

**CALL TO ORDER**

**ROLL CALL**

Present: Steve Bellatone, Member, Drew Fitch, Member, Ronald Ledgett, Member, Mark Alesse, Member, Karen Kalmar, Vice Chair, and Dutch Dunkelberger, Chair

Absent: Russell White, Member

Staff: Jamie Steffen, Town Planner

Advisory: Earledean Wells, Conservation Commission

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES- Site Walk- August 20, 2019**

Line 20- add: and to avoid recurrence the chair requests the Planner to address this with the applicant.

Line 22- after board review add: as the code does not consider the addition of stairs an expansion of a non-conforming structure. Add on next sentence after exempt: from expansion considerations.

Add Line after Line 24- Add questions asked at site walk to include: 1. What needs to be done to stabilize the steep slope in the area of the new parking lot platform? 2. What needs to be done to protect the roots of the large evergreen which is being saved? 3. What is the extent of demolition of the existing garage above the foundation? 4. Does any portion of the foundation require replacement? 5. Why are stairs being added to access the waterfront which is already accessible?

**Vice Chair Kalmar moved to accept the minutes of August 20, 2019 as amended. Seconded by Mr. Ledgett.**

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

**PUBLIC COMMENTS**

The Chair opened the Public Comments session.

There being none the Chair closed the Public Comments session.

## **OLD BUSINESS**

### **ITEM 1 – 3 Knight Ave. – Shoreland Development Plan Review**

Action: Approve or deny plan. Owner Christopher Eckel and applicant Deane Rykerson requests consideration of plans to repair and rebuild garage on 8,355 sf lot located at 3 Knight Ave (Tax Map 4 Lot 70) in the Mixed Use-Kittery Foreside (MU-KF), and Shoreland Overlay (OZ-SL-250') and Commercial Fisheries/Maritime Uses (OZ-CFMU) Overlay Zones.

Deane Rykerson, applicant, gave an update and answered questions from the site walk- The stabilization of the slope will be maintained by a retaining wall. Helical piles are used to limit the impact to the tree roots. Everything above the foundation will be demolished and replaced. It is anticipated some foundation repair will be required, and will remain within the current footprint. Stairs are being added for access to lower level of building, not to access waterfront.

Mr. Ledgett discussed the need for additional review and approval for replacing foundation if necessary to determine if the location is the best choice. Would like to clarify the approval of the stairs by either the Code Enforcement Officer or by the board which would need to be reflected on plans and findings.

Chair Dunkelberger reviewed the expectations of the preparedness of the sites for the purpose of the site walk.

Vice Chair Kalmar agreed with including stairs in the findings.

Mr. Steffen provided clarification from the Code Enforcement Officer that the stairs in this case are not restricted by the regulations 16.3.2.17.D.2(g). Stairs are to provide access to lower level of building and not the waterfront, 16.7.3.3.B.3

Mr. Ledgett proposed adding foundation repair location to the findings of fact.

Vice Chair Kalmar requested that all previous expansions to the property be included on the plan for calculations.

Mr. Fitch requested an updated de-vegetation calculation be put on the plan to include the gravel parking area.

**Mr. Ledgett moved to approve the Shoreland Development Plan subject to the conditions of approval stated. Vice Chair Kalmar seconded.  
Vice Chair Kalmar amended and added findings with Town Planner, Mr. Steffen.**

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

**Vice Chair Kalmar read the findings of fact and the board voted to affirm each finding.**

**ITEM 2- 76 Dennett Road- Mixed-Use Residential Development- Site Preliminary Plan Review**

Action: Approve with or without conditions, continue consideration, or deny plan.

Owners William J. Cullen and Sail Away, LLC and applicant William Wharff request consideration of a mixed-use residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map 6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use-Neighborhood (MU-N) Zone. Agent is Shawn Tobey, P.E. Hoyle, Tanner Associates, Inc.

Shawn Tobey, Civil Engineer with Hoyle Tanner & Associates, provided an update on the plan made since the public hearing. He noted that the labels for the vernal pool was added and the buffer will be maintained for one year. The water district modeled the water pressure at the site and confirmed a booster pump is needed, with a twelve-inch water main line. Wildlife crossing during construction will be provided with a silt fence. Building #4 will have fire prevention system. The parking plan was updated to include islands, trees, and two additional spaces. A storm water management plan could be done at the request of the DPW. Habitable space minimum requirement of 650 sq. ft. will be added to plan, and elevations of buildings. DEP site location permit is still under review. DOT scoping meeting reviewed no major issues with traffic, but right and left turn lanes will be studied with the traffic study. DOT does not want a sidewalk to connect to Ranger Road. Sidewalks that are not connected or going nowhere are not encouraged either. Applicant is looking for input on sidewalks, and requesting a secondary entrance waiver due to inadequate road frontage. DOT and Kittery Fire Chief do not have a problem with a single entrance.

Discussion ensued regarding traffic, sidewalks, and entrances.

Chair Dunkelberger would like two entrances. Suggested widening the entrance and adding a median to have an inbound and outbound lane. Vice Chair Kalmar expressed concern that car crashes will block the one entrance.

Mr. Fitch suggested putting in an access road on the property line of the adjacent parcel. Chair Dunkelberger suggested adding an easement requirement. Mr. Ledgett expressed concerns about adjacent property also requiring two entrances, and instead discussed the possibility of connecting the two parcels with an easement.

Mr. Alesse favored waiving the 1,000-ft road frontage requirement to allow for two entrances.

Vice Chair Kalmar asked the applicant to re-design the plan to have two entrances and an easement to adjacent parcel for a ROW.

Mr. Tobey expressed concern over an easement or ROW creating a cut-through for all traffic, thus devaluing the property.

Vice Chair Kalmar emphasized the purpose of the Mixed-Use zone.

Property owner, Mr. Wharff voiced extreme discontent against adding an easement or ROW through the property.

Discussion ensued regarding the need to reserve space for an easement, but not to require an easement for unknown future development.

Mr. Steffen suggested a driveway connecting the rear of the parcels would support interconnectivity and a neighborhood atmosphere.

Mr. Causey, Director of Planning, explained the town will push for connectivity between Dennett Road and Route 236 if it is feasible. Adding a note on the plan to discuss an agreement between the two parties will support the interconnectivity of the zone, and may defer to the second development to implement.

Chair Dunkelberger concluded discussion, to not require an easement and asked the applicant to re-design the entrance to include two entrances, with a waiver of the less than 1,000-foot road frontage requirement. Board agreed 6-0-0.

Mr. Steffen addressed the sidewalk plan, with Vice Chair Kalmar amending the condition of approval to include a provided detail of a safe sidewalk system.

Chair Dunkelberger inquired if the board can require an economic impact study before the final plan. The standard is to require it for the final plan only by the applicant.

Chair Dunkelberger addressed concerns from last meeting. The landscape plan was not completed by an outside licensed landscape architect. The town can coordinate a third-party review for the landscape plan.

Chair Dunkelberger requested the difference between a driveway and a road. Mr. Steffen reviewed the classifications between the two, and reported that the board can modify the standards for the deficiencies. Vice Chair Kalmar stated it is a road, and applicant agreed to update the standards to alleviate some deficiencies.

Vice Chair Kalmar asked for clarification regarding the DEP permit for the vernal pool, and Mr. Tobey reported there is not one on file. A note to the plan requiring the permanent maintenance of the 250 ft buffer around the vernal pool will be added, and signage can be added around the buffer. Snow storage adequacy and wetland impact to be reviewed by DPW. Mr. Tobey agreed and reported this is also addressed in the DEP permit. Lighting design is of importance. Mr. Tobey clarified the lighting plan is at the minimum levels but meets the town's standards.

Mr. Fitch requested follow-up from the public hearing regarding the drainage issues. Mr. Tobey replied that the culverts were reviewed at several sites. This project should improve the run-off rates to surrounding sites. The water will flow slower causing less erosion.

Mr. Bellatone requested follow-up on the noise levels and asked if there was any sound modeling done with different types of barriers. Nick Griffin, from Cube-3, provided an update. No acoustic modeling for this project had been done. Building codes with energy efficiency materials reduce noise levels inside buildings.

Mr. Alesse suggested an additional barrier is needed since the decibels taken at the site walk exceeded the allowed amount for a new development. Mr. Alesse followed-up from the public hearing on the concern of the amount of young people moving into the development and crime rate. He suggested the applicant consider setting aside a certain number of units below market rate to allow police and fire department employees to live there. Mr. Wharff answered Mr. Alesse that Kittery does not have an affordability requirement. He conceded that the options will be considered.

Advisor Ms. Wells asked if snow can be removed from the site and noted on the plan. She asked for clarification of the stream labeling on the plan, and if there is a wetland impact mitigation plan for the significant vernal pool near the corner of Dennett Road.

Mr. Tobey reported that there is adequate space on the property for snow storage. The stream was delineated with the culverts and the flow of the streams and wetlands. The vernal pool area near the street was reviewed by a third party and was classified as pocket of wetlands not a vernal pool.

**Vice Chair Kalmar moved to continue consideration of plan, not to exceed thirty days. Mr. Ledgett seconded.**

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

**Item 3- Old Post Road/Bridge Street- Cluster Residential Development- Preliminary Plan Review**

Action: Accept or deny application. Schedule a Public Hearing. Owner MAC Properties Bridge Street, LLC and applicant Silver Holdings, LLC request consideration of a three (3) building, 11-unit cluster residential development on 3.02+- acre parcel on Old Post Road/Bridge Street (Tax Map 3 Lot 77A) in the Residential-Urban (R-U) Zone. Agent is Shawn Tobey, P.E. Hoyle, Tanner Associates, Inc.

Shawn Tobey, Civil Engineer with Hoyle Tanner & Associates, presented the application- updating plan for road classification and grading, requesting a modification on land area per dwelling unit to 10,300 sf per unit, parking plan is sufficient, drainage does not require DEP permit, underground utilities, lighting plan, tree removal, sidewalk design, and storm water management to be approved by the town.

Sam Maloney, Cube 3 Architect, presented the building design plans.

Vice Chair Kalmar explained that according to State law, land area per dwelling unit cannot be modified. The greatest number of dwellings the lot can support based on the zone is six (6). This has been the number of units prior applicants for this lot have been required to adhere to. A legal review was requested before making decisions on the application.

Mr. Steffen reported he met with CMA and has not received anything in writing.

Mr. Ledgett cautioned reading the code and State laws deliberately to avoid problems with staff interpretation.

Chair Dunkelberger requested time to review application further.

**Mr. Ledgett moved to continue the application, not to exceed beyond September 26, 2019, for two weeks. Motion seconded by Mr. Fitch. Time: 8:46:30**

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

**ITEM 4- 60 Route 236- Site Preliminary Plan Review**

Action: Accept or deny application. Schedule a Public Hearing. Owner/applicant Washburn Realty Group, LLC requests consideration of a sketch site plan for a 4,603 sf 2 story building on a 73,330 sf lot at 60 Route 236 (Tax Map 29, Lot 14) in the Commercial (C-2) Zone. Agent is John Chagnon, Ambit Engineering, Inc.

John Chagnon, applicant provided updates on the plan- Board of Appeals approved requested variances on July 23, 2019. The plan has been amended to show new septic, setbacks, drainage, and detail sheets. Driveway permit application has been filed with DOT. Stormwater inspection and maintenance plan for drainage system management will be addressed. Two issues identified in Planner memo addressed- the wetland is greater than one acre, and a high intensity soil survey was not done. Applicant asking for a waiver on the soil survey.

Vice Chair Kalmar asked applicant if there are any wells on the adjacent properties within 100 ft. of the septic field. Would like the Board of Appeals findings of fact included in the plan. Shoreland Resource Officer, Jessa Kellogg has approved a waiver to skip the soil testing. A letter from the Water District is still needed for ensuring adequate capacity.

Advisor Ms. Wells asked applicant if there was a snow removal plan. Applicant will update the plan to show snow storage. Clarification requested on the location of the septic since it is under the driveway. Applicant explained it is concrete chambers designed to withstand traffic on top of it. Retaining wall labeling and intent was explained by applicant to address run-off and drainage away from the wetlands. The slope and grading allows water to collect in the catch basins.

**Vice Chair Kalmar moved to accept the preliminary site plan application.  
Seconded by Mr. Fitch**

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

**Vice Chair Kalmar moved to schedule a site visit for October 7, 2019 at 10:00am.  
Seconded by Mr. Ledgett.**

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

**Mr. Fitch moved to schedule a public hearing on October 10, 2019 at 6:00pm.  
Seconded by Mr. Ledgett.**

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

## **NEW BUSINESS**

### **ITEM 5- 79 Tower Road- Shoreland Development Plan Review**

Action: Accept or deny plan application; Approve or deny plan. Owners Donald E. Gingras and Linda K. Gringas request consideration to a new partial second floor to an existing residential structure on a 26,894 sf parcel located at 79 Tower Road (Tax Map 58 Lot 44) in the Residential-Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SH-250') Zones. Agent is Mike Bedell, Kennebunk River Architects.

Mike Bedell, agent, presented a summary of the application. The agent proposes a vertical expansion of a portion of the residence to move a bedroom upstairs with an elevator.

Discussion ensued regarding the interpretation of the code and height restrictions in the setback. Language ambiguity was noted regarding the restrictions.

Mr. Ledgett voiced concern that the building height restrictions of 20 ft within the 100 ft setback of the Shoreland does not distinguish between the entire structure or only the portion of the structure in the 100 ft. Mr. Ledgett advised obtaining a legal opinion.

Mr. Steffen reported that the Shoreland Resource Officer, Mrs. Kellogg interprets it consistently as any portion outside the 100 ft. setback is not restricted to a height of 20 ft.

Mr. Bedell explained that the owners could demolish the entire structure and rebuild out of the setback to the full 35 ft. height restriction.

Owners, Mr. and Mrs. Gringas spoke, voiced their discontent, and reported that they had spoken to the town regarding their plans for the property.



Mr. Alesse explained that if the board obtains a legal opinion not in favor of the applicant the town is opening up a lawsuit.

**Mr. Ledgett moved to obtain a legal opinion and continue the application.  
Seconded by Chair.**

**The motion failed 2-4-0**

**Vice Chair Kalmar moved to accept the plan application. Seconded by Mr. Alesse.**

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

**Vice Chair Kalmar moved to approve plan. Seconded by Mr. Alesse.**

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

**Mr. Ledgett moved to obtain a legal opinion on the interpretation of the language.  
Seconded by Vice Chair Kalmar.**

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

**Vice Chair Kalmar read the findings of fact and the board voted to affirm each finding.**

**ITEM 6 – 41 Walker Ave. –Shoreland Development Plan Review**

Action: Accept or deny plan application; Approve or deny plan. Owner Avis Langley and applicant Ryan Glidden request consideration to renovate and enlarge portions of an existing single-family dwelling on a 11,048 sf parcel located at 41 Walker Avenue (Tax Map 3 Lot 33) in the Residential-Suburban (R-S) and Shoreland Overlay (OZ-SH-250') Zones. Agent is Medley Properties Development.

Ryan Glidden, applicant, gave an overview of the proposal: Convert covered porch into a partial kitchen and a half bath, extend two dormers on the roof and build a balcony on the third floor.

**Vice Chair Kalmar moved to accept the application. Seconded by Mr. Ledgett.**

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

**Vice Chair Kalmar moved to approve the plan. Seconded by Mr. Ledgett.**

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

**Vice Chair Kalmar read the findings of fact and the board voted to affirm each finding.**

**ITEM 7 – Board Member Items / Discussion**

Mr. Ledgett requested the board receive copies of the checklist for the Climate Adaptation Committee in two weeks from the Planner.

**ITEM 8 - Town Planner Items**

A. Notice of Decision - Minor Modification to an Approved Plan – 1 Wood Island

Mr. Steffen gave a summary of the approval.

**Adjournment**

**Vice Chair Kalmar moved to adjourn the meeting.**

**Mr. Ledgett seconded the motion.**

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

The Kittery Planning Board meeting of September 12, 2019 adjourned at 9:48 p.m.

Submitted by Carrie Bacon, Development Staff Clerk on March 23, 2020.

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>.