

## **CALL TO ORDER**

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

## **ROLL CALL**

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

Member Absent: Ann Grinnell

Staff Present: Chris Di Matteo, Town Planner

## **PLEDGE OF ALLEGIANCE**

## **AGENDA**

Vice Chair Kalmar requested to move Review of Minutes to the end of the meeting. The Board agreed.

## **PUBLIC COMMENT**

The Vice Chair opened the public comment section. There being none, the Vice Chair closed the public comment section.

## **PUBLIC HEARING/OLD BUSINESS**

### **ITEM 1 - 412 Haley Road – Conventional Subdivision Approval**

Action: Hold a public hearing. Approve or deny final plan. Owner Norwich Investments, LLC, and applicant, Green & Company, requests consideration of an 8-lot conventional subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones. Agent is Joseph Coronati, Jones and Beach Engineers, Inc.

Joe Coronati, Jones and Beech Engineering, went over their progress from the last meeting which included approval of special exception and waivers. They have made minor changes as requested by the Board which includes moving the mitigation to areas adjacent to the wetland and the hammerhead-shaped right of way will now follow the pavement line. Also, they located trees as requested and found no existing trees in one cul de sac and four trees in the other. This has been added on the plan along with the proposed plantings. Input has been received from an on-site meeting with some of the abutters, CMA and Mr. Di Matteo. In response to the information, they have changed the grading of the road and have details that show the proposed grades at the end of the McCartney and Robbins' driveways the additional detailing for the Schill's driveway. Mr. Coronati added Mr. Grenier's email requesting providing a note to the plan to lock-in his easement access will be done. They have received all DEP permits for the development for wetlands and stormwater. All items have been addressed in writing and are on the plans.

Ms. Driscoll-Davis asked if anything else has changed. Mr. Coronati added they have made tweaks to the net residential area calculations as requested and he has itemized this in his letter.

Vice Chair Kalmar asked the applicant if they have reviewed the new staff comments starting on Page 5 of 18 and if they agree with them. The applicant is in agreement. Vice Chair Kalmar also recommended using an alternative species of tree for the buffer instead of white pine due to white pine disease. The applicant agreed and will use red cedar which is growing on the site.

Comment No. 13 requests adding a similar buffer to one section along Lot 1. Mr. Di Matteo asked for clarification of the relationship between the drainage easement and the trees in the same easement. He suggested the whole setback area be the buffer area and added it is not clear if the easement is a perpetual easement to maintain the drainage work. It is important to maintain the trees and drainage to prevent damage to the buffer. Mr. Coronati explained the proposed trees will be planted on the backside of the drainage area and he is not expecting erosion because the trees will stabilize the area. He added if there is erosion, it will be filled in and the buffer and swale will be maintained and the expectation will be clarified in the Home Owner's Association (HOA) documents. Mr. Di Matteo explained the HOA documents are reviewed by the Town attorney who looks at the items the Town is requiring.

Mr. Di Matteo added the street naming can be included in the Conditions of Approval and the applicant does not plan to burden the existing homeowners with any expenses regarding changes to their addresses.

Bill Straub, CMA Engineers, performed the peer review and gave an update of his meeting with the Schills and Mr. McCartney to clarify concerns. For the drainage issue, he reviewed the applicant's modifications and stated they will work because the road will be super elevated so no water will go to the Schill's driveway. A positive spot will be added in order for the water to cross to the other side. Also, there will be an inlet that will go to a catch basin and to the new drainage system. He believes this is a good solution. The other driveway has steep slopes to the new roadway and this area has been redesigned and the road will be lowered to address the drainage issues. Mr. Straub stated the applicant has addressed these issues to his satisfaction. They have a reasonable design and there will be no impact to stormwater management. Mr. Coronati added they will bring a water line to the Robbins' house with a shut off and reconnect them. The McCartney's have a well and the applicant will provide a shut off valve if they choose to be connected to town water. The Schill's have town water now and do not need a new service. The applicant agrees with the suggested language in Comment No. 20.

Mr. Dunkelberger asked for clarification of the costs associated with address changes for the abutters. Mr. Di Matteo explained the street naming application has language that implies the abutters will pay for a street sign as well as associated costs in changing addresses. Mr. Di Matteo has proposed the applicant pays for street signs and other fees if applicable. Mr. Coronati stated the applicant would be willing to cover some of the reasonable costs.

Vice Chair Kalmar opened the public hearing

Jane Schill, 424 Haley Road, commented that much has been addressed in planning note No. 15 along with other comments in the notes. She explained her concern of the mitigation for Lots 8 and 1 and looked at Map C2 that shows the mitigation land is in the setbacks. She reviewed Code 16.9.3.9 (a) preventing structures to be built within a setback area. She believes the proposed mitigation area does not meet the Code's definition and she would like clarification. Mr. Di Matteo explained buildings or structures are not allowed but uses such as parking, a garden or yard space are allowed.

Laney McCartney, direct abutter, believes the right of way was illegally cut through an existing wetland and the wetland scientist the abutters hired concurred. The road was cut from a wetland and she referred Earldean Wells' opinion from a previous meeting that the road sits on top of a wetland and, therefore, is one continuous body of wetland. She described the current condition of the road and referred to Code 16.9.3.2(b) requiring development of the wetlands be determined by a qualified wetland scientist. She questioned why core samples were not taken, especially in front Lot 8 and believes there is a reason. If the sample determined there was a wetland, this would change the setbacks and impact the current design. She spoke of her concern of leaving a small HOA with a road that will fail. She questioned the transfer from the applicant to the owners and the amount of escrow. She stated it is a cop out by the Town to impose these burdens on the HOA and the Town made an error allowing a road and her development to be built. Ms. McCartney brought a civil engineer to look at Lot 8 and he stated it was a greedy lot between the slope and the wetland. She spoke of her concern of the septic systems being located on the slope which will to the drainage pond then into Spruce Creek. Ms. McCartney requested the Board have this project done the correct way now. She requested a third-party soils scientist to review a core sample of the road.

Shea Robbins, 402 Haley Road, stated she appreciates the previous abutter's comments and those of Jane Schill. She asked Mr. Straub to look at the new updated plans. She questioned how the Board can get through the information from the September 14<sup>th</sup> meeting already and believes the information was given to the Board in a spotty manner. She stated questions have not been answered and her emails do not reach the Board members. She added the Board members ask questions but do not get answers. She referred to the June meeting when their lawyer gave a document from 1997 listing past owners. The road was approved and registered which indicated it was another person's property. She asked the board to look at this information and determine if the road is illegally placed through the wetland. She referred to the Law in State of Maine regarding utility easements and stated they include water and sewage. She is concerned there will be clear cutting within 100-ft. of wetlands. She discussed her concern regarding the stormwater basin and believes a basin is a structure. She also questioned the wetland mitigation plan regarding the crossing of Lot 8 being within a 100-ft. setback. She requested the Board to have the questions answered before final plan is approved.

Dave McCartney, abutter, spoke of his concern with the culverts. He pointed out the grass on the existing right of way is always soaked. He is concerned with the new plan's alternative draining going into Lot 8 and the additional water to his culvert. He would like to have it looked at.

There being no further comments, the Vice Chair closed the public hearing.

The comments were addressed as follows:

Wetland being connected - Mark West, wetland scientist, addressed this issue and stated he did discuss this at last meeting. He described his interpretation of the 1987 aerial photo, which was emailed to Mr. Di Matteo. The plan shows an overlay of what is existing today. He studied the land in May. He determined a crossing of a wetland at the Schill lot and added he had Joe Noelle work with him on the delineation. They found upland soil conditions between the wetland and the road and there was no evidence the road was built on the wetland. He has also addressed the percentage of impact and it does appear there was a historical crossing in one area. Mr. Alessi asked if core samples would help to determine what Ms. McCartney's suggested regarding the potholes. Mr. West explained a core sample would show if there was fill. He believes the condition of the road is due to its construction and is an engineering question. He further explained clay under fill will not verify whether it was a wetland. Mr. Di Matteo pointed out the Board could require core samples and give the results before the construction meeting. Mr. Straub believes Mr. West has provided evidence that is correct. He is satisfied with the construction details and the applicant is bringing in good materials. He did not see anything as an issue for resolution before construction and agrees it is probably too late unless wetland soils were deep and undisturbed.

Mr. Straub looked at Jones and Beech's drainage analysis for Mr. McCartney's property and including the proposed plan of the road being super-elevated, the water will be taken off and will go to the north side. The water increase is compensated from the decrease of water from the road being tipped away from the water shed. Mr. Straub sees no reason for the culvert to be expanded because the model flow does not exceed the existing condition for the them.

Future problems with the culvert - Mr. Bosen, attorney for the applicant, commented for the record the decision from the last meeting of no discussion tonight of what has already discussed. If problems occur in the future, it is a civil matter and not within the purview of this board. He pointed out there has been extensive engineering on both sides. He added Article 4 explains the procedure of the HOA taking effect. The developer stays for two years or until the last lot is sold. Mr. Di Matteo added this will be a requirement for a performance guarantee.

Ms. Robbins' concerns with utility easements - Mr. Bosen stated there is no water easement listed in the Registry and water easements are part of a general easement. Water rights will not be impacted. If something happened to the water line, depending on what caused the problem, the property will be HOA's. The developer will be responsible if it is within the first two years. Mr. Bosen added the Robbins will have the ability to tie into the water line. Mitigation is adjacent to the wetland and is within the wetland setback and a wetland of special significance.

Mr. Straub explained historically in Kittery, passive stormwater features have been allowed in wetland setbacks. Mr. Di Matteo stated if located a coastal wetland, they would be treated differently. Mr. Coronati pointed out there is a 100-ft. buffer line around the property outside of the 100-ft setback. The ponds are not within the 100-ft. setbacks.

Mr. Di Matteo pointed out the Board can continue or have the conditions of approval cover the issues. He added they are within the 90-day deadline.

Additional conditions of approval will include the applicant will be paying for the cost of signage and will not burden the abutters with expenses incurred for changing of address and removal of vegetation in Lots 6 and 7 of the Shoreland zone must conform to all Shoreland regulations.

The Board discussed having the core samples as part of the conditions of approval. Mr. Dunkelberger commented he likes what he is hearing from the engineers and would recommend the applicant get samples as part of being a good neighbor. Mr. Di Matteo thought it was determined there was no compelling evidence there was illegal fill. Vice Chair Kalmar commented that she does not want to assume there was illegal fill and is uncomfortable to decide based on a presumption. Ms. Driscoll-Davis agreed the road is in bad condition. Vice Chair Kalmar stated the peer review engineer said the road proposed road design is 12-ft. wide and they are raising it and having additional material brought in. Discussion of the benefit to have a core sample ensued. The applicant stated they will continue with their plan regardless of the core sample results and believes there is clay beneath the road. Vice Chair Kalmar added there is no evidence when the road was filled without a written record.

Mr. Dunkelberger said he understands the abutters frustrations. He applauds applicant and abutters and again encouraged the applicant to do core samples.

**Mr. Dunkelberger moved to approve with conditions the final subdivision plan dated September 30, 2017 from owner Norwich Investments, LLC, and applicant, Green & Company, requests consideration of an 8-lot conventional subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250') Zones upon he review and voting, in the affirmative on the Findings of Fact. Mr. Harris seconded the motion.**

**The motion carried 5-1-0.**

**M 34 L 3**

**KITTERY PLANNING BOARD**

**APPROVED**

**FINDINGS OF FACT**

**for**

**412 Haley Road**

**Subdivision Plan**

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

**APPROVED  
October 12, 2017**

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 Norwich Investments LLC, and applicant, Green & Company, request consideration of an 8-lot conventional subdivision located at 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) zone and a portion in the Shoreland Overlay (OZ-SL-250') Zone.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 10/12/2017;

Sketch Plan Review	Held	3/23/2017
Site Visit	Held	6/5/2017
Preliminary Plan Completeness Review	Held, accepted	5/11/2017
Public Hearing	Held	6/8/2017
Preliminary Plan Approval	Granted (conditional)	6/11/2017
Final Plan Approval	Granted (conditional)	10/12/2017

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 10/12/2017 (Hereinafter the "Plan").

1. Application and associated and subsequent submittal information dated 4/20/2017 through 9/30/2017.
2. Cover Sheet, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
3. Existing Conditions Plan, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
4. Overview Plan, Jones & Beach Engineers, Inc., dated July 20, 2016; revised September 28, 2017.
5. Overview Wetland Plan, Jones & Beach Engineers, Inc., dated July 20, 2016; revised September 28, 2017.

6. Subdivision Plan, Sheets A1-A4, Jones & Beach Engineers, Inc., dated July 20, 2016; revised September 28, 2017.
7. Demolition Plan, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
8. Grading and Drainage Plan, Sheets C2-C3, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
9. Utility Plan, Sheets U1-U2, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
10. Milliken Road Profile P1-P2, Jones & Beach Engineers, Inc., dated July 20, 2016; revised September 28, 2017.
11. Heron Road Profile, Jones & Beach Engineers, Inc., dated July 20, 2016; revised September 28, 2017.
12. Detail Sheet, Sheets D1-D4, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
13. Erosion and Sediment Control Details, Jones & Beach Engineers, Inc., dated September 30, 2016; revised September 28, 2017.
14. Net Acreage, Jones & Beach Engineers, Inc., dated January 19, 2017; revised September 28, 2017.

**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 board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies 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 is a residential use in a residential zone.

Board approved a special exception use for the conventional rather than a cluster subdivision.

Waivers for street standards were granted and are itemized further below in these findings.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 abstaining

**B. Freshwater Wetlands Identified.**

<i>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.</i>
<p>Finding: There is are several wetlands identified on the property. Their respective total sizes and sizes located on the lot are labeled.</p> <p>Conclusion: This standard appears to be met.</p>
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>C. River, Stream or Brook Identified.</b>
<i>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.</i>
<p>Finding: No rivers, streams, or brooks have been identified on site.</p> <p>Conclusion: This standard is not applicable.</p>
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>D. Water Supply Sufficient. {and}</b>
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
<b>E. Municipal Water Supply Available.</b>
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
<p>Finding: The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project.</p> <p>Conclusion: This standard appears to be met.</p>
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>



<b>F. Sewage Disposal Adequate.</b>
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
Finding: The proposed development will use individual septic systems. Reserve areas have been identified for lots with restrictive layers within 24" in the septic area.
Conclusion: This standard appears to be met.
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>G. Municipal Solid Waste Disposal Available.</b>
<i>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.</i>
Finding: The proposed development will not cause an unreasonable increase in solid waste.
Conclusion: This standard appears to be met.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>H. Water Body Quality and Shoreline Protected.</b>
<i>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.</i>
Finding: The development is partially within 250 feet of any regulated (non-forested) wetland as it relates to the Shoreland Overlay Zone. All proposed development in the overlay zone is outside of the required 100-foot setback and will not adversely affect the water quality or disturb the shoreline.
Conclusion: This standard appears to be met.
<b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b>
<b>I. Groundwater Protected.</b>
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: The proposed development will use individual septic systems designed by a Licensed Professional.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 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: There is no proposed construction located within a flood prone area.

Conclusion: This standard is not applicable.

Vote of 6 in favor 0 against 0 abstaining

**K. Stormwater Managed.**

*Stormwater Managed. The proposed development will provide for adequate stormwater management*

Finding: CMA, town peer-review engineer reports that the applicant has prepared a complete stormwater design and associated analysis and the proposed development meets the requirements of Title 16. The proposed development is located within the Town's designated MS-4 area. The applicant has provided an Inspection and Maintenance plan to comply with the standards outlined in 16.4.4.4.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 1 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 Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2). The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site.

**Conclusion:** This standard appears to be met.

**Vote of 5 in favor 0 against 1 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 proposed development does not meet the threshold for a full traffic study. The proposed development includes a two-way cul-de-sac roadway with adequate circulation and a roadway with a terminus cul-de-sac and a hammerhead located at the location where the roadway changes from a Class III to a Class I private street and provides adequate traffic circulation. The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**N. Water and Air Pollution Minimized.**

*The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:*

- 1. Elevation of the land above sea level and its relation to the floodplains;*
- 2. Nature of soils and sub-soils and their ability to adequately support waste disposal;*
- 3. Slope of the land and its effect on effluents;*

<p>4. <i>Availability of streams for disposal of effluents;</i></p> <p>5. <i>Applicable state and local health and water resource rules and regulations; and</i></p> <p>6. <i>Safe transportation, disposal and storage of hazardous materials.</i></p>	
<p>1. All proposed development is located outside of a Flood Hazard Area.</p> <p>2. Test pits have been performed on each lot for septic disposal. On lots where there is a limiting factor within 24", a reserve septic area has been identified.</p> <p>3 thru 6. Not applicable to the proposed development.</p>	
<p>Finding: It does not appear the proposed development will result in undue water or air pollution</p>	
<p>Conclusion: This standard appears to be met.</p>	
<p><b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b></p>	
<p><b>O. Aesthetic, Cultural and Natural Values Protected.</b></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>Finding: The property does not include any significant aesthetic, cultural or natural values that require protection.</p>	
<p>Conclusion: This standard appears to be met.</p>	
<p><b>Vote of <u>5</u> in favor <u>0</u> against <u>1</u> abstaining</b></p>	
<p><b>P. Developer Financially and Technically Capable.</b></p>	
<p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>	
<p>Finding: The developer will provide a performance guarantee and an inspection escrow in an amount suitable to cover the costs of required infrastructure including on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.</p>	
<p>Conclusion: This standard appears to be met.</p>	
<p><b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b></p>	

**Chapter 16.6 DECISION APPEAL, VARIANCE and OTHER REQUESTS**

**16.6.4.4 Special Exception Use Request.**

*B. The Planning Board will review, decide and may approve an applicant's Special Exception Use request where the proposed project requires Planning Board review as defined in Section 16.10.3.2 or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 and 16.6.6.*

Finding:

The proposed use of the Development as a conventional residential major subdivision located in the Residential- Rural zone appears to have no adverse impact with consideration of the *conditions* and *factors* outlined in 16.6.6, including:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

Conclusion:

The requirement appears to be met

(Board acted 9/14/2017) **Vote of 7 in favor 0 against 0 abstaining**

**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: Maximum devegetated area in the Shoreland Overlay Zone is 20%. The proposed development does not exceed devegetated coverage amounts

Conclusion: The requirement appears to be met.

Vote of 6 in favor 0 against 0 abstaining

**Chapter 9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT**

**Article III Conservation of Wetlands Including Vernal Pools**

**16.9.3.7 Wetlands Alteration Approval Criteria**

**A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.** Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

Findings: The total 6,840 square foot wetland impacts do not appear to have adverse impacts on the remaining wetland areas.

Conclusion: This requirement appears to be met.

Vote of 5 in favor 0 against 1 abstaining

**B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.**

*The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.*

**Findings:** The intent of the roadway is to widen an existing road that accesses four single-family dwellings and to access an additional lot (lot 8) that is part of the proposed subdivision, which is a special exception use in the R-RL zone. Driveways are a permitted activity within regulated wetlands. The proposed driveway for lot 8 crosses the wetland using retaining walls to minimize the impact. Clear and convincing evidence of compliance with the Code has been provided.

**Conclusion:** This requirement appears to be met.

Vote of 6 in favor 0 against 0 abstaining

***C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.***

*The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.*

**Findings:** The proposed development has a total wetland impact of less than 6,840 square feet and requires a wetland mitigation report. The report has been reviewed by the Town and it's peer-review engineer.

**Conclusion:** This requirement is not applicable.

Vote of 6 in favor 0 against 0 abstaining

***D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).***

**Findings:** The final plan depicts the preservation of an undisturbed upland buffer zone adjacent to the one on-site wetland boundary equal in size to the wetland alteration. A wetland mitigation fee is also required.

**Conclusion:** This requirement appears to be met

Vote of 6 in favor 0 against 0 abstaining

**E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.** In determining if no practicable alternative exists, the Board will consider the following:

*The proposed use:*

- 1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;*
- 2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;*
- 3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and*
- 4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.*

Finding: The proposed roadway was shifted southeast to impact the lower functioning wetland more than the larger and higher functioning wetland and to reduce overall wetland impact. The other two wetland impacts include slope impacts and outlet protection related to maintaining an existing culvert. The entire roadway is located outside of the 100-foot tidal buffer zone. Three driveway scenarios were evaluated for access to lot 8 and the one with the least impact was chosen.

Conclusion: This requirement appears to be met.

Vote of 5 in favor 0 against 1 abstaining

**F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives {described in 16.9.3.7.F}:**

*The proposed use will not:*

- 1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;*
- 2. Unreasonably increase the flow of surface waters through the wetland;*
- 3. Result in a measurable increase in the discharge of surface waters from the wetland;*
- 4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;*



5. *Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;*
6. *Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.*
7. *Result in a measurable alteration or destruction of a vernal pool.*

**Findings:** The 6,840 square foot wetland impacts do not appear to have an adverse impact on the remaining wetlands.

**Conclusion:** This requirement appears to be met.

**Vote of 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:*

1. *Maintain safe and healthful conditions;*
2. *Not result in water pollution, erosion or sedimentation to surface waters;*
3. *Adequately provide for the disposal of all wastewater;*
4. *Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*
5. *Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;*
6. *Protect archaeological and historic resources;*
7. *Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;*
8. *Avoid problems associated with floodplain development and use;*

9. *Is in conformance with the provisions of this code;*

10. *Be recorded with the York county Registry of Deeds.*

Findings: The proposed development does not appear to have an adverse impact to the factors above with consideration that: the proposed development is outside of the required 100-foot required setback; Maine DEP Best Management Practices will be followed for erosion and sedimentation control during roadway and building construction to avoid impact on adjacent surface waters; proposed lots within the shoreland overlay zone will be required for devegetated area to be accounted for and have an approved subsurface waste water system; there is no development proposed within the flood zone; and the subdivision plan will be recorded at the registry.

Conclusion: This requirement appears to be met

**Vote of 6 in favor 0 against 0 abstaining**

### **Article III. Street Signage**

#### **16.8.3.1 Names.**

*Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and are subject to the approval of the Planning Board.*

Finding: The applicant has completed a Street Naming Application that has been reviewed by appropriate town departments, including public safety and find the proposed street names, *Heron Point Lane* and *Milliken Cove Way* conform to the ordinance.

Conclusion: This requirement appears to be met

**Vote of 6 in favor 0 against 0 abstaining**

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

Waivers: (approved 9/14/2017)

- 16.8.4 - Sidewalks and pedestrian way
- 16.8.4.6 - Centerline
- 16.8.4 Table 1, street width design standards for paved and gravel shoulders

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

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. 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 completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. Prior to the issuance of a building permit, all legal documents associated with the Homeowners Association and declarations and bylaws must be reviewed and approved by the Town Attorney.
5. Prior to the issuance of a building permits for lots 1, 2 and 8 a plan is required to be submitted to the Town that: identifies the location of invasive exotic vegetation within the 20-foot wide buffer; provides the method of removal of the said vegetation; and the proposed re-planting suitable for a screen, to be reviewed and approved by the Shoreland and Resource Protection Officer or Code Enforcement Officer.
6. The owner and/or developer must notify abutters of the time and location of the preconstruction meeting and prior to the onset of construction. Within each notice, a designated contact for the developer/contractor must be made available.
7. Removal of vegetation of all lots including 6 and 7 in the Shoreland zone must conform to Shoreland zoning regulations with the Shoreland zone.
8. All Notices to Applicant contained in the Findings of Fact (dated: 10/12/2017).

Conditions of Approval (Not to be included 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.

10. Prior to recording at the York County Registry of Deeds, all new map and lot IDs must be reviewed and approved by the Town Assessor
11. Applicant to pay for street signs and miscellaneous costs associated with address changes.

Notices to Applicant: (not to be included 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, wetland mitigation fee, 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. Copies of all applicable state and federal permits submitted to the Town prior to the issuance of a building permit.
5. The owner and/or developer, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
6. 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.

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

**Vote of 6 in favor 0 against 0 abstaining**

**APPROVED BY THE KITTERY PLANNING BOARD ON OCTOBER 12, 2017**

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Ann 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.

Vice Chair Kalmar added Mr. Dunkelberger only read the highlighted findings tonight and all the findings are included.

## **OLD BUSINESS**

### **ITEM 2 - 459 U.S. Route One - Mixed-use development - Sketch Plan Review**

Action: Approve or deny concept plan. Owner, Landmark Properties, LTD, and applicant, Michael Brigham, request consideration of a mixed-use development consisting of 36 elderly housing units and two buildings with two retail/commercial units and 24 apartments located at 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed Use (MU) Zone. Agent is Ken Wood, Attar Engineering.

Ken Wood, representing the applicant, described the changes made to the design from the comments he received at the sketch plan review. There are six mixed-use buildings and they have added one commercial building. The applicant is requesting an extension of the mixed-use zone granting a 50-foot extension. Mr. Wood gave a history of the project and explained Mr. Brigham, the developer, has a good plan. He would like to move the project forward.

Mr. Alessi asked how many commercial businesses have shown an interested? Mr. Brigham replied none at this time. He explained he has added a walking trail and is considering creating a picnic area. The commercial area will be facing the Dominos building. He is looking to have retail space and a restaurant. Entering by Route 1 will not interfere with the residential area in the back. Mr. Brigham stated he has a small office client now and will not look further until the sketch plan approval.

Vice Chair Kalmar asked how the applicant will have community-shared space as the definition of elderly housing requires. Mr. Brigham replied there will be a park and he is looking into a clubhouse situation in one of the proposed structures.

Mr. Brigham explained single family homes will allow smaller businesses to be there and the businesses that will be there will benefit the residential residents. He described the homes which are detached single homes and explained duplexes are not as desirable. The applicant agrees with the staff comments. The homes are 2,800 sq. ft. including the garage. The applicant will be talking with Maine DOT.

Vice Chair Kalmar commented the applicant provided evidence that the development is applicable for a special exception use. Mr. Dunkelberger agreed.

Ms. Driscoll-Davis stated they may need a street signal at Lewis Road and Route 1. Mr. Di Matteo replied that issue will be part of the preliminary plan and studies will be done. Mr. Wood explained he has a valid entrance permit from the last project and he will send the revised sketch plan to the DOT including the Board's question of a signal.

**Mr. Dunkelberger move to approve the sketch plan dated September 27, 2017 prepared by Attar Engineering, Inc. and presented by applicant Michael Brigham, Landmark Hill, LLC for 459 U.S, Route 1 (Tax Map 60 Lot 24) in the Mixed Use (MU) Zone.  
Mr. Alessi seconded the motion.**

**The motion carried 6-0-0.**

## **NEW BUSINESS**

### **ITEM 3 - 74 State Road - Mixed Use Development - Site and Subdivision Preliminary Plan Completeness Review.**

Action: Accept or deny application: Schedule a public hearing. Owner, PB 'R' US and applicant, Millwork City Internet Service, Corp. request considerations of a mixed-use development for a 1.00 +/- acre parcel located on State road (portion of Tax Map 8 Lot 41A) in the Business Local (B-L) zone. Agent is Christopher Baudo, Architect.

Mr. Baudo gave a summary of the proposed project including the phases of construction. The area is 71,401 sq. ft. and in mixed-use project. There will be 21,420 sq. ft. of open space area, 63 parking spaces of which three are handicapped. The plan is for hotel units and townhouses. there is a waiver for the required soils survey and a waiver to accept the Altus survey which is in place. The project is on ledge and serviced by water.

The staff notes were reviewed. The applicant agreed to address missing details. Mr. Baudo stated the property has not yet been purchased and the purchase and sale agreement has an addendum. A closing is tentatively scheduled for January 2018. Vice Chair Kalmar pointed out Page 6 of 7 explains the need for professional evaluations including environmental and rock removal. She expressed her concern of the rock removal and the impact on the abutting properties. Mr. Baudo replied he has reviewed this item with the engineer and the engineer will have an analysis. She added net residential acreage needs to be charted. The applicant said it is charted on Page 2 of the plan. Mr. Di Matteo stated the earth work information is needed for the public hearing which will be held within three weeks. Ms. Driscoll-Davis would like a complete set of documents before the public hearing and the other Board members agreed. Discussion of scheduling and extending the public hearing ensued. The applicant agreed to extend to 60 days if he receives approval tonight.

Ms. Driscoll-Davis asked why a boundary survey was not completed. Mr. Baudo replied he used the existing survey and the engineers have reviewed it. He added there is an existing conditions plan. Mr. Baudo explained the history of the lot and explained the land north had been surveyed and was to be subdivided. Mr. Baudo stated he submitted the deed description in the application and a surveyor has verified the metes and bounds. Mr. Di Matteo said a boundary survey would provide the rights to the right of way. Mr. Baudo replied the current owner owns the right of way and he has submitted a copy of the existing boundary. Ms. Driscoll-Davis recommended a real survey be completed.

The Board requested all information be given to them within 30 days and schedule the public hearing in 60. Mr. Straub stated they have not done the complete technical review.

**Mr. Dunkelberger moved to accept the preliminary sketch plan, dated September 11, 2017, as complete from owner, PB 'R' US and applicant, Millwork City Internet Service, Corp. for 74 State Road (Tax Map 8 Lot 41A) in the Business Local zone.  
Ms. Day seconded the motion.**

**The motion carried 6-0-0.**

**Mr. Dunkelberger moved to schedule a public hearing on December 14, 2017 for the preliminary site and subdivision plan application from owner, PB 'R' US and applicant, Millwork City Internet Service, Corp. for 74 State Road (Tax Map 8 Lot 41A) in the Business Local zone.  
Vice Chair Kalmar seconded the motion.**

**The motion carried 6-0-0**

**ITEM 4 - 117 Haley Road - Right of Way Plan Review**

Action: Accept or deny application: Schedule a public hearing. Owner and applicant, Pauline Grover and Christopher Mende requests consideration of a new right-of-way a 3.92+/- parcel located off Haley Road (Tax Map 48 Lot 8B) in the Residential Rural (R-RL). Agent is Tome Harmon, Civil Consultants.

Tom Harmon, representing the applicant, commented they have all the information in place and the application is complete. The applicant would like to move forward without a public hearing. He added the applicant has attempted to get responses from abutters and received two.

**Mr. Alessi moved to accept the application dated August 15, 2017 from owner and applicant, Pauline Grover for consideration of a new right-of-way located off Haley Road (Tax Map 48 Lot 8B) in the Residential Rural (R-RL).  
Ms. Day seconded the motion.**

**The motion carried 6-0-0.**

**Mr. Dunkelberger moved to continue the right of way plan application dated August 15, 2017 from Pauline Grover and Christopher Mende for a right-of-way off Haley Road (Tax Map 48 Lot 8B) not to exceed 90 days.  
Mr. Alessi seconded the motion.**

**The motion carried 6-0-0.**

**ITEM 5 - 10 Spinney Cove Drive - Shoreland Development Plan Review**

Action: Accept or deny application. Approve or deny plan. Owner and applicant, Lobo Realty, LLC request consideration to demolish and replace a nonconforming single-family dwelling on a 0.44+/- acre parcel located on Spinney Cove Drive (Tax Map 2 Lot 64) in the Residential Suburban (R-S) and Shoreland Overlay (OZ-SL-250') zones. Agent is Bob Bourdeau, Lobo Realty, LLC.

Bob Bourdeau explained he purchased the property in 2004 and has been using it as a summer home. His intention is to eventually retire and live there year-round. He explained he would like to replace the building because there are many issues with it. He is planning to keep the same footprint but it will be 5 feet further away from the water which will make the building a conforming setback. He would also like to add a garage in an area that is now decking. The expansion increases the square footage 1 to 1.5 % and will reduce the nonvegetative area on the property. The applicant has hired Robbie Woodburn and is working with the Shoreline Resource Officer, Jessa Kellogg. A plan in place for an area that is erosion. Mr. Bourdeau is working with Jessa Kellogg regarding the issues with trees. He is proposing to replace the walkway.

Ms. Driscoll-Davis asked if the applicant's dock is a commercial float. Mr. Bourdeau replied it is not and explained the length of the dock is to allow getting to deep water at low tide. He added he does not require more parking and parking is available on the street. Discussion of the requirement of an in-kind walkway ensued. Mr. Bourdeau is working with the DEP and he will forward the emails to Mr. Di Matteo.

A site walk will be scheduled.

**Mr. Dunkelberger moved to accept the application dated September 12, 2017 from owner and applicant, Bob Bourdeau for 10 Spinney Cove Road (Tax Map 2 Lot 64) in the Residential Suburban and Shoreland Overlay Zones.**

**Ms. Day seconded the motion.**

**The motion carried 6-0-0.**

A site walk was scheduled for November 2, 2017 at 1:00 p.m. The applicant will have the building points and the path for the walkway marked.

**Mr. Dunkelberger moved to schedule a public hearing on November 9, 2017 for the Shoreland Development Plan application dated September 12, 2017 from owner and applicant, Bob Bourdeau for 10 Spinney Cove Road (Tax Map 2 Lot 64) in the Residential Suburban and Shoreland Overlay Zones.**

**Ms. Day seconded the motion.**

**The motion carried 6-0-0.**

## **TOWN PLANNER ITEMS**

- a. Extension request for Sawyer Lane Subdivision Brave Boat Harbor Road.

The applicant is requesting an extension for two years.

**Mr. Dunkelberger moved to extend the approval for the Sawyer Lane Subdivision, Brave Boat Harbor Road, until November 13, 2019.**

**Ms. Day seconded the motion.**



**The motion carried 6-0-0.**

After Board discussion regarding the extension date, the following motion was made:

**Ms. Driscoll-Davis moved to reconsider the extension of the approval of the Sawyer Lane Subdivision, Brave Boat Harbor Road.**

**Ms. Day seconded the motion.**

**The motion carried 5-1-0.**

**Ms. Driscoll-Davis moved to add two years to the required completion date of the Sawyer Lane Subdivision, Brave Boat Harbor Road.**

**Ms. Day seconded the motion.**

**The motion carried 6-0-0.**

Mr. Di Matteo announced the public hearing will take place on October 25<sup>th</sup> for the Foreside Report draft recommendations.

#### **BOARD COMMENTS**

None.

#### **APPROVAL OF MINUTES**

Site Walk Minutes - 412 Haley Road

**Vice Chair Kalmar moved to approve as written the site walk Minutes of 412 Haley Road**

**Mr. Alesse seconded the motion.**

**The motion carried 4-0-2**

Minutes of September 28, 2017

Line 50 - change "Earl Dean to "Earldean"

Ms. Wells pointed out the letter from the Conservation Committee regarding Huntington Run should be attached. Mr. Di Matteo explained the public comment segment was not the correct forum to provide information. Ms. Wells stated the Chair told her to do it in that way.

Line 84 - "application" not site

Line 86 - change to "is spending money and requested"

Line 93 - add "the Board" after requested

Line 114- strike out "and"

Line 148 strike out "will"

Line 36 - strike the whole line

**Mr. Dunkelberger moved to accept the September 28, 2017 Minutes as amended.**

**Ms. Driscoll-Davis seconded the motion.**

**The motion carried 5-0-1.**

Minutes of August 24, 2017

The Board agreed to address this at the next meeting on October 26, 2017.

**Mr. Alesse moved to adjourn the meeting.  
Vice Chair Kalmar seconded the motion.**

**The motion carried 6 -0-0.**

The Kittery Planning Board meeting of October 12, 2017 adjourned at 9:25 p.m.

Submitted by Mary Mancini, Minute Recorder, on October 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>