

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

**APPROVED
February 23, 2017**

CALL TO ORDER

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

ROLL CALL

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

Staff Present: Chris Di Matteo

PLEDGE OF ALLEGIANCE

AMENDMENT TO AGENDA

Chair Grinnell proposed to move Item 3 before Item 1. Board members had no objections.

APPROVAL OF MINUTES – January 23, 2017

Change date

Line 49 - change “updating” to “reviewing”

Line 62 – change “list” to “definition”

The Board approved the January 23, 2017 Minutes as amended. Mr. Dunkelberger abstained.

PUBLIC COMMENT

Chair Grinnell opened the floor for public comment.

Tim Stone, 28 Island Avenue, Badgers Island, stated there is a breakdown in the approval process. He referred to construction near his home which is not in compliance to what was approved by the Planning Board. Mr. Stone claimed the applicants hired a builder and were given a new building permit from Code Enforcement. He also stated there is an expansion of the foundation from the original plan and the height of the structure is too high and obstructs his view of the river. He also stated he requested a copy of the minutes from the July site walk and got no response. Mr. Stone passed out a picture of the structure which included a copy of the portion of the approve plan.

Mr. Di Matteo apologized for not getting back to Mr. Stone right away and stated his department has be trying to keep Mr. Stone informed. Mr. Di Matteo provided a copy of the site walk minutes. He also stated the owners of the property will be returning to the Board on March 9th and there is a stop work order in place.

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

ITEM 1- 412 Haley Road – Cluster Subdivision Preliminary Plan Review

Action: Continue the public hearing. Approve or deny preliminary plan. Owner Norwich Investments, LLC, and applicant, Green & Company, requests consideration of an 11-lot cluster subdivision 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.

Mr. Orso, attorney for the applicant, stated they were notified within the last 12 hours of an interpretation of a 100ft. no cut, no disturb setback. He stated this issue will affect the viability of the cluster subdivision as proposed. Mr. Orso questioned the fairness to his client because this issue was brought up today. They also learned of a meeting between a Board member and the Town Planner. Mr. Orso stated there have been previous times the Board did not apply this rule. He was not allowed to submit documents or meet with the Town Planner. He also questioned the fairness of the public to be polled at the December 8th public hearing and asked the Board if setback is uniformly applied.

Mr. Di Matteo responded that he never said the applicant could not meet with him. He added applicants are not allowed to change documentation for a meeting after it has been submitted to the Board and it is common for a Board member to come into his office if he or she has a question. He apologized for not catching the setback earlier.

If the current plan cannot go forward as proposed, Mr. Orso requested the applicant be allowed to present a conventional subdivision for comments. Mr. Di Matteo stated the Board needs to determine if the cluster is not going to be allowed then the applicant can apply for a conventional subdivision special exception permit.

Richard Green, owner of Green and Company, explained why he decided on a cluster subdivision. He also stated if the board enforces the setback, it would end this plan. The applicant presented for review a sketch plan of a conventional subdivision. Chair Grinnell asked how many lots. Mr. Coronati stated eight lots but the sketch was pulled together today and he needs to fine tune it. Vice Chair Kalmar stated the Board's decisions are not preferences and the Board is required by law to follow the Code. There has been a lot of time and money invested over the last six months Mr. Orso stated.

Chair Grinnell objected to the Board being referred to as unfair and explained she asked for a showing of hands at the public hearing on December 8th to save time due to the large number of residents at the meeting. She also added the Board did not received the information regarding the 100-ft. setback until today.

Mr. Coronati stated the applicant is willing to have a common drive for the two lots affected. Mr. Di Matteo read standard 16.8.11.6.5 that explained the setback must be preserved as it is now with a no cut, no disturb buffer. He further explained part of interpreting the setback are principal structures and other setbacks in the proposed plan are overlapping each other.

Chair Grinnell took a poll of Board members who agreed with the interpretation. Six Board members agreed, one abstained.

Mr. Orso requested the public hearing be postponed.

Because the current plan was no longer viable, the Board decided to postpone the public hearing until March 23, 2017 to give the applicant time to redesign or withdraw the plan.

Ms. Day moved to continue the public hearing to March 23, 2017 for 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250) Zones.

Ms. Driscoll-Davis seconded the motion.

The motion carried 7-0-0.

Ms. Day moved to continue the preliminary site plan application dated October 27, 2016 from Owner Norwich Investments, LLC, and applicant, Green & Company, for 412 Haley Road (Tax Map 34 Lot 3) in the Residential-Rural (R-RL) and Shoreland Overlay (SH-OZ-250) Zones not to exceed 90 days.

Vice Chair Kalmar seconded the motion.

The motion carried 7-0-0.

NEW BUSINESS

ITEM 2 - Seward Farm Lane – Major Subdivision Sketch Plan Review – Rescheduled from 2/9/2017 meeting

Action: Accept or deny application. Approve or deny sketch plan Owner/Applicant Gary Seward requests consideration of a 14-lot conventional subdivision on remaining land along a previously approved private Right-of-Way (Seward Farm Lane) located at Picott Road (Tax Map 46 Lot 4) in the Residential-Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones. Agent is Stephen Haight, Civil Works New England.

Stephen Haight, representing the Seward's, described the proposed sketch plan. The subdivision is to be conventional. The applicant would like to add this plan to the existing development. The proposed lots would run along the existing right of way. There is an existing gravel road, utilities are in, water would be extended and the road would be paved. Mr. Haight passed out an overview of the plan. He stated the back lot would be open space and Lot 9 is a field owned by the Seward's who will use it for haying. Mr. Haight pointed out, if the conventional subdivision is allowed, the plan would need special exception permit.

Mr. Haight stated widening the existing right of way to 60 ft. would take land away from the lots and he would prefer to keep it at 50 ft. Ms. Driscoll-Davis stated that the 60 ft. right of way would be a benefit in the event Lot 9 is developed in the future. The right of way would be private. Vice Chair Kalmar expressed her concern with the roadway. After discussion of the road width, Mr. Haight agreed to increase the width to 60 ft. and the 50 ft. right of way would begin at the right turn where three existing homes are located.

The Board was in consensus to allow a conventional subdivision with a special exception permit.

The Board was in consensus to give a waiver for the last section of the right of way being 50 ft. in width.

Mr. Di Matteo stated the need to continue to address the status of Picott Road as a scenic vista road. If the homes are not built closer to the road, a restriction will need to be added.

Mr. Di Matteo recommended including a right of way for pedestrian traffic or utilities from the abutting parcel in case a development is built in the future.

Vice Chair Kalmar moved to accept and approve the sketch plan application dated January 17, 2017 from owner/applicant Gary Seward for a 14-lot subdivision on remaining land from a previously approved private Right-of-Way, Seward Farm Lane, located at 39 Picott Road (Tax Map 46, Lot 4) in the Residential -Rural (R-RL) and Shoreland Overlay (OZ-SL-250) Zones.

The motion was seconded by Mr. Dunkelberger.

The motion carried 7-0-0.

ITEM 3 – Town Code Amendment – 16.2.2 Definitions, 16.3 Land Use Zone Regulations, 16.8.22.2 Minor Home Occupation Standards, 16.8.22.3 Major Home Occupation Standards.

Action: Review amendment. Recommend to Town Council. The proposed amendment defines retail and medical marijuana use within Title 16 and updates zoning ordinances to address medical marijuana use within the Commercial and Business Park Zones.

Town Manager Kendra Amaral addressed the Board and stated there have been joint workshops to develop long and short term strategies to address the legalization of marijuana. She further stated the Town of Kittery does not define recreational or medical marijuana in the Code and it is important to define the uses. She explained the Code states recreational marijuana is prohibited now. She further explained it is important to define where medical marijuana is to be allowed. It is used by registered caregivers now. The Town needs to keep in mind the development, cultivation and manufacturing and decide the zones.

The Chair opened the public hearing.

Pam Edwards stated she is a resident and an owner of two businesses in Kittery. A handout from Ms. Edwards was given to the Board and is attached to the Minutes. She explained she is hoping the Town will amend its commercial zones to allow a medical marijuana garden in special exception use for her location at 99 State Street. Ms. Edwards explained why it is a suitable location. She explained the odor reducing methods and the security systems. Peter MacDonald, founder of Tiny Homes for Homeless Combat Veterans, stated Ms. Edwards is a good citizen

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and has donated to his foundation. He hopes the Town will approve what she is proposing give and her credit for her community character.

Resident Kurt May, 110 State Road, stated he lives close to 99 State Road and there is a medical marijuana facility next door to his home now. He described the smell and the ability to see the plants from his home. He suggested to include in the ordinance the requirement of a buffer zone.

Resident Jane May, 110 State Road, listed her concerns including the smell and decreasing the value of their home. She also expressed her concern with having her children's friends over and pointed out there is a little league field in her area. They are unable to sit on their deck because of the odor. She encouraged the Board to think about it.

Pam Edwards stated her facility is on a second floor and there is currently a back entrance at the little league field which is not allowed to be used. There will be odor reducing machines in place.

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

Chair Grinnell questioned why social club is listed on Line 47 of the definitions. Mr. Di Matteo explained we are defining it so it is known what it is but not allowing it. Mr. Dunkelberger pointed out that social club is listed but not defined in the State's reference. Board members discussed the ordinance including the reason for listing social club.

Board recommendations were as follows:

- The Board was in consensus to leave in the phrase "social club" but change the language by taking out the word "defined" and replace it with "referenced" in the Code;
- Line 60 – change "patient" to "medical marijuana qualifying patient";
- Line 111 – Ms. Driscoll-Davis recommended taking out of the business park until the feasibility study is completed;
- Line 38 - reverse the words marijuana also means cannabis;
- Line 61 - reiterate what is in the State definitions for written certification.

Vice Chair Kalmar suggested the Board approve the definitions tonight and look at the zones another time because they will be attending a Maine Municipal Association workshop on this subject next week.

Mr. Dunkelberger asked who enforces the ordinance. Mr. Di Matteo replied that state and local (Code Enforcement) will be the ones to enforce.

After discussion, the Board was in consensus to add medical marijuana, as prohibited, as a home occupation.

**Vice Chair Kalmar moved to recommend to Town Council adoption of the Town Code Amendments 16.2.2 Definitions, 16.8.22.2 Minor Home Occupation Standards and 16.8.22.3 Major Home Occupation Standards as amended.
Mr. Dunkelberger seconded the motion.**

The motion carried 6-1-0.

ITEM 4 – Municipal Separate Storm Sewer System General Permit

Action: Discussion. No formal action required. Shoreland Resource Officer Jessa Kellogg will present an annual update and information on the Town's Municipal Separate Storm Sewer System (MS4) General Permit.

Jessa Kellogg, Shoreland Resource Officer, explained she is required to speak with Boards, Commissions and Town staff annually regarding the stormwater permit. She explained she is required to ensure members are aware of what their role is. She provided a brochure and explained the permit requirements. She also explained the regulated areas in town. Ms. Kellogg described what is considered stormwater by the DEP. She reported that the Town was audited in 2015 and there were no deficiencies.

Ms. Kellogg reviewed the minimum control issues required for the permit and explained she is in the process negotiating with the DEP for the next permit.

Ms. Driscoll-Davis asked if Ms. Kellogg has reached out to the landscapers. Ms. Kellogg stated she knows the area landscapers and tree clearing companies and keeps in touch with them regarding fertilizer and pesticide use. Looking at other town's ordinances

Chair Grinnell said she did an excellent job and asked if she could get students high school students to paint the drains. Ms. Kellogg stated she does work with the middle school in Shapleigh and will expand to the high schoolers soon. The Board does not need to fill out the survey.

Item 5 – BOARD MEMBER ITEMS/DISCUSSION

- a. The Board approved the site walk Minutes from July 7, 2016 for 17 Island Avenue
5 in favor, 2 abstained.**

Item 6 – BOARD MEMBER ITEMS/DISCUSSION

- a. OBLP request for second 90 day filing extension.**

The Board read over an email requesting a second 90-day extension. Mr. Di Matteo explained Mr. Gasparo sent an email expressing his concern of the potential subdivision not being built and will the effect on his road.

**Vice Chair Kalmar moved to grant a second 90-day extension to Operation Blessing Limited Partnership for the Quiet Pine Lane Subdivision.
Chair Grinnell seconded the motion.**

Ms. Driscoll-Davis reminded Board members of the requirement of the stone walls to be up is May 1, 2017. Mr. Di Matteo stated there is no date in the conditions.

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The motion carried 7-0-0.

Mr. Sparkowich requested to say a word. He stated he and Joe Gasparo met regarding the petition for the Town to take over a certain road section. Mr. Gasparo told Mr. Sparkowich he wants to take back his signature on the petition. Chair Grinnell suggested letting Mr. Gasparo have what he is requesting. Chair Grinnell said they cannot change what is in the past and he should work it out with him.

**Mr. Alesse moved to adjourn the meeting.
Ms. Driscoll-Davis seconded the motion.**

The motion carried 7-0-0.

The Kittery Planning Board meeting of February 23, 2017 adjourned at 9:03 p.m.

Submitted by Mary Mancini, Minute Recorder, on March 1, 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>