

CALL TO ORDER

The Chair called the meeting order at 7:10 p.m.

ROLL CALL

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

Members Absent: Marissa Day

Staff Present: Chris Di Matteo

PLEDGE OF ALLEGIANCE

REVIEW OF MINUTES – May 25, 2017

Line 58 - change to “nimbyism”

Line 268 – change “Jerry Mylroy” change “Gerry Mylroie”-

**Mr. Dunkelberger moved to accept the Minutes from May 25, 2017 as amended.
Vice Chair Kalmar seconded the motion.**

The motion carried 6-0-0.

REVIEW OF MINUTES – June 8, 2017

Line 276 – change to “will be reduced” and change to “at”

Line 280 – “looked”

Line 286 – add on “decision tonight”

Line 303 – change “fooling” to “following”

Line 403 – “eliminated” instead of “changed”

Line 284-286 – change “not be built” to “few homes would be built”

Line 271 – change “suggested” to “asked”

Line 40 - change “can’t” to “can”

Line 41 – change “8 ft.” to “a: 12 pitched”

Line 201 – change to Ray “Grenier”

Line 195 – reword to “The road has impacted the wetland on the Schill 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 the water on the Schill property side of the wetland would be incorporated into the remaining wetlands if it could reach it.

**Mr. Dunkelberger moved to accept the June 11, 2017 Minutes as amended.
Ms. Driscoll-Davis seconded the motion.**

The motion carried 6-0-0.

PUBLIC COMMENTS

The Chair opened the public hearing.

Tom Emerson, 10 Ash Point Drive, referred to a conversation regarding the size limitations in mixed-use zone, which was discussed at a previous Planning Board meeting. He explained the current mixed-use zone allows 150,000 ft. of retail space. The zone was put in place to limit mall sprawl. He would like to see growth happening in the area including residential. He explained a formula to determine the average number of children in dwelling units used to calculate the number attending the schools.

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

NEW BUSINESS

ITEM 1 – 118 Rogers Road – Cluster Subdivision Final Plan Review

Action: Approve or deny final plan. Owner Dorothy Fitzpatrick and applicant Murat Ergin requests consideration of a lot split and 4-unit cluster subdivision located at 118 Rogers Road (Tax Map 15 Lot 92) in the Residential-Urban Zone. Agent is Joseph Mulledy, Ambit Engineering.

Joe Mulledy, Ambit Engineering, stated they have submitted a written letter in response to the staff comments. The Board was in consensus to focus on the staff comments that the applicant would like to address.

Comment 7 - the applicant has corrected the ROW line to meet the circular ROW line of the cul de sac providing the required 30-foot front yard standard. The applicant explained there is an existing Town-owned lot buffering 10 School Street that does not apply and is shown on Map C2. Mr. Mulledy further explained they have submitted a waiver request for the required 60-ft. ROW width. Mr. Mulledy pointed out they have requested two waivers - one for the sidewalks and one for the reduction of the ROW width.

Ms. Driscoll-Davis asked about the open space comment. Mr. Fitzpatrick, property owner, responded he will be responsible for the open space even though his home is not part of the subdivision. Mr. Di Matteo suggested having the condominium association be responsible for their open space. After further discussion, Mr. Fitzpatrick agreed to the association overseeing the open space. This item will be added to the condominium documents. Mr. Di Matteo pointed out the documents should have been reviewed by the Town's attorney and was omitted as a condition.

The applicant agreed with CMA's suggestion of a trucking plan. The applicant stated they have met with the Public Works Department and have agreed to videotape and photograph School Street before construction due to the poor condition of the road. Mr. Mulledy stated the responsibility of any further damage caused by construction traffic has not been discussed. The Board requested the applicant to ensure a contact person is designated for abutter's concerns. Mr. Di Matteo recommended having a preconstruction meeting. Condition of Approval number 6 will be reworded to reflect the traffic plan requirement.

Mr. Gray, whose mother's property abuts the proposed development, was asked to go to the podium to discuss his concerns of the impact of the construction traffic. He suggested an alternative construction access. The Board responded the alternate access cannot be done through them. Mr. Gray questioned the purpose of a preconstruction meeting and the contact person's responsibility. Chair Grinnell stated inserting the extra step of a traffic plan will ensure it will be abided by. Mr. Gray requested the traffic plan takes into consideration the shipyard schedule and children in the area. Mr. Fitzpatrick stated he will be the contact person.

A condition will be the owner and/or the developer must meet with the abutters prior to the onset of construction and designate a contact person.

Mr. Alesse asked the applicant if he looked at the Kittery design handbook guidelines that suggest colonial style homes be built. Mr. Ergin explained the home designs he is planning for are current with new homes in the area. He added a colonial style wouldn't match the land measurements due to the need of depth. There is not enough road frontage.

Discussion ensued of meeting the buffering standards. Mr. Di Matteo explained the project is a cluster subdivision and the standards require a continuous buffer and screen. The applicant agreed to add to the final plan a continuous buffer on the southerly property line of the abutter.

Vice Chair Kalmar requested the applicant change the plan to read "final" instead of "proposed". Mr. Fitzpatrick stated the name of the subdivision and will be P. Yates Place.

The Board recommends the condition of approval of the street acceptance of School Street and all of the staff comments will be addressed by the applicant.

Mr. Dunkelberger moved to grant final approval, with conditions, for the subdivision plan dated January 2017 and the site layout plan (C2) dated January 2017 from owner, Dorothy Fitzpatrick, and applicant, Murat Ergin, for 118 Rogers Rd (Tax Map 15 Lot 92) in the Residential Urban Zone upon the review and voting, in the affirmative, on the Findings of Fact.

Mr. Harris seconded the motion.

The motion carried 6-0-0.

KITTERY PLANNING BOARD

APPROVED

FINDINGS OF FACT -

For 118 Rogers Rd

Mixed Use Development Site Plan

M 15 L 92

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 Dorothy Fitzpatrick and applicant Murat Ergin requests consideration of a lot split and 4-unit cluster subdivision located at 118 Rogers Road (Tax Map 15 Lot 92) in the Residential-Urban Zone.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 6/22/2017;

Sketch Plan Review	Held	3/9/2017
Site Visit	Held	5/1/2017
Preliminary Plan Completeness Review	Held, accepted	4/13/2017
Public Hearing	Held	5/11/2017
Preliminary Plan Approval	Granted (conditional)	5/11/2017
Final Plan Approval	Granted (conditional)	6/22/2017

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 6/22/2017 (Hereinafter the “Plan”).

1. Existing Conditions Plan, Hart Land Consulting, LLC, dated January 15, 2017; revised 2/10/2017
2. Easement Plan, Hart Land Consulting, LLC, dated January 31, 2017
3. Subdivision Plan, Ambit Engineering, Inc., dated January 2017
4. Class A Soil Survey, Ambit Engineering, Inc., dated January 2017
5. Site Layout Plan, Ambit Engineering, Inc., dated January 2017

6. Utility Plan, Ambit Engineering, Inc., dated January 2017
7. Grading, Drainage and Erosion Control Plan, Ambit Engineering, Inc., dated January 2017
8. School Street Profile, Ambit Engineering, Inc, dated January 2017
9. Construction details, sheets D1 – D5, Ambit Engineering, Inc., dated January 2017
10. Floor and elevation plans, sheets A1 – A3, dated 3/20/2017
11. Lot Line Adjustment Plan, Hart Land Consulting, LLC, dated May 27, 2017

143

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.
<i>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.</i>
Finding: The proposed development is a residential use in a residential zone. A cluster development is a permitted use within the residential-urban zone.
Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
B. Freshwater Wetlands Identified.
<i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Finding: There is one wetland identified on the property and is depicted toward southeasterly portion of parcel.
Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
C. River, Stream or Brook Identified.
<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>
Finding: No rivers, streams, or brooks have been identified on site.

Conclusion: This standard is not applicable.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient. {and}
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
Finding: The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project. Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.
<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 Kittery Wastewater Department provided a letter verifying capacity to supply water to the proposed project. Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
Finding: The proposed development will not cause an unreasonable increase in solid waste. Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.

<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>
<p>Finding: The development is not within 250 feet of any regulated (non-forested) wetland as it relates to the Shoreland Overlay Zone.</p> <p>Conclusion: This standard is not applicable.</p>
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
<p>Finding: The proposed development is connected to town sewer and will not adversely affect the quality or quantity of groundwater.</p> <p>Conclusion: This standard appears to be met.</p>
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
J. Flood Areas Identified and Development Conditioned.
<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>
<p>Finding: The property is not located within a flood prone area.</p> <p>Conclusion: This standard is not applicable.</p>
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
K. Stormwater Managed.
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
<p>Finding: CMA, town peer-review engineer reports that the applicant has prepared a complete stormwater design and associated analysis and the proposed development meets the requirements of Title 16. The proposed development is located within the Town's designated MS-4 area. The applicant has provided an Inspection and Maintenance plan to comply with the standards outlined in 16.4.4.4.</p>

Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>L. Erosion Controlled.</i>
<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>
Finding: The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2). The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. Conclusion: This standard appears to be met.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>M. Traffic Managed.</i>
<i>The proposed development will:</i> <ol style="list-style-type: none"> <i>1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i> <i>2. Provide adequate traffic circulation, both on-site and off-site.</i>
Finding: The projected average daily traffic generation for the proposed development is 40 trips and does not meet the threshold for a full traffic study. The proposed development includes a two-way cul-de-sac located at the terminus of an existing dead-end street and provides adequate traffic circulation. The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. Conclusion: This standard appears to be met and the Planning Board recommends approval for acceptance as a Town road.
Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>N. Water and Air Pollution Minimized.</i>
<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"> <i>1. Elevation of the land above sea level and its relation to the floodplains;</i> <i>2. Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> <i>3. Slope of the land and its effect on effluents;</i>

<p>4. <i>Availability of streams for disposal of effluents;</i></p> <p>5. <i>Applicable state and local health and water resource rules and regulations; and</i></p> <p>6. <i>Safe transportation, disposal and storage of hazardous materials.</i></p>
<p>1. The development is located outside of a Flood Hazard Area.</p> <p>2 thru 6. Not applicable to the proposed development.</p>
<p>Finding: It does not appear the proposed development will result in undue water or air pollution</p> <p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>
<p><i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i></p>
<p>Finding: The property does not include any significant aesthetic, cultural or natural values that require protection.</p> <p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>P. Developer Financially and Technically Capable.</p>
<p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p>Finding: The developer will provide a performance guarantee and an inspection escrow in an amount suitable to cover the costs of required infrastructure including on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.</p> <p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>

144

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:

16.8.4 Table 1 - Sidewalk/Pedestrian Way

16.8.4 Table 1 – Paved Shoulder

16.8.4 Table 1 – Cul-De-Sac / Right of Way Design

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

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. Prior to recording at the York County Registry of Deeds, all new map and lot IDs must be reviewed and approved by the Town Assessor
5. Prior to the issuance of a building permit, all legal documents associated with the sewer easement and condominium declarations and bylaws must be reviewed and approved by Town.
6. The owner and/or developer must meet with abutters prior to the onset of construction. A designated contact for the developer/contractor must be made available to them.
7. A traffic management plan must be prepared before preconstruction meeting for Town peer review engineer review and approval to address potential impacts to the residents of School Street.
8. All Notices to Applicant contained in the Findings of Fact (dated: 6/22/2017).

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

9. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation of final Mylar.

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

- 146 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with
147 review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and
148 abutter notification.
- 149 2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or
150 variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
- 151 3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and
152 all related state/federal permits or legal documents that may be required, must be submitted to the Town
153 Planning Department. Date of Planning Board approval shall be included on the final plan in the
154 Signature Block.

4. The owner and/or developer, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.

5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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

Vote of 6 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON June 22, 2017

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.

BOARD MEMBER ITEMS

a. Town Code Amendment in Foreside

Discussion of the next step regarding the Town Code amendment in the Foreside ensued. Mr. Di Matteo recommended the applicant consider what was discussed at the workshop tonight and return to the Board for an action. The Board discussed obtaining opinions from residents in the foreside to help them make an informed decision. Mr. Di Matteo also recommended to the Board to treat the current application as other applications. A suggestion of looking at a smaller number of rooms and using the special-exception if necessary was made. The number of short-term rentals will be brought to the Board in August or September. Further discussion of a timeframe to work on consideration of the ordinance change ensued.

TOWN PLANNER ITEMS

a. Comprehensive Plan

The comments have been received from the State and other agencies. Mr. Di Matteo explained the revisions will be submitted to the State and he is expecting a response around July 10th or 12th with a consistency decision. Once he has the response, he will share the information with the Board. In order for this item to be placed on the ballot for voters, a special Planning Board meeting will need to occur and the item would need to be added to the agenda at Town Council's last meeting in August.

The Board was in consensus to have a special meeting regarding the Comprehensive Plan on July 20, 2017 from 5:00 P.M. to 7:30 p.m. and will be an item on the July 28, 2017 Planning Board meeting agenda. Mr. Di Matteo recommended Board members start reviewing the plan now. Hard copies of executive summaries will be distributed.

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 22, 2017 adjourned at 9:05 p.m.

Submitted by Mary Mancini, Minute Recorder, on June 29, 2017.

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

Line 115 – delete street

Line 138 – amend applicant's name in Findings of Fact