

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

**APPROVED  
June 8, 2017**

**CALL TO ORDER**

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

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

Staff Present: Chris Di Matteo

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES – May 25, 2017**

The Minutes of May 25, 2017 will be reviewed at the June 22, 2017 meeting.

**PUBLIC COMMENTS**

The Chair opened the public comments.

Tim Stone, 28 Island Avenue, spoke on changes he hopes will be made on how Code Enforcement and the Planning Department work together. He referred to the construction project next to his property that has recently been before the Board. He hopes the Town will put procedures in place so the situation that occurred does not happen again. Mr. Stone stated there were many unknown issues discovered and suggested ensuring plans and approvals have the certifications by licensed professionals. He further explained his home is having sewer issues and, through the process of addressing this, he saw a map that showed the original sill elevation of the cottage. He suggested volume calculations be done or hire someone to do so. He discussed the shoreland regulations update that will remove the 30% limitation on volume. He is concerned people will build higher structures along the waterfront and suggested the Town have an ordinance to control this. Mr. Stone stated the applicant pushed the ordinance to the maximum limit and believes the ordinance was supposed to be used for flood zones. He encouraged the Board and the Town's departments pay more attention in the future.

Roger Cole, resident, spoke of his concern with the electronic signage in town. There are several permitted and he was told by the code office there is another application. Mr. Cole requested the Board add regulating this signage to their "to do" list and suggested the Planning Board consider a moratorium to bring to Town Council.

Mr. Di Matteo explained his department and the code office have changes in place regarding the issue Mr. Stone referred to and the Town's restrictions can be more restrictive language than the State's. He explained they have added a requirement the roof slope be a: 12 pitched.

Mr. Di Matteo also explained the Board has the issue of signage on their "to do" list.

**OLD BUSINESS**

**ITEM 1 - 412 Haley Road – Conventional Subdivision Completeness Review**

Action: Hold a public hearing. Approve or deny preliminary 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.

John Bosen, the attorney representing the applicant, explained why this project is allowed a special exception. He introduced the applicants and those on the team, including Mark West, a soil scientist. Mr. Bosen stated the applicant's plans have included considerations of past concerns of the cluster subdivision. The plan now has fewer homes than the previous plan and the lots are reconfigured to lessen impact on abutters and provide more open space.

Mr. Bosen listed the Town's special exception Code 16.6.6 criteria, which he believes the applicant has met. He explained they are proposing eight lots at three acres each and seven homes. The roads will be improved and consistent with the Town's Code, enabling better access for emergency vehicles. The Code allows single family residential homes. He further explained this should have no impact on Haley Road since there are many of homes located on it now. There will be no negative impact on property values. Mr. Bosen further stated the uses allowed are consistent with the Code and in harmony with the properties in the area. The applicant will be providing landscaping and will have covenants in place to maintain the area. There is no public parking, and the road will be widened to 24 ft. and paved. The applicant will be requesting a waiver regarding sidewalks.

The following staff notes were addressed:

- Comment 1 – the applicant believes they have met the criteria for the Special Exception request.
- Comment 2 – the applicant will add the notes of space and dimensional standards to Sheet A1 and move the A1 notes to Sheet OV2.
- Comment 3 - shoreland overlay zone standards will be added to Sheet A2.
- Comment 4 - open space is 22% and will depicted on the final plan.
- Comment 5 - the net residential acreage (NRA) calculation has been submitted and will be added to the plans.
- Comment 6 - stone monument locations are shown on the plans and will be added to Sheets P1 and P2.
- Comment 7 – the applicant believes the street standards have been met and does not feel they need a waiver. Mr. Coronati explained he has met with staff and designed roadways to meet the standards. The right of way has a cul de sac with a proposed hammerhead turnaround. The applicant requested having the hammerhead turnaround and there will be signage. Discussion of turnaround options ensued. Vice Chair Kalmar prefers the hammerhead style because would use less asphalt.
- Comment 8 – the applicant will submit the naming for two streets.
- Comment 9 – the applicant agreed to furnish and install street signs.

- 91 • Comment 10 – paving for Haley Road is scheduled for July 2017. The applicant has  
92 contacted Kittery Water District and the water main will be tapped soon.
- 93 • Comment 11 - applicant pointed out the proposed location for a fire hydrant and is willing  
94 to place it wherever the fire department would like.
- 95 • Comment 12 - plantings in a proposed right away – applicant stated it is difficult to look  
96 at the exact tree plantings now because homeowners will be allowed to choose the spot  
97 for their homes on their lots. He added they are providing buffers as required by the  
98 ordinance along the edge of Lot 8 and along abutters' property lines. Mr. Coronati  
99 further explained the right of way lot is needed for drainage and is sloped so stormwater  
100 does not go to the neighbor's property. Chair Grinnell stated her concern of cutting down  
101 trees because of the home owner's design. Mr. Di Matteo stated the HOA document's  
102 declarations could include a draft to provide for the Board's review.
- 103 • Comment 13 – applicant agreed to provide the information for life maintenance.
- 104 • Comment 14 – applicant will add a septic system plan note stating they meet the  
105 requirement.
- 106 • Comment 15 – a study found no vernal pools within 250 ft. of the project area. Mr. West  
107 stated the study was done on May 15, 2017. Mr. West pointed out on the map ponded sites  
108 and explained he inspected the Grenier's property and did not find vernal pool species in  
109 the pools.
- 110 • Comment 16 - the revision will be added to the OV sheet.
- 111 • Comment 17 – Mr. West described the wetland areas he studied. He found the wetlands  
112 are fragmented. Joe Noelle stated in 1996 he delineated the wetlands on the Schill lot. He  
113 explained the Town determined at that time the wetlands were not connected to the wetland  
114 system across the road. Mr. West explained the wet meadows were there before and the  
115 culvert that crosses the road to the wetland below is at a lower elevation so water is trapped  
116 behind the road. The wetlands are as they have sized them at less than an acre. Mr. Coronati  
117 explained where the new culvert will be located. Mr. West explained hydric soils did not  
118 exist in the areas of concern.
- 119 • Comment 18 – Mr. West explained the mitigation proposal and the areas that can be  
120 protected from mitigation total 52,000 sq. ft. in one area and 18,000 sq. ft. in another.
- 121 • Comment 19 – Mr. West will resend the narrative for each wetland impact and include  
122 more information for the Lot 8 crossing.
- 123 • Comment 20 – an analysis will be provided regarding a proposed driveway crossing a  
124 wetland with options and the impact.
- 125 • Comment 21 – easements for Lot 5 will need to be made clear in HOA documents on how  
126 the easements will be maintained.
- 127 • Comment 22 - the applicant is requesting a waiver for sidewalks and explained the  
128 proposed plan for curbing which will mainly be on Haley Road. CMA recommended they  
129 ask for a waiver for a gravel road. Mr. Coronati explained the plan is to have a gravel  
130 shoulder behind the curbing which will help keep them in place. Chair Grinnell stated her  
131 concern with gravel behind the curbing. Mr. Coronati added the curbing is to control  
132 stormwater. Mr. Di Matteo suggested, if the Board feels the amount of pavement is  
133 suitable, to request a waiver and have grass to curb. Discussion of the issues with Cape  
134 Cod curbing ensued. Mr. Di Matteo stated the Town does not recommend them. Michael

Green explained the newer Cape Cod curbing is designed to be much more efficient and durable.

- Comment 22e. - the applicant will verify the 100-ft. setback for the Class 1 road.

The applicant stated they can work out the CMA comments for leech fields. The applicant will provide information when they resubmit the stormwater plan. The applicant will make changes to details in the maintenance manual.

The Chair opened the public hearing.

Vern Gardner, abutter, spoke of his concern with the application and the applicant adhering to the ordinance. He described the documents he has presented to the Board and to the applicant. He presented an aerial photograph of the property from 1959 and believes it shows the wetlands were all connected. He stated Kittery has lost many wetlands and he is asking for help preserving the area. He added this development is destroying the area and is a nonconforming use. There is a nonconforming driveway due to the engineer's plan in 1981 was never acted upon and recorded. He has not seen a mitigation plan. Mr. Gardner proposed a revised plan that would not affect the wetlands and would bring in the 60-ft. right of way. He also mentioned the tax rate would bring a burden to other tax payers.

Gregory Ulrich, 8 Barters Creek Road, spoke of his concern of a precedence being set for future developers. They will expect the same forbearance and compromise on the wetlands. He feels this is a piece meal development and the area was developed 20 years ago and now it is happening again. He feels the Board should not need to grant the variances and waivers and added his concern for the wetlands that protect the water shed.

Laney McCartney, an abutter, spoke of her concerns with the attempts to develop this over time and stated the right of way cuts through a wetland. She wants the Board to take care of the wetlands and care for the water shed. She urged the Board to look at the past for guidance. She is concerned of being required to buy into the homeowner's association.

Dave McCartney, an abutter who shares the existing right of way, asked the Board to reject the plan. He presented a photograph of the right of way which has sink holes. He added the Board has a duty to investigate what really lies under the right of way and feels the applicant has not provided an adequate stormwater drainage plan. Mr. McCartney pointed out the Town has been changing over from septic systems to public sewer in the area because of run down to Spruce Creek. He is also concerned about the displacement of the animals.

Jane Schill, abutter, requested the Board to deny the plan. She spoke of her concern for the waiver of the center of the right of way being moved. The road will be closer to her driveway and there will be flooding. Her driveway has a zero slope for drainage and she believes there will be no curbing on her side of the road. She also believes the wetlands are connected.

John Robbins, abutter, appreciates the improvements to the new plan but asked the Board to reject the plan because of the impact to the wetlands, the effect on the animal habitat and the

shoreland zone. He pointed out the CMA report included 10 waivers and there is an insufficient stormwater management plan. He has not seen a study of the wild life habitat. He believes there will be serious impact to the wetlands and is concerned with the mitigation of water drainage for Lot 8. He requested to keep in mind the mature trees.

Shea Robbins, abutter, spoke of having deeded easements. She stated the proposal is better than the previous application plan and requested to hear more detail about the owners choosing the location of their homes on the lots. She added the plan needs to meet the Code and all State and Federal laws as well. The center line of the right of way is an issue because it will affect the property of neighbors and the existing buffer. No wetland mitigation plan has been submitted. Ms. Robbins discussed the fill for the existing driveway was placed in 1989 with no explanations and added the Planning Board should require proof the wetland fill was permitted for the driveway. Ms. Robbins stated the road was never legally approved and would like the Board to reject the pan.

Earldean Wells, Conservation Commission, commented the road has impacted the wetland on the Schill's property and it has been fragmented by Haley Road and the new road into the development. She added hydric soil takes time to form and water on the Schill's property side of the wetland would be incorporated if it could reach it. When they move the road, there will be new wet areas. She is also concerned that there was no mention of the projection of the wildlife habitat corridors and deer yards.

Ray Grenier, 428 Haley Road, explained he has submitted many pictures of wildlife in the area and he has not seen the requested wildlife study. He added his pond is not man-made and has been there for as long as he has lived there. He would like the pond run-off addressed and added the ponds supports wildlife. He also requested the Board reject the application as it is. He added he was not notified ahead of time as requested when samples taken on his property.

The Chair closed the public hearing.

Mr. Bosen addressed the abutter's concerns.

He respectfully stated Mr. Gardner is not qualified to make any of his opinions or the evidence he provided because he is not a licensed wetland scientist. The aerial photograph was not clear. The Town's file for the Schills' property was approved by the Planning Board and set forth in 1996 in the same the location as Mr. West's delineation. The driveway Mr. Gardner referred to as being installed without a permit is incorrect and the permit is in the Town's file and recorded at the Registry of Deeds. There is a wetland and subdivision plan approved by the Planning Board on March 27, 1997.

There is a service card for the water line to the Robbins' house. The applicant is providing water shut offs to the McCartney's and the Robbins' houses.

Mr. Bosen addressed Mr. Ulrich's comments and stated the Planning Board does not set a precedence and that is for the courts to decide. The Planning Board follows the Town Code. There is no evidence to support the science piece.

Mr. Coronati addressed the number of waivers and wetland issues. He pointed out the road requirements and explained waivers were submitted to reduce the footprint.

Mr. Bosen stated there is no evidence to support Mr. McCartney's claim that the right of way cuts through the wetlands and the Board should look at the 1996 approved plan. Current abutters are not obligated to buy into the Homeowner's Association but they will have the benefits such as snow removal.

The roadway plan is recorded. There has been a wildlife study and the applicant has not received comment on it so they assumed it was okay. There is no evidence the septic systems would fail. The road will be built to the Town's standards and will be built over the existing gravel drive not over loam. The road will be inspected by the Town. The applicant will be addressing all of CMA's comments and a request for the items.

Mr. Coronati gave Ms. Schill a handout detailing the construction plan of the road near her driveway. Curbing is proposed on both sides beyond Ms. Schill's driveway and there will be a paved lift at the entrance so the driveway will meet the road. He will incorporate Mr. Gardner's suggestion for the location of an additional culvert.

Mr. West explained wildlife will be impacted but found no evidence of a specific endangered species. Vice Chair Kalmar pointed out the Code only allows them to regulate those that are endangered or a deer wintering yard. Mr. Dunkelberger asked to view the 1997 driveway application.

Chair Grinnell stated she has difficulty believing the wetlands on other side of Haley Road weren't at one time contiguous. Mr. Di Matteo stated the Code Enforcement officer found no recorded violations regarding the driveway and is part of the street that was approved. Mr. Bosen pointed out all the existing buildings on the road received a building permits. Mr. Di Matteo stated the Board needs to work with the existing conditions.

**Mr. Harris moved to approve with conditions the preliminary subdivision plan and wetland alternation applications dated April 20, 2017 from owner, Norwich Investments and applicant, Green and Company for 412 Haley Road (Tax map 34 Lot 3) in the Residential-Rural and Shoreland Overlay Zones, Mr. Dunkelberger seconded the motion.**

Mr. Dunkelberger stated he didn't like the application from the beginning and shares the frustrations of the abutters. The Board was advised by legal counsel to decide based on the conditions as they are today and he believes the project meets the Code. He also expressed to the developers his gratitude for the changes and added the waivers make sense for development and helps to mitigate the impact to the wetlands and the environment.

Chair Grinnell stated she can't support the motion because there are unanswered questions. She is concerned with the impact on the Schill's driveway and stated she doesn't have to agree with the Town attorney's opinion. Mr. Di Matteo requested to add the detail that was provided this evening for the Schill's driveway be reviewed by CMA along with questions on the length of the Class 3 road. Chair Grinnell requested it in writing. Ms. Driscoll-Davis asked the applicant consider parting with Lot 8 as part of mitigation for wetlands.

Rebecca Spitko from the Planning Department, listed outstanding items which included deciding if the Class 3 cul de sac road will be reduced or have a hammerhead turn around, submitting street naming and looking at the possibilities of adding plantings to the right of way. Chair Grinnell stated her concerns of people being able to choose where they set their homes on the lots.

Mr. Alesse commented on his reluctance to go against the arguments and the will of existing residents and looked for a legal way to accommodate them. He does not see it with this plan. He also requested the applicant dispense with Lot 8 due to the wet condition and may have an overall impact to the neighborhood if taken out of the plan.

Ms. Driscoll-Davis stated her concern of displacing the wildlife from the neighborhood and added the last plan approved had comments that implied few homes would be built. She believes the previously approved plans do have an impact. The developer stated he would not give up Lot 8.

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

Conditions will be given to the applicant. Chair Grinnell reminded the applicant that the Board cannot accept any documents the night of the meeting because of time restrictions to review.

## **NEW BUSINESS**

### **ITEM 2 - Landmark Hill Plaza –Site / Major Subdivision Final Plan**

Action: Accept or deny application; Approve or deny final plan. Owner, Landmark Properties LTD, and applicant, Michael Brigham, request consideration of a mixed-use plaza located at 518 U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use (MU) Zone. Agent is Tom Harmon, Civil Consultants.

Tom Harmon, Civil Consultants, stated they are looking for final approval and reviewed the following from the staff notes:

- The applicant does not agree to the condition to build a construction entrance as recommended by CMA. Mr. Harmon stated here is asphalt now so a construction entrance is unnecessary. The applicant will have the entrance cleaned but has put the detail on the plan if it becomes necessary to use a different entrance. The cost is \$25,000 to construct it. Mr. Di Matteo stated CMA will be doing observations on site.

- The applicant will build a sidewalk located at the right of way on Route One and will include a landscaped area around it.
- Water and sewer services will be shown on the plan.
- The sewer charges will be paid in full.
- The applicant will change wording on 10 C-1 of the plan from multi-family units to mixed-use dwelling units.
- The applicant stated the stormwater plan meets code. Mr. Di Matteo discussed best management practices in terms of LID type treatment.
- The applicant will add more boulders and witch hazel to the plan per Ms. Wells comment.

**Mr. Dunkelberger moved to grant final approval, with conditions, for the site/subdivision plan dated May 18, for Owner, Landmark Properties LTD, and applicant, Michael Brigham, request consideration of a mixed-use plaza located at 518 U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use (MU) Zone, upon the review and voting, in the affirmative, on the Findings of Fact**

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

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

**Findings of Fact**

**KITTERY PLANNING BOARD**

**APPROVED**

**FINDINGS OF FACT -**

**for**

**Landmark Hill Plaza, 518 Route 1**

**Mixed Use Development Site Plan**

**M 67 L 2**

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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 Landmark Properties LTD, and applicant, Michael Brigham, request consideration of a mixed-use plaza located at 518 U.S. Route 1 (Tax Map 67 Lot 2) in the Mixed Use (MU) Zone

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 6/8/2017;



Sketch Plan Review	Held	1/12/2017
Site Visit	Held	4/4/2017
Preliminary Plan Completeness Review	Held, accepted	3/9/2017
Public Hearing	Held	4/13/2017
Preliminary Plan Approval	Granted (conditional)	5/11/2017
Final Plan Approval	Granted (conditional)	6/8/2017

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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 6/8/2017 (Hereinafter the “Plan”).

1. Existing Conditions Survey of Land of Landmark Properties, LLC, Civil Consultants dated 2/15/2017
2. Landmark Hill Square Subdivision Additions to Multi-Use Buildings (Sheets C1, C2, C3, L1 and OS); Civil Consultants; dated 5/18/2017
3. Landmark Hill Square Subdivision Stormwater Management Plan, Civil Consultants; dated February 2017 (Revised May 2017)
4. Landmark Hill Condominium Association Bylaws, Revision 3; Joseph G. Carleton, Jr. dated 5/15/2017
5. Landmark Hill Condominium Association Declaration of Condominium, Revision 8; Joseph G. Carleton, Jr. dated 5/15/2017

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**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.*

<p>Finding: The proposed mixed-use development includes a mix of residential, retail and commercial office space.</p> <p>The proposed development does not meet the off street parking standards outlined in 16.8.9. The Board of Appeals approved the shared use of parking on 4/11/2017. Per BOA approval, the proposed 136 commercial, office and retail spaces, in addition to the 28 spaces provided for residential use within the private 2-car garages, is adequate for the proposed development.</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>B. Freshwater Wetlands Identified.</b>
<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: No wetlands 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>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>

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>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 connect with Town Sewer. The Kittery Sewer Department provided a letter verifying the proposed connections are acceptable and do not cause an unreasonable burden to the Town. The applicant is responsible for all outstanding betterment charges prior to a sewer connection.
Conclusion: With consideration of condition of approval #4, this standard appears to be met.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</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 accommodates two dumpsters.
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 not within 250 feet of any regulated (non-forested) wetland as it relates to the Shoreland Overlay Zone.
Conclusion: This standard is not applicable.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</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 not adversely affect the quality or quantity of groundwater.

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>J. Flood Areas Identified and Development Conditioned.</b>
<i>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.</i>
Finding: The property is not located within a flood prone area. Conclusion: This standard is not applicable.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>K. Stormwater Managed.</b>
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
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 the LUDC. The design was prepared by Civil Consultants and reviewed by CMA Engineers.
Finding: The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. 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>L. Erosion Controlled.</b>
<i>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.</i>
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).
Finding: 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.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>M. Traffic Managed.</b>
<i>The proposed development will:</i>
<ol style="list-style-type: none"> <li>1. <i>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</i></li> <li>2. <i>Provide adequate traffic circulation, both on-site and off-site.</i></li> </ol>
The proposed development does not require a traffic movement permit as it does not create an additional 100 vehicle trips during peak traffic hours. CMA engineers have reviewed the on-site traffic circulation and found it to be adequate.
Finding: 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.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>N. Water and Air Pollution Minimized.</b>
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>
<ol style="list-style-type: none"> <li>1. <i>Elevation of the land above sea level and its relation to the floodplains;</i></li> <li>2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i></li> <li>3. <i>Slope of the land and its effect on effluents;</i></li> <li>4. <i>Availability of streams for disposal of effluents;</i></li> <li>5. <i>Applicable state and local health and water resource rules and regulations; and</i></li> <li>6. <i>Safe transportation, disposal and storage of hazardous materials.</i></li> </ol>
1. The development is located outside of a Flood Hazard Area.
2 thru 6. Not applicable to the proposed development.
Finding: It does not appear the proposed development will result in undue water or air pollution
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>O. Aesthetic, Cultural and Natural Values Protected.</b>

<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>
There is no significant change proposed in the use of the property that would have an undue adverse impact on aesthetic, cultural or natural values.
Finding: The property does not include any significant aesthetic, cultural or natural values that require protection.  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>P. Developer Financially and Technically Capable.</b>
<i>Developer is financially and technically capable to meet the standards of this section.</i>
Finding: The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.  Conclusion: This standard appears to be met.
<b>Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</b>

349

**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: None

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. All outstanding taxes and fees must be paid in full prior to the issuance of a building permit.
5. Furnish and install a sidewalk within the Street ROW along the entire extent of the front property line that is constructed to the satisfaction of the Commissioner of Public Works at the total expense of the developer.
6. All Notices to Applicant contained in the Findings of Fact (dated: 6/8/2017).

Conditions of Approval (Not to be included on the final plan):

7. 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.

350 Notices to Applicant: (not to be included on the final plan)

- 351 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated  
352 with review, including, but not limited to, Town Attorney fees, peer review, newspaper  
353 advertisements and abutter notification.
- 354 2. State law requires all subdivision and shoreland development plans, and any plans receiving  
355 waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the  
356 final approval.
- 357 3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and  
358 any and all related state/federal permits or legal documents that may be required, must be  
359 submitted to the Town Planning Department. Date of Planning Board approval shall be  
360 included on the final plan in the Signature Block.
- 361 4. The owner and/or developer, in an amount and form acceptable to the town manager, must file  
362 with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-  
363 way improvements and site erosion and stormwater stabilization, including inspection fees for  
364 same.
- 365 5. This approval by the Town Planning Board constitutes an agreement between the Town and the  
366 Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any  
367 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.

368

Vote of 5 in favor 1 against 0 abstaining

**Mr. Harris opposed**

APPROVED BY THE KITTERY PLANNING BOARD ON June 8, 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.

**ITEM 3 – Town Code Amendment – 16.2.2 Definitions, 16.3.2.15 Mixed Use Kittery  
Foreside Zone, 16.3.2.17 Shoreland Overlay Zone**

Action: Accept or deny application. Schedule a public hearing. Applicant, Wallingford Square, LLC, requests consideration of an amendment to Title 16, Land Use and Development Code, to define and allow Boutique Hotels in the Mixed-Use Kittery Foreside Zone.

Lea Rachin, representing the developers, stated they are requesting proposed amendments to allow a boutique hotel, with no more than 35 guest rooms, be permitted as a special exception in the shoreland overlay zone. Parking standard would be one parking space per guest room. Ms. Rachin stated a small upscale hotel is missing in this area and one would promote the neighborhood to regional visitors. She added it is part of a goal in the Comprehensive Plan. The applicants have met with the Economic Development Committee and sent a letter of support. The applicant is proposing one spot per guest room and discussed with the EDC to decrease this to half a spot in keeping with the goals under the Comprehensive Plan.

Chair Grinnell stated she would like to hear input from businesses and the public. Ms. Rachin added the developers have spoken to business partners and have letters of support. Vice Chair Kalmar pointed out changing the code would have a long-term impact.

**Mr. Dunkelberger moved to extend the meeting to 10:15 p.m.**

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

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



The applicant explained why they picked 35 for a unit count and discussed parking. A hotel in the Foreside needs to be a special exception. Mr. Dunkelberger stated one parking space per room is not enough if including the staff. Mr. Dunkelberger would like the name “boutique” eliminated. The applicant stated it can be called a small hotel. The Board was in consensus to have a workshop at the next meeting to further discuss this item.

**Mr. Dunkelberger moved to schedule a workshop with regard to mixed-use in the Foreside specifically discussion of a hotel for June 22, 2017 at 6:00 p.m.**

**Mr. Alesse seconded the motion.**

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

**Ms. Driscoll-David moved to extend the meeting until 10:30 p.m.**

**Mr. Dunkelberger seconded the motion,**

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

**ITEM 5 – Board Member Items / Discussion**

None

**ITEM 6 – Town Planner Items**

**Mr. Alesse moved to approve the second one-year extension to the approval date for the Hampton Inn Suites site plan approved by the Planning Board on August 20, 2015.**

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

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

**Vice Chair Kalmar moved to have a public hearing for the 9 Bowen Road project on July 13, 2017.**

**Mr. Alesse seconded the motion.**

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

Mr. Di Matteo announced the public forum for the Foreside Study will be held on June 15<sup>th</sup> from 6:00 p.m. to 7:30 p.m. at Trap Academy Library.

**Mr. Alesse moved to adjourn the meeting.**

**Mr. Harris seconded the motion.**

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

The Kittery Planning Board meeting of June 8, 2017 adjourned at 10:18 p.m.

Submitted by Mary Mancini, Minute Recorder, on June 15, 2017.

446  
447 Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst  
448 every effort has been made to ensure the accuracy of the information, the minutes are not  
449 intended as a verbatim transcript of comments at the meeting, but a summary of the discussion  
450 and actions that took place. For complete details, please refer to the video of the meeting on the  
451 Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>