

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

**APPROVED
JANUARY 28, 2016**

Meeting called to order: 6:01

Roll Call:

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Deborah Lynch, Dutch Dunkelberger, Secretary Debbie Driscoll-Davis, Mark Alesse
Staff present: Chris Di Matteo, Town Planner

Pledge of Allegiance

Minutes: January 14, 2016

Line 38 – add “line 386” to indicate the name change on line 384 also occurred on line 386

Line 257 – Sentence is unfinished. Suggested alteration: “The proposed development does not create greater nonconformance to setbacks”

Ms. Kalmar moved to approve the January 14, 2016 minutes, as amended

Mr. Alesse seconded

Motion passed 5-0-2 (Ms. Grinnell and Mr. Dunkelberger Abstaining)

Ms. Grinnell and Mr. Dunkelberger were not present at the January 14, 2016 Planning Board meeting.

Public Comment: Ms. Grinnell opened the floor for public comment. Hearing none, Ms. Grinnell closed public comment.

ITEM 1 - Town Code Amendments – 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. (Ordained 9/24/2012; effective 10/25/2012); 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip

Action: hold a public hearing; recommend to Town Council for adoption. The proposed amendments provide clarity with regard to open space and other requirement standards in cluster residential and cluster mixed-use development

Ms. Kalmar and Ms. Grinnell noted Title 16.9.1.7 and 16.2.2 are also included in the proposed Amendments and requested future agenda and item titles reflect this.

Mr. Dunkelberger asked whether building height should be included in the standards that may be modified in cluster developments outlined in Title 16.8.11.3. Ms. Kalmar clarified height is not included because the dimensional standards that can be modified mirror the State’s definition of cluster development. Ms. Driscoll-Davis noted each zone has a maximum building height that a cluster development would be required to adhere to. Mr. Dunkelberger clarified that standard that cannot be modified in a cluster development. Ms. Kalmar confirmed.

Mr. Dunkelberger noted 16.8.11.5.A is included in the review notes, but 16.8.11.B is not. Mr. Dunkelberger was unclear whether there are no changes to 16.8.11.B, or is it eliminated from the code.

Mr. Di Matteo confirmed there are no changes to any code items that are not included in the review notes. Ms. Driscoll-Davis questioned whether 16.8.11.B should be included in the packet to be presented to Town Council, so as to avoid confusion. Mr. Dunkelberger suggested adding a comment that clarifies no changes have been made to code items not included in review notes. Mr. Di Matteo agreed.

Ms. Grinnell suggested the Board continue with the public hearing prior to any further discussion.

Ms. Grinnell opened the public hearing.

Mr. Ken Markley – citizen.

Mr. Markley's testimony included the following concerns:

- Mr. Markley expressed concern over the increase of required open space from 30% to 50% net residential acreage in Title 16.8.11.6.E. Ms. Kalmar responded the increase initiated from a recommendation by the Kittery Open Space Committee to guarantee upland land will be preserved. Mr. Markley responded this is an unreasonable increase that will deter developers from building in Kittery and put an excessive burden on landowners.
- Mr. Markley feels it is the responsibility of the Planning Board to change the code when there is a problem with it, whereas these Amendments appear to come without a need. Mr. Di Matteo stated the Amendments are a result of suggestions formulated during workshops that occurred over the course of the past year.
- Mr. Markley stated the use of the terminology "contiguous and unfragmented" on Line 103 limits the shape and form of the open space and could consequentially restrict options for what the land's intended use could be. Mr. Di Matteo described a distinction between reserved open space, intended for preservation, and common open space, intended for recreation, and stated the open space referenced in this section of the code is referring to reversed open space. Mr. Di Matteo furthered contiguous and unfragmented are important aspects of reserved open space. Mr. Markley countered, as the code currently stands, the land owner should be able to decide the purpose of the open space on the property.
- Mr. Markley addressed several issues with Title 16.8.11.6.E.8 including the following:
 - As the code currently stands, required open space in a cluster development is not limited to reserved or common. Therefore, the mandate to preserve the area of highest ecological value may not be of the most value to the landowner.
 - The Planning Board should not hold the authority to determine who classifies as a qualified conservation agency or organization.
 - The Planning Board should not hold the authority to make the final decision on the allocation, location and shape of the open space in a cluster development because the Board is not an unbiased agency.
 - Mr. Markley feels this Title is overstepping the property rights of the individual owners, specifically line 113. The code, specifically Title 16.8.11.6.E.8 should read as a collaboration between the property owner and the planning board.

Ms. Earledean Wells has the following comments:

- Line 69 – Ms. Wells stated confusion over the sentence structure of Title 16.8.11.5.A.5. Ms. Kalmar clarified items 1 – 5 (lines 48 – 69) are written in list form as a response to "A. In addition to the requirements of Chapter 16.10, the following are required at the submittal of the Sketch Plan:" (line 45-46).

Ms. Grinnell closed the public hearing at 6:28

Mr. Alesse had the following grammatical comments:

- Line 74 - add a period to close the paragraph
- Line 144 – change “abuts” to “abut” and add a comma after “street”.

Ms. Driscoll-Davis

- Add a D. provision to 16.9.1.7 to exempt roads with existing scenic vistas from the buffer requirement to protect current scenic vistas.

Ms. Kalmar

- Line 171 – Board needs capitalization
- Line 185 – replace “regulations” to “standards” to match verbiage elsewhere in the code

Ms. Lynch stated she was not present for the workshop that discussed the change from 30% - 50% open space requirement and agreed that this could be considered a significant increase. Ms. Driscoll-Davis stated this open space requirement is in exchange for the benefit of the modified dimensional standards that offers a financial benefit to developers. Ms. Lynch requested a copy of the workshop minutes for review. Mr. Di Matteo agreed to send these to all Board members prior to the next Planning Board meeting.

Ms. Driscoll-Davis expressed concern the 50% open space requirement would discourage development in areas where it would ideally be encouraged, such as urban areas with access to town sewer, and suggested a provision lessening the open space standard in certain areas. Mr. Di Matteo stated Maine Municipal Association has warned of the risk of becoming too discriminatory with regard to leniencies granted in certain zones but not others and could result in a decision being successfully challenged based on fairness.

Mr. Harris also expressed concern with the 50% open space requirement, stating this takes developable land off the market. Mr. Harris advocated for “good” land to be used for development, and “poor” land to be preserved for open space. Mr. Di Matteo countered that while “good” land is good for development, it is also good for habitat in ways “poor” land may not be and a balance between these conflicting interests needs to be achieved.

Ms. Wells asked if a representative from the Open Space Committee is invited to the workshop in February 1st, as open space is such a large portion of the conversation. Mr. Di Matteo responded the Open Space Committee, or anyone else who wishes to attend, is welcome to attend the workshop.

Mr. Dunkelberger asked to address the concerns of Mr. Markley and agreed the wording of the amendments could be restrictive to developers. Mr. Dunkelberger stated a more collaborative approach between the Planning Board and land owners/developers, particularly concerning 16.8.11.6.E.8. Mr. Di Matteo clarified the intent was to be collaborative, with the recommendations of a qualified agency such as one listed in the code. Mr. Dunkelberger suggested, rather than relying solely on recommendations from an expert organization, the code should seek collaborative opinions from the developer/landowner and applicable experts, as determined by the Planning Board. In addition, Mr. Dunkelberger suggested changing the word “must” to “should” on line 112 in an attempt to highlight the collaborative intent of the code. Ms. Grinnell notes the terminology “must” and “should” appear inconsistently throughout 16.8.11.6.E.1-8 and suggested amending this so it is consistent.

Mr. Di Matteo reiterated a need to specify a distinction between reserved and common open space, and that the requirements listed in 16.8.11.6 are referring to reserved open space, which has the purpose of ecological preservation.

Ms. Kalmar suggested further clarification to differentiate between contiguous and unfragmented open space, and open space that is positioned for optimal use. Mr. Dunkelberger agreed, noting without this distinction, a situation may arise where open space areas face a mandate of being contiguous, when it may be in the best interest to keep them separate, such as a protected habitat and a recreational field. Ms. Driscoll-Davis suggested reserved open space remain contiguous and unfragmented, while common open space can be positioned for optimal use. Mr. Dunkelberger suggested using the terminology "For the purposes of this article contiguous and unfragmented means land that is optimal in area and shape for its proposed use as identified by the applicant and determined by the Planning Board."

Mr. Dunkelberger suggested allowing the developer to decide what the purpose of the open space will be and bring that purpose to the Planning Board for approval.

A discussion ensued regarding the February 1, 2016 workshop with Town Council. Town Council has received a copy of the proposed amendments as they were prepared for the January 28, 2016 Planning Board meeting. It would therefore be confusing to offer them a revised copy with notes from the Public Hearing. Therefore, the Planning Board will inform Town Council of public comments at the workshop so they are able to apply them to their discussion. The Planning Board will then return to discuss the proposed amendments further, incorporating both the public and Town Council comments, at the February 11, 2016 Planning Board meeting and tentatively schedule a public hearing at either the February 25th or March 24, 2016 Planning Board meeting.

Ms. Lynch requested a copy of the Amendments as they stood for the January 28, 2016 public hearing prior to the February 1, 2016 workshop. Mr. Di Matteo agreed.

Mr. Dunkelberger made a motion to continue the Town Code Amendment for 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip; 16.9.1.7 Buffer areas; and 16.2.2 Definitions for further discussion on the February 11, 2016 Planning Board meeting
Mr. Harris seconded

MOTION PASSED 7-0-0

ITEM 2 – Board Member Items / Discussion

Ms. Grinnell reviewed the following items included in the Board member packets: Town Manager report; Building permits issued in December 2015; A letter from Southern Maine Planning & Development detailing Town dues and benefits; And a list of the recent and current applications that have been presented to the Planning board. Ms. Grinnell asked Mr. Di Matteo for an update on the Memorial Circle project that was last presented as a public informational presentation on October 22, 2015. Mr. Di Matteo stated the consultants reviewed the suggestions gathered at the informational presentation and concluded a reorder of the development tiers is not possible due to the amount of resources that have been invested in the project

and the priorities of the State in creating a bicycling route around Memorial Circle. The consultants are continuing to work to make smaller modifications to accommodate the concerns of the individual property owners who spoke at the October 22, 2015 meeting. Ms. Grinnell expressed disappointment in the change in scope from the original project objectives and the danger of bicyclists and pedestrians traversing along Route 236 without a path. Ms. Driscoll-Davis noted sewer has recently expanded to that area of Route 236, therefore, development along that area is anticipated in the future. Ms. Driscoll-Davis further questioned if there is a way to prevent the engineering of a project to utilize a large portion of the project funds and avoid a similar situation in the future. Mr. Di Matteo agreed to work closely with the Planning Board, the State and developers to avoid future unnecessary project delays.

Mr. Di Matteo and Ms. Grinnell described the Action List to Mr. Dunkelberger and explained it as a Planning Board to-do list that is reviewed at the second meeting of each month to outline project priority and responsible party. Ms. Kalmar added the Planning Board and Town Council have three standing meetings each year to discuss code amendments.

ITEM 3 – Town Planner Items:

A. Ms. Grinnell asked the board if they have any comments on the storm water management code amendment draft that will be discussed at Monday’s workshop with Town Council. Ms. Kalmar noted on Title 16.8.8.2.3 – Applicability, the wording “does alter” should be changed to “alters” in the second sentence.

B. Ms. Grinnell asked the Board if they have any comments on the shoreland application code amendments that will be discussed at Monday’s workshop with Town Council. Mr. Dunkelberger commented line 28 is confusing and suggested a revision. Mr. Di Matteo explained the intent of the statement is to identify what is exempt from Planning Board approval by offering a list with the assumption that all development other than what is exempt requires approval. Ms. Kalmar suggested modifying 16.10.3.2.A so it reads “A. Single and duplex family dwellings. This exemption does not apply in the Shoreland or Resource Protection Overlay Zones.” Mr. Di Matteo agreed to review this.

Ms. Driscoll-Davis requested a revision of lines 23-26 for clarity. Ms. Grinnell agreed and questioned why “the Shoreland and Resource Protection Overlay Zones” are specified in the list of exemptions when the title paragraph includes that disclaimer. Ms. Kalmar differentiated between Shoreland Development review and Shoreland and Resource Protection Overlay Zone, and noted both need to be addressed in the code to meet DEP standards. A consensus not to alter lines 23-26 was reached.

C. Ms. Grinnell asked to clarify the name of the committee as names are currently used interchangeably, which can be confusing. Ms. Driscoll-Davis suggested continuing with the name Foreside Design Review Committee because that is how it is referred to in the code.

Mr. Di Matteo distributed minutes from a conversation that occurred in January 2015 regarding the dissemination of the Foreside Design Review Committee. Mr. Di Matteo encouraged the Board to decide whether they want to revive the committee as it is defined in the code, or remove the committee from the code and use the peer review model that was discussed at previous Planning Board meetings. Ms. Driscoll-Davis stated she believes the residents of the Foreside have a right to representation in the form of a committee, or there should be a zoning change to offer Foreside residents protection from mixed-use businesses. Mr. Di Matteo differentiated between advisory and advocacy feedback, and questioned whether these should come from the same body, or have independent sources. Ms. Kalmar agreed advisory input in relation to design review would be beneficial, and would need to have resident and

expert opinion but an advocacy group is best-fit working with the Comprehensive Plan Committee. Ms. Driscoll-Davis confirmed they were invited to the Comprehensive Plan Committee meeting held on January 20th, 2016, unfortunately they were unable to attend due to another commitment. Mr. Di Matteo stated the Comprehensive Plan Committee is breaking down to smaller groups so there is a possibility to shift the schedule so it meets the needs of the residents interested in the Foreside Design Review Committee.

Ms. Grinnell stated she is in favor of an advisory committee, but that she does not believe it should be referred to as a design review committee, because they will not have any voting or regulatory authority. Ms. Grinnell suggested the title Kittery Foreside Committee. Ms. Driscoll-Davis agreed and stated the original Foreside Committee was established with the intent to “revitalize” the Foreside, and noted the scope of the new committee would focus on the types of development and how that interacts with the Foreside residents. Ms. Driscoll-Davis is also in support of an advisory, Kittery Foreside Committee and recommended they work closely with the Comprehensive Plan Committee. Mr. Dunkelberger read Title 16.3.2.15 which states “KFC advisory design review is required for any project involving the construction of a new building, or enlargement or modification of an existing building”. Mr. Dunkelberger noted this definition does not match the intent the Board is stating they would desire from an advisory group. Ms. Grinnell asked if the Board would be in support of this. Mr. Alesse stated he would support a group working collaboratively with the Comprehensive Plan Committee.

Ms. Grinnell suggested taking the feedback from this conversation and placing this on the February 25, 2016 agenda to discuss further while the invested residents work to meet with the Comprehensive Plan Committee. Ms. Driscoll-Davis asked Mr. Di Matteo to reach out to invested residents to express the sentiments of this conversation to them. Mr. Di Matteo agreed.

Mr. Alesse made a moved to adjourn
Mr. Harris seconded
Motion carried 7-0-0

The Kittery Planning Board meeting of January 28, 2016 adjourned at 8:17 p.m.

Submitted by Rebecca Spitko, Assistant Town Planner, on February 5, 2016

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>.