

CALL TO ORDER

ROLL CALL

Present: Ronald Ledgett, Member; Dutch Dunkelberger, Member; Russell White, Member; Mark Alesse, Member, and Karen Kalmar, Vice Chair

Absent: Ann Grinnell, Drew Fitch

Staff: Jamie Steffen, Town Planner; Adam Causey, Director of Planning and Development

Advisory: Earledean Wells, Conservation Commission

PLEDGE OF ALLEGIANCE

Vice Chair Kalmar announced because of the number of members present she would like to postpone the Election of Officers.

APPROVAL OF MINUTES – September 27, 2018, October 25, 2018 Site Walk

Line 160 – change if to is

Line 259 –drop the s in shapes

Line 72 – change the words “by the” to “at any”

Line 74 – insert the word “before” after advertised

Mr. Dunkelberger moved to accept the Minutes of September 27, 2018 as amended.

Mr. Ledgett seconded the motion

The motion carried 5-0-0.

Mr. White moved to accept the Site Walk Minutes of October 25, 2018.

Mr. Ledgett seconded the motion.

Motion carried 5-0-0.

PUBLIC COMMENT

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

PUBLIC HEARINGS

ITEM 1 – 19 Coleman Avenue – Shoreland Development Plan Review

Action: Accept or deny application. Approve or deny plan. Owner/applicant Ian R. Rex requests consideration to expand a nonconforming single family dwelling on a 8,895 +/- square foot parcel located at 19 Coleman Avenue (Tax Map 26 Lot 7-1) in the Residential – Kittery Point Village (R-KPV) and the Shoreland Overlay (OZ-SL-250') Zones.

Ian Rex, owner/applicant, gave a brief overview of the proposal.

Vice Chair Kalmar opened the public hearing. Earledean Wells, Conservation Commission Chair stated putting a basement 25 feet from Barter's Creek in the floodplain should be rethought.

The Board reviewed and discussed the following:

- Mr. Ledgett pointed out a discrepancy in the staff notes regarding the height of the porch. On the plans it is listed as 13' 1" but in the notes it is stated as 13 feet. Mr. Steffen responded that the plan number is the correct one.
- Mr. Ledgett suggested a revised finding of fact under Section 16.7.3.3.B and wanted it to read "Per 16.7.3.3.B.3 (e) [2] that portion of the structure within 25 feet of the Highest Annual Tide (HAT) cannot be expanded.

Mr. Dunkelberger moved to approve the waiver request from Section 16.7.3.3.B. [4] [a] to allow the roof slope of the structure to be less than an 8:12 pitch for a Shoreland Development Plan from owner/applicant Ian R. Rex to expand a nonconforming single family dwelling on a 8,895 +/- square foot parcel located at 19 Coleman Avenue (Tax Map 26 Lot 7-1) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') zones.

Mr. Ledgett seconded the motion.

The motion carried 5-0-0.

Mr. Dunkelberger moved to approve the Shoreland Development Plan dated June 28, 2018 from owner/applicant Ian R. Rex, who requests consideration to expand a nonconforming single family dwelling on a 8,895 +/- square foot parcel located

at 19 Coleman Avenue (Tax Map 26 Lot 7-1) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') zones with the condition that prior to the issuance of a building permit a Flood Hazard Development Permit is obtained from the Code Enforcement Officer. Mr. Ledgett seconded the motion.

The motion carried 5-0-0.

FINDINGS OF FACT

The Planning Board made the following factual findings and conclusions:

Section 16.3.2.17.D Shoreland Overlay Zone

Finding: The existing devegetated and impervious surfaces area is 25% of the lot area. The applicant will remove some impervious surfaces (portions of existing pavement and existing patio) and revegetate to maintain the overall devegetated area at 25%.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 0 abstaining

Section 16.7.3.1 Prohibitions and Allowances

Finding: This is an existing, nonconforming lot with an existing single family dwelling structure that is nonconforming to the 100-foot setback from the water and side yard setbacks. A dwelling is a special exception use in the Shoreland Overlay Zone.

The proposed development does not increase the nonconformity as permitted in 16.7.3.3.B. Nonconforming structure repair and/or expansion.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 0 abstaining

Section 16.7.3.3 Nonconforming Structures

16.7.3.3.B Nonconforming structure repair and/or expansion

In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board. See 16.6.6.A.2 reference below.

Finding: The proposed development increases the nonconformity as permitted in 16.7.3.3.B. (1) [4] [a] Nonconforming structure repair and/or expansion. The expansion

of the footprint of the structure will not exceed 1,000 square feet in size. The height of the structure will not be greater than the height of the existing structure. Per 16.7.3.3.B.3. (e) [2], that portion of the structure within twenty-five (25) feet of the Highest Annual Tide (HAT) cannot be expanded. A waiver from the 8:12 roof pitch is justified based upon the existing structure roof pitch.

Conclusion: This standard appears to be met.

Vote of 5 in favor 0 against 0 abstaining

Section 16.6.6. Basis for Decision

16.6.6.A.2 In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.3.B.(1) above] must use the following criteria as the basis of a decision:

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.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

Section 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:

Finding: The Planning Board made a positive finding on Criteria 1-10 with all of the criteria appearing to be met.

Vote of 5 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 subject to any conditions or waivers, as follows:

Waivers:

- 1) Under Section 16.7.3.3.B [4] [a], relief from requirement that a structure have a roof slope not less than an 8:12 pitch to allow a 6:12 pitch.

Conditions of Approval (to be included 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. Prior to the issuance of a building permit a Flood Hazard Development Permit is obtained from the Code Enforcement Officer.
3. 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.
4. 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.
5. All Notices to Applicant contained herein (Findings of Fact dated 12/13/18).

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

Vote of 5 in favor 0 against 0 abstaining

ITEM 2 – Andrews Cluster Subdivision – Preliminary Plan Review

Action: Approve and deny preliminary plan. Owner /Applicant, Arthur W. Andrews Rev. Trust requests consideration of a 11-lot cluster subdivision on 106.82 acres located off Deer Ridge Lane (Tax Map 60, Lot 10) in the Residential Rural (R-RL) and Shoreland Overlay and Resource Protection (OZ-RP & OZ-SL 250') Zones. Agent is Jeff Clifford, P.E., Altus Engineering.

Jeff Clifford, Altus Engineering, gave an overview of the proposed subdivision. He discussed the proposed lot line adjustment that would occur to transfer 17 acres to an abutting Andrewes parcel. He noted that they were in negotiations with the Kittery Land Trust for stewardship of the open space parcel.

Vice Chair Kalmar opened up the public hearing.

Christine Bennett, Executive Director, Kittery Land Trust, spoke in favor of the proposed subdivision. She felt it was a model cluster subdivision where it is proposing compact residential development with conservation in mind.

Steve Brake, 45 Cutts Road, handed out documents for the Board to view. Vice Chair Kalmar advised him to limit his comment specifically to the proposed subdivision. Mr. Brake expressed his concern about the project's impact on the adjacent natural area.

Mary Thron, 71 Tower Road, Trustee of the Arthur W. Andrews Revocable Trust, spoke in support of the project.

The Board reviewed and discussed the following:

- Mr. Ledgett asked to see where the proposed lot line adjustment would be. Mr. Clifford pointed it out on the displayed plan.
- Mr. Dunkelberger noted that they were asking for a number of waivers from the road standards. He asked if it was their intent for the road to forever remain private. Mr. Clifford responded yes. Mr. Dunkelberger commented that he would like to have a note on the plans to that effect.
- Vice Chair Kalmar asked to have written justification supplied for the roadway waivers. She also wanted to see the actual amount of open space marked on the plan. Mr. Steffen noted that it would be a requirement for the final plan review. Mr. Clifford responded that they are still negotiating with the Kittery Land Trust.
- Vice Chair stated that the Board would hold off until the next meeting to vote on the requested waivers.

Mr. Dunkelberger moved to approve the preliminary cluster subdivision plan application dated October 18, 2018 from owner / applicant Arthur W. Andrews Rev. Trust for an 11-lot cluster subdivision located off of Deer Ridge Lane (Tax Map 60 Lot 10) in the Residential Rural and Shoreland Overlay and Resource Protection (OZ-RP & OZ-SL 250') Zones with the condition that all of CMA

comments must be addressed to their satisfaction. Mr. Ledgett seconded the motion.

The motion carried 5-0-0.

OLD BUSINESS

ITEM 3 – 88 Pepperrell Road – The Bistro – Parking Plan Review for Business Use Change

Action: Approve or deny plan. Owner, Chatham Street, LLC, and applicant, Ann Kendall are establishing a new business entity in an existing facility, where intensity of use is significantly different, located at 88 Pepperrell Cove (Tax Map 27 Lot 49) in the Business Local (B-L) and Shoreland Overlay (OZ-SL-250') Zones.

Ken Wood, Attar Engineering, gave an overview of the redevelopment of the site and the proposed parking plan. He discussed working with the previous Code Enforcement Officer on getting each venue open. He discussed what has occurred since the Board saw the request back in October of 2017. He noted that he has worked closely with the Town Planner and the Director of Planning on the developing the parking plan that he has brought forward to the Board. He discussed the details of the proposed parking plan.

The Board reviewed and discussed the following:

- Mr. Dunkelberger asked how many parking spaces they needed. Mr. Wood responded 80. Mr. Dunkelberger noted the Staff indicated 90 spaces were required. Mr. Dunkelberger also asked how they would define the parking spaces in the unimproved portion of the parking lot. Mr. Wood answered by using wheel stops and signage. They would also be utilizing a parking attendant but not year round.
- There was discussion about the number of spaces shown on the plans.
- Mr. Steffen discussed that there was confusing information shown on the plan for parking space numbers. He commented that the plans had changed several time since they were first submitted for the November meeting. He stated Staff was still trying to get a handle on actual numbers for all of the venues. He noted the discrepancy between what was listed in the parking calculations and what was shown on the plan for the outdoor seating area. In response, Carla Goodnight, CJ Architects, discussed the square footages and parking calculations for new venues and clarified the ice cream take-out window use. She stated that the wished to stay within the limits of the ordinance.

- Vice Chair Kalmar asked if they were still proposing off-site parking. Mr. Wood responded that they still do have an opportunity for off-site parking.
- Mr. Allese discussed the seating at The Wharf and commented that they could put more seating out there but were voluntarily reducing it.
- Mr. White stated that it was important that the applicant and staff get on the same page regarding the parking calculations and documents for review. He discussed year round use of the site and commented that it doesn't appear that they would maximum use of the site for a majority of the year.
- Vice Chair Kalmar commented that she would like to have Staff and the applicant work together to address the discrepancies in the plan and then have the Board view the site. Ms. Goodnight commented that her concern was that there was no definition in the ordinance for outdoor seating for restaurants.

Donna Ryan, Business partner and Kittery resident, commented that they were proposing a parking plan that works for the amount of spaces they have. She discussed their business success, commitment to staff and the goodwill they have tried to show the community.

Adam Causey, Director of Planning and Development, spoke to the Department's side of the issue. He explained that the code says when someone changes, alters and expands a use they need to comply with the parking standards. Staff cannot waive those requirements.

There was further discussion amongst the Board regarding prior plan reviews and the actual parking numbers previously approved. Vice Chair Kalmar stated she would like see an adequate plan developed with the detail required so that the Board has a better understanding of how they arrived at the number of spaces provided. At the suggestion of the Vice Chair, the Board decided to schedule a site walk.

**Mr. Dunkelberger moved to schedule a site walk for December 27th at 10:00 am.
Seconded by Mr. Ledgett.**

Motion carried 5-0-0.

ITEM 4 - 25 Pinkham's Lane – Major Subdivision Sketch Plan Review

Action: Accept or deny application; Approve or deny sketch plan Owners Rudy E.

Shayganfar & Mahni Shayganfar request consideration of a 8-lot residential subdivision with access along an existing private right-of-way (Pinkham's Lane), (Tax Map 62 Lots

10 & 10-5) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones. Agent is Paul Dobberstein, Ambit Engineering.

Paul Dobberstein, Ambit Engineering, gave an overview of the proposed subdivision. He discussed the proposed changes to the subdivision from the first review. He noted that Rudy & Mahni Shayganfar are now the owners of the property. Mr. Dobberstein discussed the proposed new right-of-ways (ROW) off of Pinkham's Lane. He outlined their different road classifications. He discussed locating the new lots in the most desirable, developable areas and avoiding wetlands impacts as much as possible. He discussed the proposed upgrades to Pinkham's Lane from the property line to the development area. He discussed proposed Lot 6 which would be accessed by a glorified driveway which is an old logging road. The proposed new ROW would skirt wetlands and provide access to a house lot for Niles Pinkham.

The Board reviewed and discussed the following:

- Mr. Dunkelberger asked who utilizes Pinkham's Lane. Mr. Dobberstein answered that there were several lots out there currently that have been divided off over the years and showed those on the map. Mr. Dunkelberger asked how wide the ROW was in from Bartlett Road. Mr. Dobberstein stated 20'. Mr. Dunkelberger commented then that it would go from 20' to 60' once it enters the development property. Mr. Dobberstein discussed the legal reasons for keeping the existing portion the way it is. He then outlined the waiver requests that they would be seeking for the portion with the proposed subdivision.
- Vice Chair Kalmar asked who maintains the roadway. Mr. Dobberstein answered Mr. Pinkham. He discussed putting a maintenance agreement in place.
- Mr. Ledgett asked if they considered adding a passing lanes along the roadway to Lot 6 to allow vehicles to pass by one another if needed. Mr. Dobberstein stated that they could add those.
- Mr. White expressed his concern about the number of houses already existing on the roadway and adding more to a long stretch of narrow roadway. He would like the safety officials of the Town weigh in on the proposal. He discussed looking at improvements to the roadway make it more robust.
- The Board and the applicant discussed conducting a site walk as the next step.

Mr. Dunkelberger move to accept the sketch plan application dated November 2018 from owners Rudy E. Shayganfar & Mahni Shayganfar for a 8-lot residential subdivision with access along an existing private right-of-way (Pinkham's Lane)

(Tax Map 62 Lots 10 & 10-5) in the Residential-Rural (R-RL) and Resource Protection Overlay (OZ-RP) Zones as complete. Seconded by Mr. White.

Motion carried 5-0-0.

The Board and the applicant continued to discuss the roadway issues and Vice Chair Kalmar asked to see more detail driveway location for each lot. The Board also further discussed conducting a limited site walk. Mr. Dobberstein asked if the Board could seek a legal opinion regarding the off-site roadway improvements. Vice Chair responded, yes, they could. Mr. Ledgett asked about the existing 20' wide ROW. Mr. Dobberstein outlined the ownership details and how it was granted. There was more discussion about improving that portion of the ROW and what parties would be involved. Mr. Steffen recommended that the Board conduct a site walk before the snow flies. Mr. White discussed getting the legal opinion and doing a limited site walk as the next steps.

Mr. Dunkelberger moved to schedule a site walk for January 3rd at 10:00 am. Seconded by Mr. Ledgett.

Motion carried 5-0-0.

NEW BUSINESS

ITEM 5 – 50 Chauncey Creek Drive – Shoreland Development Plan Review.

Action: Accept or deny application. Approve or deny plan. Owners and applicants, Thomas and Michele Jordan request consideration to reconstruct and expand a nonconforming single family dwelling on a 7,800 +/- square foot parcel located at 50 Chauncey Creek Road (Tax Map 44 Lot 59) in the Residential Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250') and Resource Protection (OZ-RP) zones. Agent Tom Emerson, studioB-E.

Tom Emerson, studio-B-E, gave an overview of the project. The footprint of the house will remain exactly the same. They would be keeping the foundation and building on top of it. He outlined the other proposed changes / improvements to the property. He discussed the addition of a new shed / accessory structure and explained that the existing accessory structure, a boathouse is located entirely below the highest annual tide (HAT) line.

The Board reviewed and discussed the following:

- A portion of the reconstructed dwelling appears to be located within the required 25 foot setback from the HAT and cannot be expanded. Mr. Ledgett stated that the problem is they are proposing to go up within the 25 feet. Mr. Steffen read an email from Jessa Kellogg's memo that seemed to indicate that the portion that was being increased in height was outside of the 25 foot setback. The Board noted that the plans submitted seem to indicate differently. Clarification is needed before the Board could take any further action.

Mr. Dunkelberger moved to continue the shoreland development plan application from owners and applicants, Thomas and Michele Jordan to reconstruct and expand a nonconforming single family dwelling on a 7,800 +/- square foot parcel located at 50 Chauncey Creek Road (Tax Map 44 Lot 59) in the Residential Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250') and Resource Protection (OZ-RP) zones not to exceed 90 days. Seconded by Mr. Ledgett.

Motion carried 5-0-0.

ITEM 6 - 28 Mendum Avenue – Shoreland Development Plan Review

Action: Accept or deny application. Approve or deny plan. Owners/applicants Oliver P. & Claire H. Gaudissart request consideration for rip rap shoreline stabilization along Mendum Creek on a 9,600+- sf parcel located at 28 Mendum Avenue (Tax Map 3 Lot 52) in the Residential – Urban (R-U) and the Shoreland Overlay (OZ-SL-250') Zones. Agent Steven Riker, CWS - Ambit Engineering, Inc.

Steven Riker, CWS, Ambit Engineering, gave an overview of the project. They have designed a revetment to be above the HAT line. They submitted a Maine DEP permit in late November. He stated that they will meet the devegetated coverage requirements. He stated that they would provide a replanting plan to replace the seven (7) trees which will be removed if the Board desires.

After question from Mr. Dunkelberger, Mr. Steffen stated he is not recommending a site walk and public hearing for this application.

Mr. Dunkelberger moved to approve the Shoreland Development Plan application dated October 30, 2018 from owners/applicants Oliver P. & Claire H. Gaudissart for rip rap shoreline stabilization along Mendum Creek on a 9,600+- sf parcel located at 28 Mendum Avenue (Tax Map 3 Lot 52) in the Residential – Urban (R-U) and the Shoreland Overlay (OZ-SL-250') Zones with the condition that a

**replanting plan conforming to 16.9.2.2 be approved by the Shoreland Resource Officer and/or the Code Enforcement Officer prior to any excavation work.
Seconded by Mr. Ledgett.**

Motion carried 5-0-0.

ITEM 7 - Kittery Parks Commission Presentation on Proposal for Invasive Species Management/Eradication at Fort Foster

Presentation and discussion, possible vote: Shaye Robbins of the Parks Commission will present an FB Environmental proposal to manage and eradicate invasive species at Fort Foster which will require funding from the Town's Wetland Preservation Fund. The Parks Commission is seeking Planning Board support for funding the proposal

Shaye Robbins of the Kittery Parks Commission updated the Board on the proposal and gave an overview of the work that has been accomplished in Phase 1. She discussed FB Environmental's Phase 2 proposal to draft an invasive species eradication / management plan for Fort Foster. She asked for the Board's support of the Parks Commission's request that the Town Council release funds from the Wetland Preservation Fee account to cover the costs of Phase 2.

Mr. Dunkelberger moved to have the Planning Board draft a letter of support to the Town Council for release of funds from the Wetland Preservation Fee account to cover the costs of Phase 2. Seconded by Mr. Ledgett.

Motion carried 5-0-0.

ITEM 8 – Board Member Items/Discussion

- A. Election of Officers postponed until the January 10, 2019 meeting.

ITEM 9 - Town Planner Items

None.

ITEM - Adjournment

**Mr. Alesse moved to adjourn the meeting.
Mr. Dunkelberger seconded the motion.**

The motion carried 6-0-0.

The Kittery Planning Board meeting of May 10, 2018 adjourned at 8:45 p.m.

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

**APPROVED
December 13, 2018**

Submitted by Jamie Steffen, Town Planner, on January 28, 2019.

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>.