

CALL TO ORDER

ROLL CALL

Present: John Perry, Member, Drew Fitch, Member, Russell White, Member, and Karen Kalmar, Vice Chair,

Absent: Steve Bellantone, Ronald Ledgett, Dutch Dunkelberger, Chair

Staff: Bart McDonough, Town Planner

Advisory: Earldean Wells, Conservation Commission

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES- None.

PUBLIC COMMENTS

Public comment and opinion are welcome during this open session. However, comments related to development projects currently under review by the Planning Board shall be heard only during their respective scheduled public hearing. Due to the current pandemic, all meetings and public hearings held by the Planning Board are conducted via Zoom webinar. To register in advance for the webinar, please submit a request to bmcdonough@kitteryme.org. After registering, you will receive a confirmation email containing information about joining the webinar. Webinar participants will be able to submit questions and comments during the public hearing and public comment period. Members of the public unable to participate during the webinar may submit comments for agenda items via email, US Mail, or by dropping written comments in the Drop Box outside the Town Hall entrance. Emailed comments should be sent to bmcdonough@kitteryme.org. Comments received by noon on the day of the meeting will be read into the record by the Planning Board Chair.

There being none the Vice Chair closed the public comments.

OLD BUSINESS

ITEM 1— 459 U.S. Route 1—Major Modification Review to a Master Site Development Plan and Subdivision / Site Plan

Action: Continue to a subsequent meeting; approve or deny plan; Pursuant to §16.10.9.1.D Approved plan expiration and §16.10.9.3 Modifications to approved plan and of the Town of Kittery Land and Use Development Code, owner/applicant Middlesex Land Holdings, LLC requests approval for both an extension to an approved subdivision plan and a major modification to an approved Master Site Development and Subdivision plan proposing to reduce the residential dwelling unit count from 44 (32 age-restricted; 12 non-age-restricted) to 32 (16 age-restricted; 16 non-age-restricted) dwelling units within 8 buildings and make associated improvements on real property with an address of 459 U.S. Route 1, Tax Map 60, Lot 24, in the Mixed-Use (MU) Zone.

V.C. Kalmar asked Mr. McDonough to give the Board an update on the application's status.

Mr. McDonough recited and gave a corresponding update to the Board on the items needing further review by town staff or more information. These items included: review of the homeowners association ("HOA") condominium documents and road / property maintenance agreement between the HOA and hotel by the Town Attorneys, updated construction schedule for work along U.S. Route 1 that aligned with Maine Department of Transportation's ("MDOT") paving schedule, and an update on the status of the applicant's stormwater management plan modification filing with the Maine Department of Environmental Protection ("MDEP").

From that summary, Mr. McDonough informed the Board that the applicant's proposed HOA documents and property maintenance agreement was determined satisfactory by the Town Attorneys with the incorporation of slight amendments, for which the applicant agreed to include in a revised document.

Mr. McDonough continued by informing the Board that the updated construction schedule for US Route 1 was submitted and appeared reasonable but needed a slight revision, and commented that the modification filing was or is to be sent to DEP for review. Mr. McDonough added the caveat that DEP recently underwent a staff change and the review timeframe could take longer than normal.

Mr. McDonough then described the responsibilities and liabilities of the applicant to complete the road work along U.S. Route 1 and discussed what would happen if a road moratorium were breached.

Mr. McDonough then relayed to the Board that applicant was in the process of applying for permits and briefly discussed the next steps and key events to occur before construction commenced.

In closing, Mr. McDonough clarified to the Board the permit extension process along with the amount of time the Board is permitted to grant to complete the project. After updating the Board Mr. McDonough requested Mr. Nielson to provide any information that was missing or inaccurate.

Mr. Nielson followed up and gave more details regarding the construction schedule and asked the Board if there any other outstanding issues that they wanted to discuss.

Ms. Wells asked whether or not the hotel is responsible for removing any of the excess snow from the site. Mr. Nielson replied that the site plan directs the hotel to remove any excess snow. Mr. Nielson continued further, stating that he would ensure that the owners of the hotel understand their maintenance responsibilities.

V.C. Kalmar then asked the Board if there were any further questions to be posed to the applicant, which there were none.

Mr. White moved to approve the Permit Extension and Modification Plan application to a Master Site Development and Subdivision plan from owner/applicant Middlesex Land Holdings, LLC requesting approval to reduce the residential dwelling unit count from 44 (32 age-restricted; 12 non-age-restricted) to 32 (16 age-restricted; 16 non-age-restricted) dwelling units within 8 buildings and make associated improvements on real property with an address of 459 U.S. Route 1, Tax Map 60, Lot 24, in the Mixed-Use (MU) Zone with the following conditions:

- 1. Prior to the issuance of any certificate of occupancies for any of the proposed buildings, all infrastructure that affects US Route 1 must be installed.**
- 2. The approved plan shall be extended until February 14, 2024.**
- 3. Prior to the issuance of a building permit, the applicant shall submit documentation demonstrating DEP approval of the modification.**

Seconded by Mr. Fitch. The motion passed by roll call vote, 4-0-0.

ITEM 2— 52 State Road—Shoreland Development Plan and Sketch Plan Review

Action: Accept or deny application as complete; continue application to a subsequent meeting, approve or deny sketch plan. Pursuant to §16.3.2.17 Shoreland Overlay Zone, Article III Nonconformance of §16.7 General Development Requirements, §16.10.3.4

In closing, Mr. McDonough clarified to the Board the permit extension process along with Shoreland Development Review and §16.10.4.2 Sketch plan review phase of the Town of Kittery Land Use and Development Code, owner/applicant Kevin Cambridge and agent Attar Engineering Inc. requests approval to expand a legally nonconforming commercial structure and to construct a parking lot comprising 27 spaces with appurtenant

infrastructure and landscaping on real property with an address of 52 State Road, (Tax Map 3, Lot 1) located in the Business-Local 1 (B-L1) Zone and the Shoreland Stream Protection Overlay Zone (OZ-SL-75).

Mr. McDonough gave the Board an update on the application's status. He reviewed the outstanding issues the Board wanted clarified before the sketch plan application could move forward. This mainly included a report from a soil scientist analyzing the soil characteristics of the area where a purported stream was located.

Mr. McDonough then went on to explain the events that took place prior to the meeting and described future actions that the Board may need to take if it were determined that the stream no longer exists as designated on the Town's zoning map. Mr. McDonough continued by describing the site visit that took place between the applicant's agent, town staff and Maine Department of Environmental Protection ("DEP") and remarked on the preliminary opinion from DEP, which opined that a stream did not currently exist as indicated on the zoning map with the caveat that the area was experiencing a prolonged drought and conditions may change accordingly. Also, Mr. McDonough conveyed it was the opinion of DEP that the application could move forward as the expansion of the building is not moving any closer to the area designated as a stream.

Mr. McDonough went on further to describe the project's details and their relation to the protective areas with further details added to the discussion by Mr. Nielson, the applicant's agent.

Mr. Neilson then continued by describing in more detail the site plan's characteristics, which included details regarding: the parking lot, building's expansion, stormwater infrastructure, and landscaping.

V.C. Kalmar stated that since there were only four members present at the meeting, it would be more fruitful to continue the application's progression, if it were the will of the Board, and move out of sketch review so that more input and consideration may be provided by other Board members.

Mr. Nielson concurred, and requested that he read a letter penned by the applicant, Mr. Cambridge, to clarify purpose of the application, to which was recited into the record. Thereafter, Mr. Nielson then asked the Board if they had any additional questions for him regarding the application.

Mr. White inquired whether or not the parking calculation requirements were satisfied and stated that he would like the applicant to consider reducing the amount of asphalt as much as possible and consider alternative materials that would compose the parking lot.

Mr. McDonough followed up with a suggestion that it may be an opportunity to incorporate LID technology to help with stormwater.

Mr. Nielson inquired whether or not the Town has any history with porous pavement, to which Mr. White replied, that a former Road Commission used such materials along Litchfield Road playgrounds, which, according to Mr. White's observations, has worked and held out well over the years.

Thereafter, a brief discussion ensued revolving around parking count calculations, followed by an appeal by V.C. Kalmar on how the Board would wish to proceed with the application.

Mr. White move to approve the shoreland development and site plan sketch application from owner/applicant Kevin Cambridge and agent Attar Engineering Inc. requesting approval to expand a legally nonconforming commercial structure and construct a (27) parking lot on real property with an address of 52 State Road, (Tax Map 3, Lot 1) located in the Business-Local 1 (B-L1) Zone and the Shoreland Stream Protection Overlay Zone (OZ-SL-75).

Seconded by Mr. Fitch. The motion passed by roll call vote, 4-0-0.

V. C. Kalmar read the findings of fact and the Board voted to affirm each finding by roll call vote 4-0-0.

ITEM 3— 2 Old Ferry Lane—Shoreland Development Plan Review

Action: Continue application to a subsequent meeting; or approve or deny plan: Pursuant to §16.7.3.3.B Nonconforming structure repair and/or expansion and §16.10.3.4 Shoreland Development Review of the Town of Kittery Land Use and Development Code, owner Forbes-Taylor Trust and applicant Elliot Architects requests approval to expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone by 225-sf on real property with an address of 2 Old Ferry Lane, Tax Map 17 - Lot 14, located within the Residential-Urban (R-U) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

Mr. McDonough gave the Board an update on the application's status. He reviewed the outstanding issues the Board wanted clarified before the shoreland development plan application could move forward. This included the condition that a registered surveyor needed to delineate the land to be conveyed to the applicant. Moreover, Mr. McDonough described how the site walk was informative and allowed the Board to obtain a good understanding of the site's constrictions.

Mr. McDonough continued with a brief update of the new deed's status, went on to describe the issue with expanded the retaining wall and potential alternatives. Mr. McDonough then asked Mr. Papadopoli to give an updated to the Board.

Mr. Papadopoli then discussed how the lot line adjustment plan was filed with the York County Registry of Deeds and that the deed modification is currently being drafted and finalized. Mr. Papadopoli continued by suggesting that he was in favor of the idea that the Board grant a conditional approval and that no building permit would be issued until the modified deed was recorded.

Mr. Papadopoli went on to describe his plan on expanding the retaining wall, to which solicited a question from V.C. Kalmar to Mr. McDonough clarifying in what instance the retaining wall could be expanded upon in this context. A discussion between Mr. Papadopoli and the Board then ensued with a resolution that vertical granite curbing would be used.

Mr. Papadopoli then handed the discussion over to the Board for further questions.

Mr. McDonough inquired how construction management would be handled, to which elicited a response from Mr. Papadopoli stating that he was working with the builder to develop best site management practices to handle parking, storage of construction materials and equipment and to incorporate carpooling so as to take up as little space as possible on Old Ferry Road.

Mr. Fitch inquired whether a plan from a licensed surveyor was required instead of the plan before the Board, to which a discussion ensued with the resolution that the plan as presented was suitable for recording at the York County Registry of Deeds.

V.C. Kalmar then asked if the Board had any other questions for Mr. Papadopoli. Hearing none, V.C. Kalmar then invited the Board to make a motion.

Mr. White moved to approve the shoreland development plan application from owner Forbes-Taylor Trust and applicant Elliot Architects requesting approval to expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone by 225-sf on real property with an address of 2 Old Ferry Lane, Tax Map 17 - Lot 14, located within the Residential-Urban (R-U) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones with the following conditions:

- 1. Prior to the endorsement of the shoreland development plan by the Planning Chair or Vice Chair, the applicant shall submit an updated plan depicting all missing elements as directed by the Planning Board at their June 24, 2021 meeting and Planner's Review Notes, dated June, 24, 2021.**

- 2. Prior to the issuance of a building permit, the applicant shall file with the Code Enforcement Officer a recorded Lot Line Adjustment Plan and corresponding deed for Map 17, Lot 14 that clearly depicts the conveyance of land from Map 17 Lot 15 to the lot and that all setbacks are adhered to.**

Seconded by Mr. Fitch.

The motion passed by roll call vote, 4-0-0.

V. C. Kalmar read the findings of fact and the Board voted to affirm each finding by roll call vote 4-0-0.

NEW BUSINESS

ITEM 4— Land Use Development Code Amendments—Proposed Revisions to Title 16 to Amend Distant Requirements between a Gas Station and Protective Structures.

Action: Continue to a subsequent meeting, or schedule a public hearing date: Pursuant to M.R.S.A Title 30-A, Chapter 187, §4352 and §16.1.9 Amendments of the Town of Kittery Land Use and Development Code, the Planning Board seeks to set a public hearing date for a proposed amendment to §16.3 Land Use Regulations from petitioner Cumberland Farms Inc., and agent Archipelago Law, LLP by amending §16.3.2.11.C(1)(b.) to reduce the required distance between Gasoline Sales and protected uses and certain types of structures.

Mr. McDonough gave the Board brief overview of the proposed amendment changes which sought to amend the distance requirements for Gasoline Stations in the C-1 Zoning District.

Mr. McDonough then asked Ms. Guay to introduce the project and state the reasons for the proposed amendments. Before Ms. Guay introduced herself, her team and the project, V.C. Kalmar made it a point for the discussion to be brief as three members of the Board were absent.

Ms. Guay gave a concise presentation on the reason the corporation was pursuing an amendment to the code, emphasized how the existing language was needlessly burdensome given the geographic context of the area; mentioned briefly the manner in which the proposed language would comport with the Town's Comprehensive Plan, and provided a power point presentation of existing conditions and conceptual architectural renderings of the gas station in the targeted location, if the amendment were to pass.

V.C. Kalmar requested from staff that a brief presentation be created to determine the potential impacts if the proposed amendments were adopted.

Ms. Guay clarified an error Mr. McDonough made during his introduction regarding the proposed amendment's language and further expounded upon the rational and justification for the changes.

A discussion on the procedural steps ensues and it was determined the best path forward was to set the public hearing date for the second meeting in July.

Mr. White moved to set the public hearing date at the Planning Board's July 22, 2021 meeting.

Seconded by Mr. Perry.

The motion passed by roll call vote, 4-0-0.

ITEM 5 – Board Member Items/Discussion

No Board Member Items or Discussion.

ITEM 6 – Town Planner/Director of Planning & Development Items

Mr. McDonough told the Board that there were no applications to be reviewed at the July 8, 2021 meeting. Given the dearth of applications, Mr. McDonough suggested it would be an opportune time to review the priority list at the next meeting.

A brief discussion took place on returning to in-person meetings, which the Board agreed would be a good idea.

Adjournment

Mr. White moved to adjourn the meeting. Seconded by Mr. Perry. The motion passed by roll call vote 4-0-0.

The Kittery Planning Board meeting of August 13, 2020 adjourned at 7:28 p.m.

Submitted by Bart McDonough, Town Planner on July 8, 2021.

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>.