

**CALL TO ORDER**

**ROLL CALL**

Present: Steve Bellantone, Member; Drew Fitch, Member; Ronald Ledgett, Member; Dutch Dunkelberger, Member; Russell White, Member; Mark Alesse, Member; and Karen Kalmar, Vice Chair,

Absent: None

Staff: Jamie Steffen, Town Planner; Adam Causey, Director of Planning and Development

Advisory: Earldean Wells, Conservation Commission

**PLEDGE OF ALLEGIANCE**

**ELECTION OF OFFICERS**

The Board moved to elect officers from its membership:

Chair – Mr. White nominated Dutch Dunkelberger for Chair. Seconded by Ms. Kalmar. There were no other nominations. All were in favor.

Vice Chair – Mr. Ledgett nominated Karen Kalmar for Vice Chair. Seconded by Mr. Dunkelberger. There were no other nominations. All were in favor.

Secretary – Mr. White nominated Mr. Ledgett for Secretary. Seconded by Mr. Dunkelberger. There were no other nominations. All were in favor.

Chair Dunkelberger expressed his appreciation to former Chair Ann Grinnell for her strong leadership and said he hoped to continue her legacy.

Chair Dunkelberger introduced new member Steve Bellantone.

**APPROVAL OF MINUTES – November 8, 2018**

**Mr. Ledgett moved to accept the minutes of November 8, 2018. Mr. Alesse seconded the motion.**

**The motion carried 6-0-1.**

**APPROVAL OF MINUTES – December 13, 2018**

Line 35 – the vote should be 4-0-1 since Mr. Dunkelberger was not at the site walk.

Line 182 – insert or Vice Chair in the line.

**Vice Chair Kalmar moved to accept the minutes of December 13, 2018 as amended. Mr. Ledgett seconded the motion.**

**The motion carried 5-0-2.**

The Chair opened the public comment section. There being none, the Chair closed the public comment section.

**PUBLIC HEARING**

**ITEM 1 – 230 U.S. Route 1 – Preliminary Site Plan Review**

Action: Approve or deny preliminary site plan Owner/Applicant Green Brook, LLC requests consideration to develop a food truck pod on a 1.04 acre lot located at 230 U.S. Route 1 (Tax Map 22 Lot 14) in the Commercial (C-1) Zone. Agent is Barbara Jenny.

Barbara Jenny, owner/applicant, gave a brief overview of the proposal. Vice Chair Kalmar asked if there were any changes since the Board last saw it. Ms. Jenny discussed the conversation that she had with MaineDOT regional engineers regarding the planter troughs in the ROW. She explained that DOT would consider them as fixtures in the ROW which would not be permitted. She spoke to the alternative which was to paint a yellow line the ROW pavement to better direct traffic. She also spoke to the waiver request process which can come from Town public officials.

Chair Dunkelberger opened the public hearing.

Liam Hardy, Wells, ME and a member of the Portland food truck community, spoke in favor of the project.

Chair Dunkleberger mentioned that the Board has also received a number of emails in support of the project. Chair Dunkelberger then closed the public hearing.

Vice Chair Kalmar commented about the need for more landscaping details. Mr. Steffen noted that it was typically required for final plan review which would be the next step. Ms. Jenny addressed the landscaping question and stated there were no plans to add additional plantings.

There was discussion amongst the Board and the planner about the landscaping requirement. It was decided that the landscaping plan would need to be furnished for the final plan review.

**Vice Chair Kalmar moved to approve the preliminary site plan dated December 9, 2018 from Owner/Applicant Green Brook, LLC for a food truck pod on a 1.04 acre lot located at 230 U.S. Route 1 (Tax Map 22 Lot 14) in the Commercial (C-1) Zone. Mr. Ledgett seconded the motion.**

**The motion carried 7-0-0.**

Mr. Fitch needed to excuse himself from the rest of the meeting.

## **OLD BUSINESS**

### **ITEM 2 - 88 Pepperrell Road – The Bistro – Parking Plan Review for Business Use Change**

Action: Approve Findings of Fact. Owner, Chatham Street, LLC, and applicant, Ann Kendall are establishing a new business entity in an existing facility, where intensity of use is significantly different, located at 88 Pepperrell Cove (Tax Map 27 Lots 2A & 49) in the Business Local (B-L), Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones.

Mr. Steffen stated the Board was only acting on the approval of the Notice of Decision and Findings of Fact.

Vice Chair Kalmar asked about the status of the reconsideration of the landscaping approval by the Board of Appeals. Mr. Causey explained that the BOA was scheduled to hear the request at their February 12 meeting but the meeting was cancelled due to the snowstorm. He discussed that the abutters have met with the applicants since the original decision by the BOA and the filing of the appeal for reconsideration and have

come to an agreement on the landscaping. He explained that the request for reconsideration was still out there until the BOA acts on it or it is rescinded.

The Board discussed postponing action on this item until after the BOA reconsideration.

**Mr. Ledgett moved to defer action on this item until after the BOA considers the appeal for reconsideration on the landscaping approval. Seconded by Vice Chair Kalmar.**

**Motion carried 6-0-0.**

**ITEM 4 - 459 U.S. Route One – Site and Subdivision Final Plan Review**

Action: Accept and deny application. Approve, approve with conditions, disapprove, postpone action or continue plan. Owner, DSS Land Holdings LLC, and applicant, Michael Brigham, request consideration of a mixed-use development consisting of a 112-room hotel, and three residential buildings with 32 elderly housing units and 12 residential units located at 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed Use (MU) Zone. Agent is Ken Wood, Attar Engineering.

Brian Nielsen, Attar Engineering, gave a brief update on the plans before the Board. Chair Dunkleberger asked about the phasing of the project noting that the hotel plans were not finalized and they had changed the order of the phasing of the proposed development. Mr. Nielsen explained the proposal now was to build the entrance road and the driveway to the existing doctor's office first and then foundations for the residential buildings. Chair Dunkelberger asked if they were only proposing to put in the one entrance for now. Mr. Nielsen responded by stating once the details are finalized with the hotel the second entrance will be added.

Mr. Ledgett stated that one of the questions will be what is the hotel going to look like. Michael Brigham, applicant, discussed the situation with the proposed building design for the hotel and the concern about the flat roof design. He noted that with the subdivision approval for the two lots he would like to go forward now with the residential development and then return at a later time with the building design plans for the hotel once those are finalized.

The Board discussed the phasing element, and the approvals for the project. Mr. Steffen laid out the options for the Board to consider for the approval. Mr. Causey spoke to the design guidelines and discussed how to bring something back to the Board

if it isn't the ideal design. He felt that the guidelines weren't strongly worded and have not been strictly adhered with previous approvals.

The consensus of the Board was to condition the approval on having the developer come back to the Board for approval of the final building design for the hotel once those are finalized. Chair Dunkelberger and the Board came to a consensus on the conditions of approval.

Ms. Wells asked about the location of stormwater pond #5. Mr. Nielsen responded that the sequential numbering got thrown off during the analysis for the State permitting. He indicated he would fix that. Ms. Wells then asked about the walking trail right in the middle of the wetlands. Mr. Nielsen clarified that it was the existing walking path edge of the passive recreation area. Ms. Wells expressed her concern about lack of snow storage area in the hotel parking area. Mr. Nielsen responded that they would relook at it.

**Mr. White moved to approve the 50-foot extension of the MU zone as allowed by Section 16.7.2.5 of the LUDC. Seconded by Mr. Ledgett.**

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

**Vice Chair Kalmar moved to approve the waiver request from Section 16.8.4.2.F of the LUDC to allow two entrances closer than 1,000 feet apart. Seconded by Mr. White.**

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

**Mr. White moved to approve the mixed use development final plan application dated 1/24/2019 as prepared by Attar Engineering, Inc. for owner DSS Land Holdings LLC, and presented by applicant Michael Brigham, Landmark Hill, LLC, for 459 U.S. Route 1 (Tax Map 60 Lot 24) in the Mixed-Use Zone with the following conditions: 1) sidewalk to be furnished and installed to the satisfaction of the Public Works Commissioner and at the developer's expense along the entire property frontage on Route 1; 2) design plans for the hotel that comply with Kittery's building design standards for the MU zone be approved prior to issuance of a building permit for the hotel building; 3) more detail be provided and shown on the plan to the satisfaction of the Town Planner for the landscape plantings within the parking areas; the maintenance plan and agreement for the common areas shall be reviewed and found satisfactory by CMA Engineers and**

**the Town Attorney, and 4) all of CMA Engineers review comments are addressed to their satisfaction. Seconded by Mr. Ledgett.**

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

## **FINDINGS OF FACT**

The Planning Board made the following factual findings and conclusions:

### **A. Development Conforms to Local Ordinances**

**Finding:** The proposed development conforms to the primary objective of the comprehensive plan for economic development as it seeks to redevelop an abandoned commercial property with mixed use. The site plan and subdivision plans comply with the provisions of Title 16.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

### **B. Freshwater Wetlands Identified.**

**Finding:** Wetlands have been delineated and are depicted on the overall site plan.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

### **C. River, Stream or Brook Identified.**

**Finding:** A small portion of Stream Protection District (Shoreland Overlay) is identified and depicted on the overall site plan.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

### **D. Water Supply Sufficient.**

### **E. Municipal Water Supply Available**

**Finding:** The Kittery Water District has the capacity to supply municipal water service for both domestic and fire protection purposes to the proposed development.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**F. Sewage Disposal Adequate.**

**Finding:** By letter from the Town's Superintendent of Wastewater Services, the Town sanitary sewer service is available for the proposed development and the sewer system will have the capacity and ability to handle the discharge flow estimates.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**G. Municipal Solid Waste Disposal Available**

**Finding:** Solid waste disposal will either be by contracted curb-side pick-up or residents may elect to utilize the Town Resource Recovery Facility. The proposed development will not burden the facility.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**H. Water Body Quality and Shoreline Protected.**

**Finding:** A 100' setback from the northern wetland will become a no cut, no disturb area and will remain undeveloped and undisturbed in perpetuity, including no mowing or removal of any vegetation without a permit from the Code Enforcement Officer.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**I. Groundwater Protected.**

**Finding:** The proposed development will be serviced by Town sewer. The runoff from developed areas on site will receive treatment in USF ponds prior to being discharged into on-site wetlands.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**J. Flood Areas Identified and Development Conditioned.**

**Finding:** There is no proposed development located within a flood prone area.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**K. Stormwater Managed.**

**Finding:** The use of Underdrained Soil Filter (USF) ponds to attenuate peak flows will result in no increases in peak runoff quantity from the proposed development. No adverse effects are anticipated on any downstream properties or drainage structures for the analyzed storm events. Runoff quality is addressed by use of USF ponds.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**L. Erosion Controlled.**

**Finding:** Best management practices will be employed as required by the Erosion & Sedimentation Control Plan.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**M. Traffic Managed.**

**Finding:** The applicant has provided a traffic analysis.

1. A traffic movement permit was previously issued by Maine Department of Transportation (MDOT) for 619 peak hour trips. The proposed mixed use development will have a significantly lower number of peak hour trips at 115 AM and 133 PM. There are two proposed entrances within 1000' of each other. The applicant has received a waiver from this requirement. Site distance from both site drives was measured by Attar Engineering, Inc. and was found to exceed 800' in both directions.
2. The project roadways and drives are designed to accommodate the projected traffic numbers and provide adequate traffic circulation.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**N. Water and Air Pollution Minimized.**

**Finding:**

1. 1. The proposed development is located outside of a floodplain.
2. 2-4. The proposed development will be serviced by Town sewer.
3. 5. The proposed development will adhere to all applicable State regulations.
4. 6. Not applicable to the proposed development.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**O. Aesthetic, Cultural and Natural Values Protected.**

**Finding:** The property does not include any significant aesthetic, cultural or natural values that require protection.

**Conclusion:** This standard appears to be met.

**Vote of 6 in favor 0 against 0 abstaining**

**P. Developer Financially and Technically Capable.**

**Finding:** The developer has been involved with large scale construction projects through completion. 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.

**Vote of 6 in favor 0 against 0 abstaining**

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board hereby grants final approval, including approval for a special exception use request for the development at the above referenced property, including any waivers granted or conditions as noted.

**Waivers:**

- 1) Section 16.8.4.2.F of the Land use and Development Code (LUDC) to allow two entrances closer than 1,000 feet apart.

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

1. A revised phasing plan must be submitted and approved by the town planning staff.
2. Sidewalk must be installed to the satisfaction of the Public Works Commissioner along the property's Route 1 frontage.
3. Design plans for the hotel that comply with Kittery's building design standards for the MU zone must be approved by the Planning Board prior to issuance of a building permit for the hotel building.
4. More detail must be provided to the satisfaction of the Town Planner for the landscape plantings within the parking areas.
5. The maintenance plan and agreement for the common areas shall be reviewed and must be found satisfactory by CMA Engineers and the Town Attorney.
6. All of CMA Engineers' review comments are addressed to their satisfaction.
7. No changes, erasures, modifications, or revisions may be made to the approved plan, and no further land division or additional dwelling units may be established without Planning Board-approval.
8. 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.
9. 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 complete and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
10. All Notices to Applicant contained in the Findings of Fact (dated: February 14, 2019).

**Conditions of Approval (NOT to be depicted on the final plan):**

11. 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. The amended subdivision plan must be submitted to

Staff for review prior to recording with the York County Registry of Deeds within 90-days of approval.

12. Prior to any earthwork and clearing, all required Maine Department of Environmental Protection permits must be approved and submitted to the Town for recording.

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**

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 4 - 50 Chauncey Creek Road – Shoreland Development Plan Review.**

Action: Accept or deny application. Approve or deny plan. Owners and applicants, Thomas and Michele Jordan request consideration to reconstruct and expand a nonconforming single family dwelling on a 7,800 +/- square foot parcel located at 50 Chauncey Creek Road (Tax Map 44 Lot 59) in the Residential Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250') and Resource Protection (OZ-RP) zones. Agent Tom Emerson, studioB-E.

Tom Emerson, architect, studioB-E, gave an overview of the project. He stated that there was a change in the plans since the December meeting presentation. They have deleted the building portion that jutted out over the 1<sup>st</sup> floor sitting room. It will now be a roof deck with the face of the wall back to where it currently is.

He discussed the proposed storage shed and noted that DEP and their legal team was looking at it. He stated his contention that the existing boathouse is below the high water mark and therefore are not part of the lot area and would not be considered the accessory structure on the main portion of the property. After question from Mr. Ledgett, Mr. Emerson described the use of the existing boathouse. It is not a water dependent structure. Mr. Emerson discussed the intent of the State law on the accessory structure for lawn tools was to keep hazardous materials off of the resource. Mr. Ledgett expressed his opinion that if the boathouse was not a water dependent structure than it would be considered the accessory structure. The Board determined

that they were not going to be able to make a determination on this issue until it gets a legal opinion.

Mr. Ledgett then asked about the railings for the roof deck and whether they would be considered an expansion within the 25 foot setback.

The Board set a date for a site walk to inspect the property for February 28<sup>th</sup> at 10:30 am. The Board also decided to hold a public hearing and scheduled that for the March 14<sup>th</sup> meeting.

**Vice Chair Kalmar moved to schedule a site walk for Thursday, February 28<sup>th</sup> at 10:30 am. Seconded by Mr. Bellantone.**

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

**Vice Chair Kalmar moved to schedule a public hearing for March 14<sup>th</sup>. Seconded by Mr. Bellantone.**

**The motion passed 6-0-0.**

**ITEM 5 - Huntington Run - Cluster Subdivision Final Plan Review**

Action: Accept and deny application. Approve, approve with conditions, disapprove, postpone action or continue plan. Owner, Landmark Properties, LTD and Kingsbury and Veronica Bragdon, and applicant, Chinburg Builders, Inc., request consideration of a 20-lot cluster subdivision on 86.6 +/- acres located on Betty Welch Road (Tax Map 66 Lots 2A, 8 & 8A) in the Residential Rural Zone (R-RL) and a portion located in the Shoreland Overlay (SH-250'-OZ) Zone. Agent is Jeff Clifford, P.E., Altus Engineering.

Jeff Clifford, Altus Engineering, gave an update on where the project was in the review process. He discussed the MDEP permit approval under the Site Location of Development Law and the Maine Department of Health and Human Services (DHHS) approval for the proposed engineered wastewater system.

Vice Chair Kalmar discussed her concerns with the waiver language in the code. Mr. Clifford responded that the reduced pavement width would force slower driving speeds. He discussed other cluster subdivisions which had 20' wide pavements and 2' wide gravel shoulders which had been approved by the Planning Board. Mr. White stated he agreed that the wider pavement did encourage greater speeds. He discussed putting in sidewalks of paths so people had the option of getting off the road.

There was more discussion amongst the Board and Mr. Clifford regarding road widths and the applicant making a case for the Board granting the waivers. Mr. Clifford commented on CMA Engineer's input on the roadway design and highlighted their suggestion for 1' of paved shoulder on both sides.

Mr. Clifford discussed the other waiver requests. He spoke to the Impact Analysis that they had provided. There was some discussion amongst the Board and Mr. Clifford relative to the impacts on Town services. Mr. Clifford also discussed the wetlands alteration. Total impacts are 6,478 sf which translates into a mitigation fee of over \$25,000. He discussed CMA Engineer's review comments and how they have addressed them, in particular the concerns about the wastewater systems. There was discussion about the maintenance responsibilities and the system requirements.

Mr. Clifford discussed CMA's concern about auxiliary power for the systems and stated that each homeowner would get portable generator for the wastewater treatment systems and would have the opportunity to purchase permanent ones if they so chose.

Ms. Wells expressed concern about failure in the pumping system and the length of time she had heard for repair. Mr. Clifford addressed her concern in detail explaining the functioning and operation of the pumping systems.

Mr. Clifford noted that they had received a letter from the Kittery Water District giving their final approval of the design of the water infrastructure and proposed materials.

Chair Dunkelberger discussed his concerns about the road shoulders. He mentioned the suggestion about installing walking and riding signs on one side of the street. He suggested paving one side of the street at 4' and the other side having 2' gravel shoulder. Mr. White stated he would support CMA Engineer's recommendation. Chair Dunkelberger polled the rest of the Board. Mr. Alesse, Mr. Ledgett and Vice Chair Kalmar were not in support of the waiver request. Mr. Bellantone stated he could support CMA Engineer's recommendation. The Board and Mr. Clifford again discussed the roadway design and not meeting the Town's standard. Mr. Causey stated the department's position on staff reviews was to adhere to what is required in the ordinance but he did acknowledge the waiver provision and the input from CMA Engineers and the department heads on these matters.

The Board and Mr. Steffen discussed the wetlands alteration permit approval. Mr. Clifford responded that they have addressed the impacts through their wetlands mitigation offering.

**Mr. Ledgett moved to continue the application to resolve the waiver requirements of the proposed roadway design not to exceed 90 days. Seconded by Mr. Alesse.**

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

Ms. Wells questioned the common open space area including wetlands. Mr. Clifford explained that they had demonstrated that the open space area of 76 acres had the required upland and no future ballfields could be built in wetlands.

**ITEM 8 – Board Member Items/Discussion**

- A. Chair Dunkelberger noted that the Election of Officers was done earlier in the meeting and he then discussed his approach to Board member questions through the Chair.

**ITEM 9 - Town Planner Items**

- A. Title 16 Recodification update  
Mr. Causey informed the Board that the effort was moving forward. He noted that KOSAC has been renamed to the Kittery Land Issues Committee (KLIC). He reminded the Board about the upcoming Elected & Appointed Officials Meeting on March 4<sup>th</sup> and discussed the format.
- B. Mr. Causey informed the Board about the MMA workshop for Board training in Portland on March 20<sup>th</sup>. The Board discussed attending and logistics.

**Adjournment**

**Mr. Alesse moved to adjourn the meeting.  
Mr. Ledgett seconded the motion.**

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

The Kittery Planning Board meeting of February 14, 2019 adjourned at 8:50 p.m.

Submitted by Jamie Steffen, Town Planner, on March 25, 2019.

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

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

**APPROVED  
February 14, 2019**

refer to the video of the meeting on the Town of Kittery website at  
<http://www.townhallstreams.com/locations/kittery-maine>.