

CALL TO ORDER

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

ROLL CALL

Members Present: Robert Harris, Dutch Dunkelberger, Karen Kalmar, Ann Grinnell, Debbie Driscoll-Davis, Mark Alesse, Marissa Day

Staff Present: Rebecca Spitella

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – July 27, 2017

Lines 26, 37 and 65 – Fix order of vote.

**Vice Chair Kalmar moved to approve the July 27, 2017 Minutes as amended.
Mr. Dunkelberger seconded the motion.**

The motion carried 7-0-0.

PUBLIC COMMENT

The Chair opened the public hearing. There being no comments, the Chair closed the public hearing.

OLD BUSINESS / PUBLIC HEARING

ITEM 1 – 9 Bowen Road – Shoreland Development Plan Review

Action: Hold a public hearing; approve or deny plan. Owner/applicant Lee Reinhold requests consideration of plans to expand an existing two-family dwelling and detached accessory structure located within the 100-foot setback from a protected water body. The site is located at 9 Bowen Road (Tax Map 17 Lot 3) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Peter Agrodnia, North Easterly Surveying

Ms. Driscoll-Davis recused herself.

Mr. Agrodnia explained they were before the Board on May 11th. On June 1st, a site walk was done. The applicant has received input from staff and neighbors. He has addressed concerns and has changed the design.

The applicant will not raise and add a foundation under the studio. New windows and a rooftop deck are still proposed. Mr. Agrodnia stated the applicant will add a note to the plan stating this building is a non-dwelling unit.

The proposed addition to the main building has now been moved back from the road and does not go beyond the structure.

Volume and floor area calculations were requested and the applicant's architect prepared a detail volume calculation which includes additions built since 1989. Staff found this acceptable.

Mr. Agrodnia addressed a letter of concern from an abutter regarding noise from the proposed elevator. The elevator will be installed for the owner's mother who will visit. The architect stated the lift does not have an engine and is quiet.

Robbie Woodburn from Woodburn & Company Landscaping gave a review of the vegetation that is being proposed in three areas. The applicant has a permit to revegetate the rip rap along the shoreline and has agreed to replace plants if they expire. Blueberry plants will be planted and the applicant agrees with the number of plants stated in the staff notes.

The Chair opened public hearing.

Donna Jean Higgins, 5 Bowen Road, explained her home directly abuts 9 Bowen. She thanked the members for serving on the Board. She added the renovation plan is good but explained her concern of the studio becoming an accessory rental structure. She added there is no language in the Code that excludes bait shacks or sheds and is concerned because a bathroom is being added. She stated her concern with parking in front of the home and explained Bowen road is only 16-foot-wide road. She also questioned the roof top deck and what may happen in the future when house gets sold. She added she would like the existing trees along the property line to remain.

Milton Hall, 51 Bowen Road, explained there is no parking along the west side of the street and the right of way is for the Fire Department to get to the York yard. Chair Grinnell asked if signs were present. Mr. Hall replied there is one. Chair Grinnell would like the Department of Public Works to look into the lack of signs on the road.

Jeff Gordon, 5 Bowen Road, is pleased to see the new plans and spoke of his concern of the property being flipped. He doesn't want the studio to be turned into a rental. He also spoke of his concern of added stress to the sewer line and added the Town has not inspected or serviced the line since 1993. He added the Town informed him the property owners are responsible for the line but County documents state it is the Town's responsibility. Mr. Gordon asked if the studio will have a shower and a toilet. Ms. Spitella stated the previous owner had approval to include a bathroom for the studio and this proposed development is not requesting it because it is already approved. She added if the permit is over two years, the applicant would need to reapply. Chair Grinnell would like the issue regarding who is responsible for the sewer cleared up.

Debbie Driscoll-Davis, property owner at 1 Bowen Road, agreed with the previous comments and expressed her concern for the lack of language in the Code regarding transient and overnight occupancy. She is hoping it is addressed by the Board soon. She also spoke of her concern of the shed being able to handle a rooftop deck and asked Mr. Adgrodnia if an analysis has been done.

Ms. Higgins pointed out a letter from July 6th that includes verbiage on Page 3 regarding the easement and believes it shows responsibility belongs to the Town.

Ms. Driscoll-Davis would like to know what the applicant plans for guest parking since the area that is being revegetated will take away the space. Mr. Adgrodnia explained the applicant will be providing the same amount of parking. Ms. Driscoll-Davis disagreed and said she has seen parking in that area since she has lived on the road.

The following items were also discussed:

- Vice Chair Kalmar reminded the applicant trees cannot be removed within the 100-ft setback without approval. The applicant has no plans to remove trees and will have a note on the plan to reflect this. The applicant confirmed they will not damage the arborvitae near the planned spiral staircase, which was a concern of Mr. Gordon's.
- Chair Grinnell requested Public Works place additional no parking signs on the street where appropriate.
- Discussion of the deck being nonconforming ensued. Ms. Spitella explained it is in within the 30 percent expansion permitted in the Code.
- The Board requested the applicant have an itemized list of previous alterations to the property since 1989.
- The measurement of 8.2 ft. for the bay window will be amended and added to the plan.

The Chair closed the public hearing.

Conditions of Approval will include a note stating the studio cannot be permitted to be a dwelling unit under regulations at the time of this approval.

Mr. Dunkelberger moved to approve with conditions the Shoreland Development Plan dated April 6, 2017 from owner and applicant Lee Reinhold for 9 Bowen Road (Tax Map 17 Lot 3) in the Residential-Urban and Shoreland Overlay Zones, upon the reading and voting, in the affirmative, on the Finding of Fact.

Vice Chair Kalmar seconded the motion.

A note regarding tree removal will be noted on the plan.

The motion carried 6-0-0.

WHEREAS: Lee Reinhold requests consideration of plans to expand an existing nonconforming two-family dwelling and detached nonconforming accessory structure located within the 100-foot setback from a protected water body. The site is located at 9 Bowen Road (Tax Map 17 Lot 3) in the Residential-Urban and Shoreland Overlay Zones, hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 8/10/2017}

Shoreland Development Plan Review	5/11/2017	HELD
Site Walk	6/1/2017	HELD
Public Hearing	8/10/2017	HELD
Shoreland Development Plan Approval	8/10/2017	GRANTED

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”): {as noted in the plan review notes prepared for 8/10/2017}

1. Shoreland Development Plan Application, dated 4/6/2017
2. Shoreland Development Plan, North Easterly Surveying, dated 4/6/2017, revised 7/11/2017
3. Floor and Elevation Plans, Brian Libby, revised 5/9/2017, 6/15/2017 and 7/10/2017
4. Revegetation Plan, Woodburn & Company, dated 6/6/2017

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone

1.d The total footprints of the 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: The existing devegetated area is 31.2%. In order to avoid increasing devegetated area, the applicant will to revegetate existing devegetated areas, as depicted on the final plan, dated 4/6/2017, revised 7/11/2017. The proposed development does not result in a devegetated area greater than 30.9% of the total lot.

Conclusion: The requirement appears to be met.

Vote: 6 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 conditions must not be permitted to become more nonconforming

Finding: The proposed development does not encroach on any front or side yard setbacks, nor does it increase the encroachment in the 100-foot setback greater than currently exists. The applicant will revegetate a portion of the asphalt parking area, crushed stone walk way and shoreline riprap in order to avoid an increase to the lot's devegetated area. With consideration of condition of approval #4, the proposed development does not increase the nonconformity of any structure or aspect of the lot.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.5.6 Nonconforming structure reconstruction

A. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board.

Finding: The proposed reconstruction does not appear to damage or destroy more than 50% of the market value of any structure located on the lot.

Conclusion: The requirement appears to be met.

Vote: 6 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 & B. The proposed development is the 3rd expansion for the principle structure. The floor area and volume as of January 1, 1989 is 4,147 sf and 28, 748 cf, respectively. The proposed floor area and volume, as depicted on the plan dated 4/6/2017, revised 7/11/2017 is 4,942 sf and 34,058 cf, respectively. This is an expansion of 19.7% in floor area, and 18.5% in volume.

The proposed development is the first expansion for the accessory structure, therefore, the existing dimensions are equivalent to the recorded dimensions for January 1, 1989. The existing floor area and volume of the accessory structure is 610 sf and 4,108 cf, respectively. The proposed floor area and volume, as depicted on the plan dated 4/6/2017, revised 7/11/2017, is 790 sf and 3,907 cf. This is an expansion of 29.5% in floor area, and -4.9% in volume.

C. The proposed development does not remove, replace or raise the foundation of either the principle or accessory structure.

Conclusion: This requirement appears to be met.

Vote: 6 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:

<p><i>1. Maintain safe and healthful conditions;</i></p> <p><u>Finding:</u> The proposed development as represented in the plans and application does not appear to have an adverse impact.</p> <p><u>Conclusion:</u> This requirement appears to be met</p>
<p>Vote: <u> 6 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining</p>
<p><i>2. Not result in water pollution, erosion or sedimentation to surface waters;</i></p> <p><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.</p> <p><u>Conclusion:</u> This requirement appears to be met</p>
<p>Vote: <u> 6 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining</p>
<p><i>3. Adequately provide for the disposal of all wastewater;</i></p> <p><u>Finding:</u> The proposed development does not increase the impact on the existing wastewater disposal system.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u> 6 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining</p>
<p><i>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i></p> <p><u>Finding:</u> The proposed development does not appear to have an adverse impact.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u> 5 </u> in favor <u> 0 </u> against <u> 1 </u> abstaining</p>
<p><i>5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p><u>Finding:</u> Shore cover does not appear to be adversely impacted</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u> 6 </u> in favor <u> 0 </u> against <u> 0 </u> abstaining</p>
<p><i>6. Protect archaeological and historic resources;</i></p> <p><u>Finding:</u> There does not appear to be any resources impacted.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>

Vote: __6__ in favor __0__ against __0__ abstaining
<i>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i> <u>Finding:</u> The proposed development is not located within the commercial fisheries / maritime activities zone. <u>Conclusion:</u> This requirement is not applicable
Vote: __5__ in favor __1__ against __0__ abstaining
<i>8. Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The property is designated Zone C by FEMA Flood Zone standards and is defined as an area of minimal flood hazard. The proposed development does not appear to have an impact on a floodplain or flood-prone area. <u>Conclusion:</u> This requirement appears to be met.
Vote: __6__ in favor __0__ against __0__ abstaining
<i>9. Is in conformance with the provisions of this code;</i> <u>Finding:</u> With consideration of the conditions of approval below, the proposed development complies with the applicable standards of Title 16. <u>Conclusion:</u> This requirement appears to be met.
Vote: __6__ in favor __0__ against __0__ abstaining
<i>10. Be recorded with the York county Registry of Deeds.</i> <u>Finding:</u> With consideration of condition of approval # 5, a plan suitable for recording will be prepared. <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.
Vote: __6__ in favor __0__ against __0__ 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 and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be depicted 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. The accessory structure identified on the plan as “studio” cannot be permitted as a dwelling unit.
4. The property owner is responsible for the maintenance of the blueberry shrubs located along the shoreline of the property. Any vegetation that is not viable, as determined by the Code Enforcement Officer or Shoreland Resource Officer, must be replanted at the property owner’s expense.
5. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer, per 16.9.2.2.
6. All Notices to Applicant contained herein (Findings of Fact dated 8/10/2017).

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

7. Incorporate all plan revisions to the final plan as recommended by Staff or Planning Board, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: 6 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON August 10, 2017

Ann Grinnell, Planning Board Chair

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as required by Planning Board 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.

NEW BUSINESS

ITEM 2 – Seward Farm Lane – Major Subdivision Preliminary Plan Review

Action: Hold a public hearing; approve or deny preliminary plan. Owner/Applicant Gary Seward, Gregg Seward and Patti Parsons request consideration of a 14-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Stephen Haight, Civilworks New England.

Stephen Haight reviewed the proposed continued subdivision and explained the road is an existing right of way and will be increased to 60 feet and paved. The lots will have septic systems.

Mr. Haight addressed the following CMA comments:

- Comment. 2 – a note for the stone monument will be added to the plan.
- The applicant has not proposed a sidewalk on the roadway and has requested a waiver now.
- The end of cul de sac at the existing hammerhead will be maintained.
- Site distance to Picott Road – applicant will add site distance that exists now.
- Road is a gravel roadway and Mr. Haight explained how it will be supplemented with Maine State specified gravel and then paved. The Board would like DPW to confirm in a letter.
- Applicant has met with the Kittery Water district and will meet with the Fire Department to review the location of the fire hydrant.
- Reserve leech fields - test bits have been done and each lot has sufficient space for one reserved field. The locations will be shown on the plan.
- Surface drainage – Mr. Haight has spoken to the State DEP and they are not indicating the need to go back for additional permitting.
- Post construction stormwater management - the applicant will submit storm management plan
- Trees – the applicant will indicate where they are on the plan and they are looking to plant pear trees.

The following staff comments were addressed:

- View shed – staff did not see one on the plan. Mr. Haight has met with the Planning Department regarding Picott Road being a scenic road and the view shed needs to be defined and shown on the plan.
- Comment 3 – ratio of width. Mr. Haight explained why they don't meet the requirement is because of the configuration of lot 9. The applicant would like lot 9 to remain wooded and be common open space. Ms. Spitella stated common open cannot be individually owned. The applicant would like to discuss this further in the meeting.
- Comment 8 length of cul de sac – applicant agrees.
- The applicant would like to add a street and subdivision signs. Ms. Spitella stated there are two street sign waivers.
- Fire hydrant shown on the plan and profile - the applicant will identify the hydrants to the Fire Department.
- Septic systems will be identified on the plan.
- Comment 13 –the applicant will submit a municipal impact analysis.

The note sheet showing special exception under waivers and will be fixed.

Vice Chair Kalmar moved to grant preliminary approval, with conditions, of the subdivision plan dated 6/22/2017, from owner/Applicant Gary Seward, Gregg Seward and Patti Parsons request consideration of a 14-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones.

Mr. Dunkelberger seconded the motion.

Chair Grinnell asked Mr. Haight to change stormwater analysis from 12 to 14 lots. Mr. Haight replied a letter was included in the original packet and should address that item.

Discussion ensued of the applicant's proposal to have lot 9 as open space. Mr. Haight stated the applicant does not want to restrict the space and it is used as a hayfield. The applicant wants to use the whole parcel and may want to break it out and develop it in the future. The Board asked why not separated now and retain ownership? Mr. Haight stated the owners do not want to do it now. Chair Grinnell explained it would be difficult for future boards. Ms. Driscoll-Davis stated it could be beneficial for the owners to separate now because of the affect how they address the road and other items.

Mr. Haight explained Mr. Seward would like to maintain the lot to hay it. After further discussion, the Board determined lot 9 is in code, but Ms. Spitella will double check the Code before coming back for the next meet and will supply the information to the applicant.

Because the public hearing was not opened, the following motion was made:

**Mr. Dunkelberger moved to reconsider the motion for Seward Farm.
Vice Chair Kalmar seconded the motion.**

The motion carried 6-1 -0.

The Chair opened the public hearing. There being none, the Chair closed the public hearing.

Vice Chair Kalmar moved to grant preliminary approval, with conditions, of the subdivision plan dated 6/22/2017, from owner/Applicant Gary Seward, Gregg Seward and Patti Parsons request consideration of a 14-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones.

Ms. Driscoll-Davis seconded the motion.

The motion carried 6-1-0.

ITEM 3 – Board Member Items / Discussion

Chair Grinnell received a letter dated July 20th from the Town Manager regarding the Open Space Committee attending a meeting to discuss Title 16 the business park. Chair Grinnell added Vice Chair Kalmar is the representative not her.

Mr. Alesse informed the Board the committee reviewing the Town Charter have a proposal to remove the Planning Board member representing on the Kittery Port Authority Board and have a Town Council member instead. Mr. Alesse does not believe this is a good idea because issues overlap between the Planning Board and the KPA. He added the reason is administrative fluidity due to the proposal to place the KPA under the Town. This will need to go before the voters. Chair Grinnell would like the public to know. After further discussion, the Planning Board was in consensus to place a request to the Town Manager of what is driving the change. If there is a response, members will discuss further.

Ms. Driscoll-Davis asked to have the Board address non-dwelling unit issues which is on the Board's to do list. She would like the item moved up on the list. Ms. Spitella stated she will speak with Mr. Di Matteo regarding this.

Chair Grinnell asked of the report on traffic and parking in the foreshore. Ms. Day informed the Board a working group meeting will take place soon. They have reviewed the data and she will give a status update. She will also let the Board know when to submit their questions.

Mr. Alesse moved to adjourn the meeting.

Mr. Harris seconded the motion.

The motion carried 7-0-0.

The Kittery Planning Board meeting of August 10, 2017 adjourned at 7:55 p.m.

Submitted by Mary Mancini, Minute Recorder, on August 17, 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>