt that, aside from placing a building in the buffer, the size and type of the buffer can be waived by the Board. The buffer requirements will not buffer the building, but would help buffer the noise. **Mr. Carleton** quoted section 16.28.180, Waiver Authorized, as the area where the Board could consider waiving buffer requirements as improvements. Discussion followed regarding waiver requirements, buffering materials, location of the driveway, and interpretation of definitions.

**Chris Baudo** asked that if he removes the ramp from the side-yard, within the buffer area, could he return to the Board for final approval. Mr. Baudo agreed that nothing would be in the buffer other than the fence and existing and proposed plantings. The ramp will be removed from the buffer and parking calculations will be re-addressed. Board members felt that a revised plan would be acceptable.

**ITEM 3 – Amendment to Title 16 Land Use and Development Code Zoning Ordinance – Workshop – Shoreland Zoning** – The mandatory Shoreland Zoning Act (Act), 38 M.R.S.A. Section 435-449 and the guidelines for the Board of Environmental Protection require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines set forth in the Act and by the Board of Environmental Protection. The Town administration, endeavoring to incorporate State recommendations for the Shoreland Zoning ordinance proposes the following:

- Amendment to Chapter 16.04 -General
- Amendment to Section 16.08.20 – Definitions,
- Amendment to Chapter 16.16 – Administration and Enforcement
- Amendment to Chapter 16.24 – Special Exceptions and Variances
- Amendment to Chapter 16.28 – General Development Requirements
- Delete Section 16.32.490 –Shoreland Zoning, and

Add Chapter 16.34 – Shoreland Zoning.

**Craig Wilson, Earledean Wells and Board members** discussed the language regarding non-conformance in the shoreland zone, relocation and expansions, ZBA vs. Board review, mitigation requirements, changing the word “buildings” to “structures” throughout, appeal procedures, plan requirements, DEP notification of ZBA decisions, and miscellaneous content and structure of the ordinance.

**ITEM 4 – Amendment to Article XXV of Title 16 Land Use and Development Code – *Workshop*.** This amendment proposes to expand the Temporary, Intra-Family Dwelling Unit ordinance to include an ordinance section on accessory dwelling units. Accessory dwelling units are an important form of housing that contributes to the character and diversity of housing opportunities. The intent is to provide workforce housing, housing for family members, students, elderly, in-home health care providers, the disabled and others, at below market rental rates within existing neighborhoods, to protect the character of the neighborhoods, and to respond to the Comprehensive Plan in regards to diversity in housing, as well as affordable housing.

**Will Pierce** joined the Board members to discuss the draft ordinance. The Town Planner added new language for accessory dwelling units to build upon the existing intra-family dwelling unit ordinance. Upon further discussion, members felt that the two ordinances were unique and each should stand alone. Questions arose regarding septic requirements, enforcement capability, and other general implications, to be discussed further.

**PLANNER'S TIME** – No items were presented.

The April 23, 2009 meeting at adjourned by rule at 10:00 pm

Submitted by Jan Fisk, Recorder, April 29, 2009