

CALL TO ORDER

ROLL CALL

Present: Ronald Ledgett, Member; Drew Fitch, Member; Russell White, Member; Mark Alesse, Member; Karen Kalmar, Vice Chair, and Ann Grinnell, Chair

Absent: Dutch Dunkelberger

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

Advisory: Earldean Wells, Conservation Commission

PLEDGE OF ALLEGIANCE

Chair Grinnell announced that she would like to move Items 2, 3 & 4 up first on the agenda. Vice Chair Kalmar suggested moving Item 3 until the end of the meeting.

NEW BUSINESS

ITEM 2 – 230 U.S. Route 1 – Preliminary Site Plan Review

Action: Accept or deny application; Approve or deny preliminary site plan

Owner/Applicant Green Brook, LLC requests consideration to develop a food truck pod on a 1.04 acre lot located at 230 U.S. Route 1 (Tax Map 22 Lot 14) in the Commercial (C-1) Zone. Agent is Barbara Jenny.

Barbara Jenny, owner/applicant, gave a brief overview of the proposal. She discussed the site walk and the changes to the plans that arose from the walk. Notable changes include: installing trough planters and removable bollards at the north entrance to keep some separation between vehicles entering and exiting the property and the food truck pod area; pavement markings and signage at the entrances / exits for directing traffic and moving the porta-potties closer to the food truck area and screening them from abutters.

Vice Chair Kalmar moved to accept the preliminary site plan from Owner/Applicant Green Brook, LLC for a food truck pod on a 1.04 acre lot located at 230 U.S. Route 1 (Tax Map 22 Lot 14) in the Commercial (C-1) Zone. Mr. Alesse seconded the motion.

Roll call vote was taken with all voting in favor. The motion carried 6-0-0.

Vice Chair Kalmar moved to schedule a public on February 14, 2019 for the preliminary site plan from Owner/Applicant Green Brook, LLC for a food truck pod on a 1.04 acre lot located at 230 U.S. Route 1 (Tax Map 22 Lot 14) in the Commercial (C-1) Zone. Seconded by Mr. White.

Roll call vote was taken with all voting in favor. The motion carried 6-0-0.

ITEM 4 - 19 Water Street – Shoreland Development Plan Review

Action: Accept or deny application. Approve or deny plan. Owner/applicant Andrew Page requests consideration to construct a roof deck and stairs on an existing shed on a 39,289+- square foot parcel located at 19 Water Street (Tax Map 1 Lot 48) in the Residential – Urban (R-U) and the Shoreland Overlay (OZ-SL-250') Zones. Agent, Sean Marshall, Dynamic Solutions Construction LLC.

Drew Page, owner/applicant, gave a brief overview of the project. He would like to remove the roof from the shed / chicken coop structure and replace it with a roof deck. He would also be constructing a stairway from it down to an existing patio. He noted that the only increase to the square footage was for the stairway and that would total 61 sf. He noted he would keep the historical nature of the building intact.

Mr. Ledgett asked if the structure was fully attached to the house. Mr. Page responded yes, it is original to the barn.

Vice Chair Kalmar moved to approve the shoreland development application to construct a roof deck and stairs on an existing shed on a 39,289+- square foot parcel located at 19 Water Street (Tax Map 1 Lot 48) in the Residential – Urban (R-U) and the Shoreland Overlay (OZ-SL-250') Zones. Seconded by Mr. Fitch.

FINDINGS OF FACT

The Planning Board made the following factual findings and conclusions:

Section 16.3.2.17.D Shoreland Overlay Zone

(1)(d)[3]. The total footprint of devegetated area must not exceed twenty (20) percent of the lot area, located within the Shoreland Overlay Zone, except in the following zones : Residential-Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum de-vegetated area is fifty (50) percent.

Finding: The property is currently at 16.7% devegetated area and after the construction it will become 16.9%.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

Section 16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Finding: This is an existing, nonconforming single family dwelling structure relative to the 100 foot setback from the water. A dwelling is a special exception 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.

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 6 in favor 0 against 0 abstaining

Section 16.7.3.3 Nonconforming Structures

16.7.3.3.B Nonconforming structure repair and/or expansion

16.7.3.3.B (d)

16.7.3.3.B (e)[5] [a]

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) [5] [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.

Conclusion: This standard appears to be met.

Vote of 6 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 6 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 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 subject to any conditions or waivers, as follows:

Waivers: None

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. 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. All Notices to Applicant contained herein (Findings of Fact dated 1/10/19).

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

1. 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 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 compliance with any conditions of approval.

Vote of 6 in favor 0 against 0 abstaining

OLD BUSINESS

ITEM 3 - 28 Mendum Avenue – Shoreland Development Plan Review

Action: Approve Findings of Fact. 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.

Mr. Steffen stated that this application was approved by the Board at its December 13, 2018 meeting but the draft Findings of Fact weren't available for the Board's review and action.

FINDINGS OF FACT

The Planning Board made the following factual findings and conclusions:

Section 16.3.2.17.D Shoreland Overlay Zone

(1)(d)[3]. The total footprint of devegetated area must not exceed twenty (20) percent of the lot area, located within the Shoreland Overlay Zone, except in the following zones : Residential-Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum de-vegetated area is fifty (50) percent.

Finding: The property is currently at 28% devegetated area and after the construction it will become 33.4%.

(2) (a) [3] The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor do they apply to other functionally water-dependent uses, as defined in 16.2.

Finding: Though the retaining wall is considered a new structure in the Shoreland Overlay Zone closer to the water body than the principal structure, the proposed revetment is exempt from meeting the 100 foot setback requirement as it is an operational necessity.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

Section 16.9.2.2 Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection of Shoreland Overlay Zone.

A. In a Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Finding: A replanting plan conforming to 16.9.2.2 will need to be approved by the Code Enforcement Office prior to any excavation work. A site walk with the Shoreland Resource Officer and/or Code Enforcement Officer will be required prior to approval of the Replanting Plan.

Conclusion: This standard appears to be met.

Vote of 6 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 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 subject to any conditions or waivers, as follows:

Waivers: None

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. 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. A replanting plan conforming to 16.9.2.2 will need to be approved by the Shoreland Resource Officer and/or the Code Enforcement Office prior to any excavation work.
4. All Notices to Applicant contained herein (Findings of Fact dated 12/13/18).

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

1. 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 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 compliance with any conditions of approval.

Vote of 6 in favor 0 against 0 abstaining

ITEM 1 – 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.

Adam Causey, Director of Planning and Development, discussed the redevelopment effort on this property consisting of four businesses; The View, The Wharf, and Provisions which have all received approvals for building permits and certificates of occupancy and are currently in operation. On October 26, 2017 there was a vote for the applicant to return with its fourth use to finalize the parking plan that would meet the requirements for every use in operation.

A site walk was done on December 27, 2018, and members of the staff, public, planning board and board of appeals were in attendance, minutes of the site walk were provided for reference. It is being discussed with the applicant that the amount of parking they are requesting to satisfy the needs for each use, with the current calculations, is met in their plan but that plan is not sufficient in meeting the requirements in the code for parking lots with regard to landscaping, pavement, buffering, and a host of things that must be met when building out a parking lot and increasing the number of spaces.

The applicant was sent to the Board of Appeals to see if there was an option to allow for a parking miscellaneous variation request for parking standards. A draft notice of decision from the Board of Appeals was provided to Planning Board members and was reviewed in length including changes that have occurred since the draft was submitted. (A draft copy of the Board of Appeals notice of decisions has been submitted into record)

Ken Wood, Attar Engineering, spoke on behalf of the applicants. He stated that the Board of Appeals approved the five waivers in support of what both abutters and applicants were looking for in that the lot remained as is with a few improvements. Mr. Wood presented the revised plan with the waiver requests as a result of the Board of Appeals meeting with the minor adjustments, dated 01/10/2019. The changes included:

- the addition of the dock on the waterfront, with the dimensions of dock including floats;
- CMP's recommendation of a 250 watt, high pressure sodium fixture facing down illuminating the parking lot;
- the sidewalk was straightened out as suggested by Dave Rich, Public Works Commissioner, and now runs perpendicular to Pepperrell Road.

Mr. Wood spoke on the suspected tomb of slave remains under the gravel parking lot and stated the tombs were a supposed 40 feet away where nothing could be disturbed within that distance. Mr. Wood continued conversation regarding the suggestion of having a parking lot attendant onsite when the businesses are in use. He asked the board to consider two things:

1. That the plan being submitted meets the ordinance requirements and believes from his experience that any project that met the ordinance did not require an attendant;
2. Suggested instead that a parking lot attendant be provided by the applicants when all three of the public venues are in operation or when The View (the function facility) has an event that has 75 or more people in attendance.

The applicants submitted a waiver request for sidewalks, justification for the waiver was written into the request. Dave Rich, Public Works Commissioner, suggested five sections of sidewalks on both sides of Pepperrell Road which was submitted in the memo along with the waiver. Mr. Wood does not believe the sidewalks are necessary and thinks it would be an engineering disaster. Mr. Wood & Mr. Rich agreed to remove the crosswalk near the Kittery Point Post Office and placed it into position as suggested by Mr. Rich.

Chair Grinnell, stated that it was her understanding that a conditional approval does not pass as an approval for a Certificate of Occupancy, allowing the business to open. Adam Causey, Director of Planning and Development, clarified what was agreed to with a conditional approval. He stated that due to seasonal conditions the applicants would not be able to meet certain conditions, but the Planning Board can place time restraints on those conditions that would allow the applicants to meet those conditions at a later date. The applicants would then agree to finalize those conditions set forth in the conditional approval allowing for a Certificate of Occupancy to be signed off on.

Mr. White gave his suggestion that dependent upon the season, weather and construction realities they would ask the applicants for a reasonable timeframe for them to meet the conditions for things such as plantings and for them to be put into place at those dates set by the conditional approval.

Chair Grinnell agreed stating they could put a date certain on things.

Mr. Fitch asked a couple questions: 1) Was there a particular reason that the applicant had a handicap or ADA parking spot on the parking lot as opposed to up against the restaurant? Mr. Wood answered saying that he felt it was a more central location to

access each business. Mr. Fitch suggested it would alleviate concerns and the necessity for the ADA ramps and sidewalks; 2) In the waiver were they proposing any sidewalks in front of the Bistro. Mr. Wood stated no, but they are more than agreeable to stripe it.

Mr. Ledgett asked about the curb stops and why they were in the unpaved portion of the parking lot, but not in the paved portion. His concerns laid with the exit passage way of the parking lot where he felt having curb stops would assist in not allowing a vehicle to obstruct the passage way. Mr. Wood agreed that in retrospect they should have the curb stops there allowing for back passage out of the parking lot.

Vice Chair Kalmar asked to place a condition on the applicants' waiver request for sidewalks to have Mr. Rich, sign off and approve their plan. Mr. Wood agreed. Karen Kalmar restated that she would prefer to see him submit a plan and have Mr. Rich sign off on it. Mr. Wood said that would be satisfactory.

Mr. Ledgett spoke to the recommendations made by staff, Mr. Causey, under number four and asked Mr. Causey to comment. Mr. Causey stated that his recommendations were made after speaking with Mr. Rich. Mr. Causey gave his opinion that when commercial development happens that it come with new infrastructure, and it is his recommendation and opinion that the sidewalks be addressed.

Earldean Wells commented regarding the staff notes that two drains in the parking lot had been covered and were unknown to be draining, and that the applicants intended to store snow on site and wanted clarity as to where they were planning to store snow. Mr. Wood stated the drain is working and that snow would be in the parking lot or they would be able to transport offsite.

PUBLIC COMMENT:

- (1) Durward Parkinson, representing Driscoll Realty Inc., an abutter to the project, agreed that the landscaping could start between the two zoning districts and wrap up around the gravesite area. They would like to see a parking lot attendant on site, but would like the time changed from 12-7 to 12-8, and have the attendant be available through to Columbus Day weekend. They would also like to see a police officer available for events with 100 people or more. Last was a condition for the applicant to provide offsite parking when all venues are open. They would like to see these suggestions written into the applicants' plan.

- (2) Clint Reed, 4 Pepperrell Terrace, spoke regarding plantings being stated as arborvitae which moved to evergreens with a minimum of four foot, and a maximum of six foot. He would like to see plantings that are done tastefully that will allow for visibility and access to the tomb.
- (3) Jim McPherson, member of the Board of Wood Island, spoke on behalf of the character of the applicants, thanking them for what they are doing for the community and enriching the town. He spoke of their generosity in feeding over 60 National Guardsmen who were working on Wood Island.
- (4) Tom Philbrook, 27 Cutts Island Lane, spoke regarding what he felt was being overlooked, which is the congestion on the Town wharf. He was concerned with residents who were parking down at the town dock to access the venues. He thought there should be some stipulations and that the owner should be more proactive in curbing customer parking down at the dock.
- (5) Nikolas Franks, 72 Foyes Lane, said how great of an opportunity it has been to be able to walk down to the Wharf with his family and enjoy the area and is thankful to have the opportunity.
- (6) Wendy Turner, 621 Haley Road, representing Elizabeth Segers, an abutter to the project, asked to not plant arborvitae along the parking lot as she does not see it needed and instead to place them on Mrs. Segers property between the fence and the bollards to help block noise from the parking lot. The applicants have agreed to assist in the planting on Mrs. Segers property, she believed it is placed wrong on the plan and asked them to consider placing it over by the post office and not in front of people's private homes.

End of Public Comment

Vice Chair Kalmar asked a question of staff regarding the Planning Board having the authority to change a Board of Appeals decision which specifically called out arborvitae in a certain location. Mr. Causey stated, no, the Planning Board cannot preempt the Board of Appeals. He clarified that the Board of Appeals condition was only of location and not of the specificity of the number or density. Mr. Causey stated that it was only the intent of the Board of Appeals to protect the abutters with plantings that would offer some buffering. He asked the Planning Board to permit him to reach out to April Timko on the Board of Appeals to discuss what actions might be available to change the condition of the arborvitae. The Planning Board agreed and asked Mr. Causey to contact Ms. Timko to discuss options.

Chair Grinnell asked if the Board of Appeals conditions were going to be added to the plan. Mr. Causey answered that it was not stipulated at the meeting but he thought it was a good idea to place all conditions on the plan.

Chair Grinnell stated that there are things she would like to see included on the plan. On the parking lot by the post office she would like to see the plan read "wooden split rail fence". On the staircase coming down from second story of bistro she would like signage at the top and bottom that it is only egress. She would like to add on the plan that no portable lighting will be allowed on the site, ever.

Chair Grinnell requested discussion and a vote on the waiver request for the sidewalks. She suggested to move forward with casting a vote for having the plan, set forth by the DPW, and be put into the final plan for the applicant. Mr. Wood said that he would as submit a plan to the Public Works Commissioner for approval.

Vice Chair Kalmar moved to deny the applicants waiver request for sidewalks. Seconded by Mr. Ledgett. : 6 in favor 0 opposed. The waiver request was denied.

Curb stops were agreed to be placed on all parking spots except the parallel spaces in the paved portion.

It was requested that the applicants submit a landscape design for consideration by the Board of Appeals.

The Planning Board moved forward with voting on the conditions on page 6.

#4 was replaced with. The applicant shall design and construct pedestrian improvements subject to DPW review and approval. Vice Chair Kalmar moved to approve condition #4 as modified by the Director of Planning and Development. Seconded by Mr. White. 6 in favor 0 opposed.

#1 was approved as shown on the plan

#2 The Board voted that curb stops be placed and anchored in all parking spots except for the parallel spaces in the paved portion of the lot located at 87 Pepperrell. Chair Grinnell moved and Mr. Ledgett seconded. 6 ayes. Condition was approved.

#3 was approved as shown on the plan.

#5 any parking signs place on the interior parking lot must be affixed on a wooden post, no metal posts were allowed. Moved by Chair Grinnell seconded by Mr. Ledgett. 6 ayes. Condition was approved.

#6 was moved to remove LED from the condition. Moved by Ann Grinnell. Seconded by Mr. Ledgett. 6 ayes. Condition was approved.

#7 was amended to read, food and beverage service for the Wharf is restricted to the area designated in the approved liquor license. Moved by Mr. White, seconded by Vice Chair Kalmar. 5 ayes 1 no (Chair Grinnell)

#8 approved on the plan.

#9 motion was made to amend it to include, a parking management plan shall be developed in conjunction with staff which will be reviewed annually, and certified as to compliance, by April 1st of every year.

Mr. Ledgett moved to extend the meeting by 10 minutes. Seconded by Russell White. All in favor. 6 ayes.

#10 was approved as shown on the plan.

Vice Chair Kalmar, proposed a motion that the land owner and applicant shall employ qualified professionals, using minimally disruptive techniques to determine whether unmarked grave sites exist in close proximity to the gravel portion of the parking area, tax map 27-2A. Seconded by Chair Grinnell.

Applicants agreed and stated they are willing to commit to a phase-1 archeological survey within the next year.

Mr. White motioned to approve the parking plan with a revision date of January 10, 2019 as it abides by the conditions discussed and voted on by the Planning Board. Seconded by Mr. Ledgett.

Vote of 5 in favor 1 (Chair Grinnell) against 0 abstaining

ITEM 8 – Board Member Items/Discussion

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

ITEM 9 - Town Planner Items

None.

Adjournment

Chair Grinnell moved to adjourn the meeting.

Mr. Ledgett seconded the motion.

The motion carried 6-0-0.

The Kittery Planning Board meeting of January 10, 2019 adjourned at 10:29 p.m.

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>.