

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

**APPROVED
JANUARY 12, 2017**

CALL TO ORDER

The Chair called the meeting to order at 6:00 p.m.

ROLL CALL

Board Members Present: Karen Kalmar, Mark Alesse, Robert Harris, Ann Grinnell, Dutch Dunkelberger, Marissa Day
Absent: Debbie Driscoll-Davis
Staff Present: Chris Di Matteo

PLEDGE OF ALLEGIANCE

AMENDMENT TO AGENDA

Addition of election of officers and representatives for Kittery Port Authority, Comp. Committee and Open Space Committee under Item 4

APPROVAL OF MINUTES – December 8, 2016

Line 41 – add “public” instead of “open”
Line 80 – add “stated he submitted a letter”
Line 138 – “setback” not “wetback”
216 – add to end of sentence “regarding the estoppel issue”
219 – “buffer” strip not “bumper” strip
232 – replace “in” with “outside”
Line 172 – change to “during the site walk noticed the wetland along one edge appears to be inaccurate on the plans.”

The Board approved the amended December 8, 2016 Minutes. Mr. Dunkelberger abstained.

The Board approved the Minutes of the November 3, 2016 and December 6, 2016 site walks.

Four approved, 2 abstained.

PUBLIC COMMENTS

Chair Grinnell opened the floor for public comment. There being no comments, the Chair closed the public comment section.

ITEM 1 - 450 U.S. Route 1 – Site Plan Review – Final Plan Review

Action: Accept or deny application. Approve or deny final plan. Owner/Applicant Kitterydom, LLC requests consideration to develop a two-unit commercial building on an approximately 19 - acre vacant lot located at 450 U.S. Route 1 (Tax Map 61 Lot 28) in the Mixed Use (MU) Zone. Agent is Paul Avery, Oak Consulting Group, LLC.

Paul Avery, from Oak Consulting Group, reviewed the plan changes that have occurred since the last meeting. Parking spaces are now at 10 along the frontage. The signage has been modified to include a pylon sign and directional signs. Mr. Avery also stated they made enhancements to the landscape plan.

Mr. Avery went over open items from the staff notes which included:

- Documentation of open space – the updated plan shows 14.7 acres of open space which is 75% of the site.
- Tree count methodology – Mr. Avery explained they looked at total frontage of the site, which is 1,500 ft., and most will not be developed. They are proposing to plant 1 tree at 25 ft. spacing. Mr. Avery stated the plan for shrubs is depicted on the landscape plan. He further stated the developed frontage will be 435 feet.
- An easement for a sidewalk, as requested by the Board, is now shown on the plan. The Applicant stated he is not sure of the practical value of having a sidewalk due to the wetlands. After further discussion of the easement, Board members were in consensus to require the Applicant to have an easement but no sidewalk at this time.

Vice Chair Kalmar stated her concern of the small directional signs and requested them to be larger. She also requested to add a sign before the actual turn sign. Chair Grinnell suggested the Town ask the State to place a blue State sign on the side going south. The design and color of the signs were also discussed. The Applicant stated they will have directional arrows on the driveway pavement because it will be a one-way and will add a “do not enter” sign near the pickup window lane.

Mr. Alesse asked the applicant if the sign logo can be lowered and change the design to be more in keeping with the character of Maine. The applicant stated he would prefer to keep as proposed because it will increase revenue by attracting nonresidential people. The applicant also stated he needs to keep consideration for the rental space in the building that needs to be rented. Di Matteo pointed out that the Board will need to approve logos on the informational signs. Mr. Di Matteo suggested the applicant consider placing the pylon signs in relation to the easement in case the Town decides to build a sidewalk. The applicant prefers to keep the pylon sign as is and agreed to move the sign if the Town decides to build a sidewalk in the future.

Mr. Dunkelberger moved to allow the Domino’s logo to be placed on the directional signs. Vice Chair Kalmar seconded the motion.

Mr. Alesse stated he does not like color of the logo. Mr. Harris stated tourists need to see the signs.

The motion carried 4-1-1.

Mr. Avery stated the lighting plan proposed is designed to be safer. He has included the photometric plan for this and an alternate general plan. The Board was in consensus to use the applicant’s proposed plan.

Commissioner of Public Works' comment was addressed and the applicant has agreed to cut the pavement as discussed.

Vice Chair Kalmar moved to accept the final plan application and approve with conditions the final site plan dated October 18, 2016 from owner, BJP Corp. and applicant, Kitterydom, LLC, for 450 U.S. Route 1 (Tax Map 61 Lot 28) in the Mixed Use Zone upon the review and voting, in the affirmative, on the Findings of Fact. Mr. Dunkelberger seconded the motion.

Revised Condition of Approval regarding the easement will read "owner's responsibility is to move all signs considered in the easement when the Town constructs a public sidewalk at his or her expense.

The motion carried 4-0-2.

FINDINGS OF FACT

APPROVED

For 450 Route 1

Site Plan Review

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner/applicant Kitterydom, LLC proposes a two-unit commercial building on an approximately 19 acre vacant lot located at 450 U.S. Route 1 (Tax Map 61 Lot 28) in the Mixed Use (MU) Zone.

Hereinafter the "Development,"

And pursuant to the Plan Review meetings conducted by the Planning Board as noted ;*in the Plan Review Notes prepared for 1/12/2017*

Determination of Completeness/Acceptance	GRANTED	7/14/2016
Site Walk	HELD	11/15/2016
Public Hearing	HELD	11/17/2016
Preliminary review and	GRANTED	11/17/2016

approval		
Final review and approval	GRANTED	1/12/2017

And pursuant to the application, plans and other documents considered to be a part of the plan approval by the Planning Board in this finding consist of the following ;{ *as noted in the Plan Review Notes prepared for 1/12/2017*} (hereinafter the “Plan”):

1. Site Plan Application, October 18, 2016
2. Sign Permit Application Items A-H, Barlo Signs, received 12/14/2016
3. Site Lighting Calculations, Oak Consulting Group, LLC, dated 11/28/2016
4. Existing Conditions and Site Preparation Plan, Oak Consulting Group, dated 10/18/2016
5. Overall Site Plan, Oak Consulting Group, dated 10/18/2016
6. Site Layout Plan, Oak Consulting Group, dated 10/18/2016
7. Grading Drainage and Erosion Control Plan, Oak Consulting Group, dated 10/18/2016
8. Site Utilities Plan, Oak Consulting Group, dated 10/18/2016
9. Landscape Plan, Oak Consulting Group, dated 10/18/2016
10. Architectural Sketch, Jason D Gnich Architect, dated 7/25/2016
11. Erosion Control Notes, Oak Consulting Group, dated 10/18/2016
12. Site Details, Oak Consulting Group, dated 10/18/2016
13. Stormwater Basin Details, Oak Consulting Group, dated 10/18/2016

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by section **16.10.8.3.4** and as recorded below:

FINDINGS OF FACT

Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Finding: The proposed development meets the applicable land use provisions in Title 16 with consideration of condition of approval #8.

Conclusion: The requirement appears to be met.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

B. Freshwater Wetlands Identified.

All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

Finding: Wetlands have been identified on the Plan. See sheet C-2A

Conclusion: The requirement appears to be met

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

C. River, Stream or Brook Identified.

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

Finding: There are no rivers, streams or brooks existing on site.

Conclusion: The requirement appears to be met

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

D. Water Supply Sufficient.

The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on an existing water

supply, if one is to be used.

Findings: Municipal water is available and a letter confirming supply capacity from the Kittery Water District was submitted to the Town.

Conclusion: The requirement appears to be met

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

F. Sewage Disposal Adequate.

The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Finding: The proposed development will connect to the town sewer and the Town's sewer superintendent has reviewed the plans and confirmed capacity and ability to manage the development.

Conclusion: The requirement appears to be met.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

G. Municipal Solid Waste Disposal Available.

The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

Finding: The proposed development accommodates a dumpster enclosure for private collection

Conclusion: The requirement appears to be met.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

H. Water Body Quality and Shoreline Protected.

Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Finding: The Town's peer-review engineer, CMA, has reviewed the plans and have not found the proposed development to adversely affect the adjacent wetlands.

Conclusion: The requirement appears to be met

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

I. Groundwater Protected.

The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Finding: The proposed development will be connected to town sewer and not utilize a subsurface waste water system.

Conclusion: The requirement appears to be met

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

Finding: The development is not located within a flood prone area

Conclusion: The requirement is not applicable.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

K. Stormwater Managed.

The proposed development will provide for adequate stormwater management.

Finding: The town peer-review engineer has reviewed the proposed development and has made comments the applicant needs to address.

Conclusion: With consideration of condition of approval #8, the requirement appears to be met.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Finding: The town peer-review engineer has reviewed the proposed development and has made comments the applicant needs to address.

Conclusion: With consideration of condition of approval #8, the requirement appears to be met.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

M. Traffic Managed.

The proposed development will:

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

Finding: The town peer-review engineer has reviewed the proposed development and has made comments the applicant needs to address. The proposed development requires an MDOT traffic movement permit.

Conclusion: With consideration of condition of approval #8, the requirement appears to be met.

<p style="text-align: right;">Vote of <u>4</u> in favor <u>0</u> against <u>2</u> abstaining Ms. Day and Mr. Alesse abstaining</p>
<p>N. Water and Air Pollution Minimized.</p>
<p><i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"><i>1. Elevation of the land above sea level and its relation to the floodplains;</i><i>2. Nature of soils and sub-soils and their ability to adequately support waste disposal;</i><i>3. Slope of the land and its effect on effluents;</i><i>4. Availability of streams for disposal of effluents;</i><i>5. Applicable state and local health and water resource rules and regulations; and</i><i>6. Safe transportation, disposal and storage of hazardous materials.</i>
<p><u>Finding:</u></p> <p>1 thru 6. Not applicable to the proposed development.</p> <p><u>Conclusion:</u> The requirement appears to be met</p>
<p style="text-align: right;">Vote of <u>4</u> in favor <u>0</u> against <u>2</u> abstaining Ms. Day and Mr. Alesse abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>
<p><i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i></p>
<p><u>Finding:</u> There is no adverse impact on aesthetic, cultural or natural values</p> <p><u>Conclusion:</u> The requirement appears to be met</p>

<p style="text-align: right;">Vote of <u>4</u> in favor <u>1</u> against <u>1</u> abstaining</p> <p style="text-align: right;">Mr. Alesse against</p> <p style="text-align: right;">Ms. Day abstaining</p>
<p>P. Developer Financially and Technically Capable.</p>
<p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p><u>Finding:</u> The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.</p>
<p><u>Conclusion:</u> The requirement appears to be met</p>
<p style="text-align: right;">Vote of <u>4</u> in favor <u>0</u> against <u>2</u> abstaining</p> <p style="text-align: right;">Ms. Day and Mr. Alesse abstaining</p>

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines that the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Final Approval for the Site Plan at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

None.

Conditions of Approval (to be depicted on the final site plan):

1. No changes, erasures, modifications, or revisions may be made to the approved plan, including no further land division or additional dwelling units established prior to Planning Board-approval.
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 complete and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.

4. An approved traffic movement permit must be obtained from MDOT prior to the issuance of a building permit.
5. If there are any changes to the intensity of use and/or if it becomes evident to the Code Enforcement Officer that there is insufficient parking on site, available parking must be increased as determined and approved by the Planning Board
6. The proposed pick-up window will not become a drive through window without prior approval by the Planning Board
7. Owner is responsible to move all signs located within the easement at his or her expense when the Town constructs a public sidewalk.
8. All Notices to Applicant contained in the Findings of Fact (dated: January 12, 2017).

Conditions of Approval (NOT to be depicted on the final plan):

9. 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. The amended subdivision plan must be submitted to Staff for review prior to recording with the York County Registry of Deeds within 90-days of approval.
10. Prior to the issuance of a building permit, the Town must approve all legal documents pertaining to the 15-foot easement along Route 1.
11. Prior to any earthwork and clearing, all required Maine Department of Environmental Protection permits must be approved and submitted to the Town for recording.

Notices to Applicant (NOT to be depicted on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.
5. Where required the applicant must provide to the Town a performance guaranty and an inspection escrow to cover the construction of all improvements that will be utilized in common use or by the general public.

The Planning Board authorizes the Planning Board Chairperson, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 4 in favor 0 against 2 abstaining

Ms. Day and Mr. Alesse abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON January 12, 2017

Ann H. Grinnell, Planning Board Chair

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 2 - 74 State Road – Sketch Plan Review

Review application. Approve or deny sketch plan. Owner PB ‘R’ Us, and applicant, Christopher Baudo request consideration of a mixed use complex located at 74 State Road (Tax Map 8 Lot 41A) in the Business Local (B-L) Zone.

Mr. Baudo gave an update of the sketch plan and reviewed the concerns from the site walk. He clarified where the fire hydrant will be. He also explained fencing will be used to enclose the parking lot to address the concern for abutters raised at the site walk regarding headlights and vehicles at night. He further explained there will be two handicapped parking spaces for the two first floor handicap units. Staircases will connect to the street parking level.

Mr. Baudo has submitted the reports from Albert Frick’s office which identifies the wetlands and geology of the property. He also explained Mr. Frick’s office identified the setback in the entire area and recalculated for the net residential area. Mr. Baudo plans to remove exposed bedrock identified on the site. Mr. Alesse asked if Mr. Baudo plans to remove all the exposed ledge. Mr. Baudo replied that he is removing ledge to have access for the project and stated ledge can be difficult to work with.

Vice Chair Kalmar asked if applicant is willing to address the set back issues, parking and determine if units are connected or independent on the corner lot. Mr. Baudo replied he is and the units will be connected and will have open decks with a wall between them. Mr. Baudo also pointed out on the plan the setback line. Vice Chair Kalmar requested arrows or a descriptive for clarity be shown for the stairways. Mr. Baudo stated there will be a park/playground added and the floorplan for the townhouses are a general layout. Mr. Baudo will supply the cubic yards of dirt and rock that will be taken away in the blasting plan as requested by Mr. Alesse. Mr. Baudo will also provide an excavation time and agreed to work out parking details with staff.

Mr. Dunkelberger moved to approve the sketch plan dated September 23, 2016 for owner PB “R” US and applicant Chris Baudo, for 74 State Road.

Mr. Harris seconded the motion.

Ms. Day questioned parking spaces 41 and 53 because they look back-to-back. Mr. Baudo explained they are tandem spaces and will be designated to certain townhouses.

The motion carried 6-0-0.

NEW BUSINESS

ITEM 3 – Landmark Hill Plaza – Sketch Plan Review

Action: Accept or deny application. Approve or deny sketch plan. Owner, Landmark Properties LTD, and applicant, Michael Brigham, request consideration of a mixed-use plaza located at 518

U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use (MU) Zone. Agent is Tom Harmon, Civil Consultants.

Mr. Harmon, Civil Consultants, described the sketch plan which shows an addition of two, three-story buildings with seven residential units and seven office commercial units. He stated the applicant is considering moving some units into the garage building to provide more green space. The proposed plan has a one-way street from the north side of Route 1 and they may remove a unit to have an additional exit as well.

Mr. Harmon stated he will be working on parking calculation to address the comment in the staff notes including handicap parking. Mr. Harmon will also have a landscaping plan.

The Board was in consensus to wait until after the plan is complete to schedule a site walk. Mr. Harmon added they are looking to dress up the front of the plaza with a green area.

**Vice Chair Kalmar moved to accept sketch plan application dated September 22, 2016 from owner, Landmark Properties, LTD, and applicant, Michael Brigham, for 518 U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use Zone.
Mr. Dunkelberger seconded the motion.**

The motion carried 6-0-0.

**Vice Chair Kalmar moved to approve the sketch plan application dated September 22, 2016 from owner, Landmark Properties, LTD, and applicant, Michael Brigham, for 518 U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use Zone.
Ms. Day seconded the motion.**

The motion carried 6-0-0.

ITEM 4 – Board Member Items / Discussion

A. Election of Officers of the Planning Board

**Mr. Alesse made a motion to nominate Ann Grinnell for Chair.
Mr. Dunkelberger seconded the motion.**

The motion carried 5-0-1.

**Mr. Alesse made a motion to nominate Karen Kalmar for Vice-Chair.
Ms. Day seconded the motion.**

The motion carried 5-0-1.

**Mr. Alesse made a motion to nominate Dutch Dunkelberger for Secretary.
Chair Grinnell seconded the motion.**

The motion carried 6-0-0.

Chair Grinnell made a motion to nominate Mark Alesse to continue to represent on the Kittery Port Authority.

Vice Chair Kalmar seconded the motion.

The motion carried 5-0-1.

Chair Grinnell made a motion to nominate Debbie Driscoll-Davis to continue to represent on the Comprehensive Planning Committee.

Vice Chair Kalmar seconded the motion.

The motion carried 5-0-1.

Chair Grinnell made a motion to nominate Karen Kalmar to continue to represent on the Open Space Committee.

Mr. Dunkelberger seconded the motion.

The motion carried 5-0-1.

ITEM 5 – Town Planner Items

Mr. Di Matteo passed out the RFP for the Kittery Foreside Land Use Parking and Traffic Circulation Study. MRLD Associates has been chosen. He stated he is working with the Town Manager to develop a group to work alongside them. This should be starting up by the end of this month or early February.

Mr. Di Matteo is still working with Southern Maine Regional Planning regarding the business park.

Mr. Alesse moved to adjourn the meeting.

Mr. Dunkelberger seconded the motion.

The motion carried 6-0-0.

The Kittery Planning Board meeting of January 12, 2017 adjourned at 7:55 p.m.

Submitted by Mary Mancini, Minute Recorder, on January 18, 2017.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>