

CALL TO ORDER

ROLL CALL

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

Absent: Steve Bellatone, Member

Staff: Jamie Steffen, Town Planner; Jessa Kellogg, Shoreland Resource Officer / Stormwater Coordinator, and Adam Causey, Director of Planning and Development

Advisory: Earledean Wells, Conservation Commission

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

The Chair opened the Public Comments session.

There being none the Chair closed the Public Comments session.

PUBLIC HEARING

ITEM 1 – 96 Pepperrell Road – Shoreland Development Plan Review

Action: Hold Public Hearing. Approve or deny plan. Owners/applicants Paul J. & Jessica O. McKeon request consideration for repair/replacement of an existing stone revetment and other site improvements on a 12,333 sf parcel located at 96 Pepperrell Road (Tax Map 27 Lot 47) in the Residential – Kittery Point Village (R-KPV) and the Shoreland Overlay (OZ-SL-250') Zones. Agent Steven Riker, CWS - Ambit Engineering, Inc.

Steve Riker, Ambit Engineering, gave an update on the plans as a result of the site walk. He explained the error in the de-vegetated area calculations for the porous flagstone walkway and the resulting adjustment. He addressed the question from the site walk on the septic system location.

Jessa Kellogg, Interim Code Enforcement Officer and Shoreland Resource Officer addressed the question from the site walk on whether the boathouse improvement fell under the 50% of market removal provision in the nonconformance section of the Code.

She explained that she looked at the tax assessment card and determined that the proposed improvement was less than 50% of the assessed value of the structure. She further explained the reasons for why it did not come before the Planning Board which included no change to the foundation or the height of the structure. The work, she explained was simply repair and maintenance of the structure.

There was discussion amongst the Board and Ms. Kellogg regarding the boathouse use, and the remodeling of the interior of the structure. Ms. Kellogg explained that the use as dwelling of any kind would not be permitted by Staff.

Mr. Ledgett explained his concern that there does not appear to be any record of the work that has been done to the pier deck and railings. Chair Dunkelberger stated that if there were any violations related to that work it would need to be pursued separately. The proposal before the Board was for modifications to the main house.

Vice Chair Kalmar stated that she would like to have Staff input on Code items provided in a more timely fashion. Chair Dunkelberger suggested having workshop with Staff to discuss the reviewing authority for these types of situations.

Mr. White moved to approve the Shoreland Development Plan application dated 6/14/19 from owners/applicants Paul J. & Jessica O. McKeon for repair/replacement of an existing stone revetment and other site improvements on a 12,333 sf parcel located at 96 Pepperrell Road (Tax Map 27 Lot 47) in the Residential – Kittery Point Village (R-KPV) and the Shoreland Overlay (OZ-SL-250') Zones. Seconded by Vice Chair Kalmar.

The motion carried 5-1-0.

Chair Dunkelberger opened the Public Hearing.

No one from the public wished to speak.

Chair Dunkelberger closed the Public Hearing.

FINDINGS OF FACT

The Planning Board made the following factual findings and conclusions:

Section 16.3.2.17.D Shoreland Overlay Zone

(1)(d). The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones: Residential-Urban (r-U) Zone where the lot is equal to or less than 10,00 square feet, the maximum de-vegetated area is fifty (50) percent.

Finding: The existing de-vegetated and impervious surfaces area is 45.2% of the lot area. The applicant will remove some impervious surfaces and revegetate to lower the overall de-vegetated area to 44.1%.

(2) (a) [3] The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor do they apply to other functionally water-dependent uses, as defined in 16.2.

Finding: Though the retaining wall is considered a new structure in the Shoreland Overlay Zone closer to the water body than the principal structure, the proposed revetment is exempt from meeting the 100 foot setback requirement as it is an operational necessity.

Conclusion: The standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

Section 16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Finding: This is an existing, nonconforming lot with an existing single family dwelling structure that is nonconforming to the 100-foot setback from the water and the side yard setback. A dwelling is a special exception use in the Shoreland Overlay Zone. The proposed development does not increase the nonconformity as permitted in 16.7.3.3.B. Nonconforming structure repair and/or expansion.

Conclusion: This requirement appears to be met.

Vote of 5 in favor 1 against 0 abstaining

Section 16.7.3.3 Nonconforming Structures

16.7.3.3.B Nonconforming structure repair and/or expansion

Finding: The proposed improvements increase the existing structure volume by 12.9% but the structure area will decrease from 1,757 sf to 1,703 sf nonconformity as permitted in 16.7.3.3.B. (3) (e) [5] [a] Nonconforming structure repair and/or expansion.

Conclusion: This requirement appears to be met.

Vote of 6 in favor 0 against 0 abstaining

Section 16.6.6. Basis for Decision

16.6.6.A.2 In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.3.B.(1) above] must use the following criteria as the basis of a decision:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote of 6 in favor 0 against 0 abstaining

Section 16.10.10.2 Procedure for Administering Permits

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

Finding: The Planning Board made a positive finding on Criteria 1-10 with all of the criteria appearing 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 approves the Shoreland Development Plan.

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Vote of 5 in favor 1 against 0 abstaining

OLD BUSINESS

ITEM 2 – 7 Stoneridge Way- Right of Way Plan Review

Action: Accept or deny application. Approve or deny plan. Owner/Applicant, Joshua Philbrick requests consideration for an additional dwelling on a 4.89-acre lot on a private right-of-way off Remicks Lane (Tax Map 65 Lot 17) in the Residential Rural (R-RL) Zone.

Joshua Philbrick, owner/applicant, stated that he was waiting for the revised plans from his surveyor and just about complete on the draft private road association documents.

Chair Dunkelberger discussed the conditions of approval and noted that Staff can enforce them through an Assessing database feature.

Mr. White moved to approve the waiver requested from Section 16.8, Table 1b. Travel pavement to allow the existing gravel surface. Seconded by Mr. Ledgett.

The motion carried 6-0-0.

Move to approve the waiver requested from Section 16.8.4.13, Table 1c. Sidewalk/pedestrian way to not require the construction of a sidewalk along the existing ROW. Seconded by Mr. Ledgett.

The motion carried 6-0-0.

Move to approve the waiver requested from Section 16.8, Table 1d. Gravel shoulder to not require gravel shoulders on both sides. Seconded by Mr. Ledgett.

The motion carried 6-0-0.

Move to approve the right-of-way plan application with associated plan dated {plan date to be specified} from owner / applicant, Joshua L. Philbrick for an additional dwelling unit on a 4.89-acre lot on a private right-of-way off Remicks Lane (Tax Map 65 Lot 17) in the Residential Rural (R-RL) Zone with the following conditions:

- 1) No more than five (5) dwelling units may be serviced by Stoneridge Way until the road is brought up to the Town's Class II Private Streets road design and construction standards. This requirement may not be waived, except for the required sidewalks; and,**
- 2) A formal private road association must be formed and chartered to maintain the ROW with approval of the association documents by the**

Kittery Planning Department and the Town Attorney prior to the issuance of a Certificate of Occupancy. Seconded by Vice Chair Kalmar.

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 right-of-way serving the duplex conforms to applicable Title 16 standards with the waivers and conditions of approval included herein.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

B. Freshwater Wetlands Identified.

Finding: All wetlands have been identified and no impacts are proposed.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

C. River, Stream or Brook Identified.

Finding: No rivers, streams or brooks have been identified on site.

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 proposed development has received a building permit for the construction of a duplex.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

F. Sewage Disposal Adequate.

Finding: The proposed duplex has an approved septic system.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available

Finding: The proposed duplex will not cause an unreasonable burden on the Town's 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: This right-of-way is not located in the Shoreland or Resource Protection Overlay Zones.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

I. Groundwater Protected.

Finding: The proposed duplex will not adversely affect groundwater.

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 are no flood prone areas present.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

K. Stormwater Managed.

Finding: The proposed duplex is located on a 4.89-acre lot that will provide for adequate stormwater management.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

L. Erosion Controlled.

Finding: The contractor is following MDEP best management practices for erosion and sedimentation control with site work for the duplex.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

M. Traffic Managed.

Finding: There will be a negligible increase in traffic with the additional dwelling. However, note Stoneridge Way right-of-way (ROW) is at maximum capacity and no other homes will be allowed until the ROW is upgraded per condition of approval #2.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

1. All proposed development is located outside of a Flood Hazard Area.
2. Addressed in the previous standard on waste disposal.
- 3-6. Not applicable to the proposed development.

Finding: The proposed duplex will not result in undue water of air pollution.

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 impact 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 applicant has received financing to construct the proposed duplex on the lot.

Conclusion: This standard appears to be met.

S. For a Right-of-Way.

Finding: The ROW does not create any nonconforming lots or buildings and provides adequate of passage for an automobile.

Conclusion: This standard appears to be met.

Vote of 6 in favor 0 against 0 abstaining

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:

1. Section 16.8, Table 1b. Travel pavement to allow the existing gravel surface.
2. Section 16.8.4.13, Table 1c. Sidewalk/pedestrian way to not require the construction of sidewalk along the existing ROW.
3. Section 16.8, Table 1d. Gravel shoulder to not require gravel shoulders on both sides.

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. No more than five (5) dwelling units may be serviced by Stoneridge Way until the road is brought up to the Town's Class II Private Streets road design and construction standards. This requirement may not be waived, except for the required sidewalks.

3. A formal private road association must be formed and chartered to maintain the ROW with approval of the association documents by the Kittery Planning Department and the Town Attorney prior to the issuance of a Certificate of Occupancy.
4. All Notices to Applicant contained in the Findings of Fact (dated: 7/11/2019).

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 3 - 76 Dennett Road – Mixed-Use Residential Development – Site Preliminary Plan Review

Action: Accept or deny application. Schedule public hearing. Owners William J. Cullen and Sail Away, LLC and applicant William Wharff request consideration of a mixed-use residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map 6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use - Neighborhood (MU-N) Zone. Agent is Shawn Tobey, P.E. Hoyle, Tanner Associates, Inc.

Mr. Tobey gave an overview of their preliminary plan submission.

The Board had the following questions / comments on the proposed plans:

- COAST bus service for the project and location of a bus stop if service is provided. Mr. Tobey responded that bus service and provisions of sidewalks in front of the property would be coordinated with Maine DOT for the traffic scoping meeting.
- Minimum square footage of the studio apartments. Mr. Tobey responded that the minimum size would be 650 sf per the Land Use and Development Code (LUDC)
- Responses to CMA Engineers plan review comments. Soils map and wetlands delineations need to be stamped and signed.

- Roadway easement established to connect to adjacent properties. Mr. Tobey responded that it would take coordination with adjacent property owners which they had been able to do yet. The Board noted there might be an opportunity to look the road connectivity issue at the site walk.

Ms. Wells asked for more plant diversity for the proposed landscaping and to have a landscape architect look at the proposed plantings to see if they are acceptable. She also voiced a concerns about the proposed wet ponds 2 and 3 being close to wetlands and a stream. She also asked if the Planner could provide information on the wetlands impact permit for the existing road crossing. Her concern was that it be a properly sized culvert. Mr. Tobey stated that the culvert was sized based upon their modeling and that those calculations were provided to CMA Engineers.

Vice Chair Kalmar moved to accept the site preliminary plan dated June 20, 2019 as prepared by Hoyle, Tanner & Associates, Inc., for owners William J. Cullen and Sail Away, LLC and applicant William Wharff for a mixed-use residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map 6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use - Neighborhood (MU-N) Zone as complete. Seconded by Mr. Ledgett.

The motion carried 6-0-0.

Mr. White moved to schedule a site walk for Tuesday, July 23rd at 10:30 am. Seconded Mr. Ledgett.

The motion carried 6-0-0.

Mr. White moved to schedule a public hearing on August 8, 2019 for the site preliminary plan, dated June 20, 2019 as prepared by Hoyle, Tanner & Associates, Inc., for owners William J. Cullen and Sail Away, LLC and applicant William Wharff for a mixed-use residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map 6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use - Neighborhood (MU-N) Zone. Seconded by Vice Chair Kalmar.

The motion carried 6-0-0.

ITEM 4 - Old Post Road / Bridge Street – Cluster Residential Development – Sketch Plan Review

Action: Accept or deny application. Approve or deny concept plan. Owner MAC Properties Bridge Street, LLC and applicant Silver Holdings, LLC request consideration of a three (3) building, 11-unit cluster residential development on 3.02+- acre parcel on Old Post Road / Bridge Street (Tax Map 3 Lot 77A) in the Residential – Urban (R-U) Zone. Agent is Shawn Tobey, P.E. Hoyle, Tanner Associates, Inc.

Mr. Tobey gave an overview of the conceptual site plans. He explained the cluster proposal and noted that they were looking at clustering the units in the center of the site and providing over 50% open space around the perimeter in exchange for more units through the cluster modifications.

The Board had the following questions / comments on the proposed plans:

- Concern about the amount of site work, ledge removal required to get the driveway in. Mr. Tobey stated that the design for the driveway would be at a 10% grade or less.
- Clarification on the proposed parking for the units at ground level.
- Concern about access to the site in winter conditions. Mr. Tobey discussed trying to lower the grades. He also noted that they would be utilizing a professional maintenance contract for snowplowing / removal.
- Concern was also expressed about the sheer drop-off of the property where it meets Old Post Road.

Mr. White moved to accept and approve the cluster residential sketch plan – major subdivision, dated June 20, 2019 as prepared by Hoyle, Tanner & Associates, Inc., for owner MAC Properties Bridge Street, LLC and applicant Silver Holdings, LLC for a three (3) building, 11-unit cluster residential development on 3.02+- acre parcel on Old Post Road / Bridge Street (Tax Map 3 Lot 77A) in the Residential – Urban (R-U) Zone. Seconded by Mr. Fitch.

The motion carried 6-0-0.

ITEM 5 - 60 Route 236 – Sketch Site Plan Review

Action: Accept or deny application. Approve or deny sketch plan. Owner/applicant Washburn Realty Group, LLC requests consideration of a sketch site plan for a 4,608+-

sf 2 story building on a 73,330 sf lot at 60 Route 236 (Tax Map 29, Lot 14) in the Commercial (C-2) Zone. Agent is John Chagnon, Ambit Engineering, Inc.

Mr. Chagnon gave an overview of the proposal. He spoke to the challenges of redeveloping the site which included access and parking, narrowness and grade and proximity of wetlands in the rear.

He spoke to the need for variances from the setback requirements. He also to the parking regulations. Concerning the parking requirement for the proposed use, Mr. Steffen noted that the Code (Section 16.8.9.4 C.) has built in some flexibility. He commented that even though the proposed use includes a retail sales component with a showroom he felt that utilizing the retail parking requirement of 1 parking space for each 175 square feet was excessive in this case.

The Board had the following questions / comments on the proposed plans:

- Frequency of the truck traffic and the size of the trucks. Mr. Chagnon noted that the design vehicle was WD-40.
- Had the applicant been to the Board of Appeals yet for the necessary relief from the setback requirements. Mr. Chagnon replied that application had been made and they would be meeting with the Board on July 23rd.

Vice Chair Kalmar moved to approve the sketch plan application dated April 2019, revised 6/20/19 from owner/applicant Washburn Realty Group, LLC for a 4,608+- sf 2 story building at 60 Route 236 (Tax Map 29, Lot 14) in the Commercial 2 (C-2) Zone pending Board of Appeals approval of variances. Seconded by Mr. Ledgett.

The motion carried 6-0-0.

ITEM 6 – Board Member Items / Discussion

Vice Chair Kalmar discussed the need to get a common understanding among the Board and Staff on the shoreland zoning provisions of Section 16.7.3.3 – Nonconforming structure reconstruction and repair and/or expansion. A workshop with Staff was suggested and a date and time of August 22nd at 5 pm was set.

ITEM 7 - Town Planner Items

- A. Minor Modification to an Approved Plan – 335 U.S. Route One

Ms. Kellogg gave a summary of this approval. These modifications were for miscellaneous changes to drive-thru area and a small freezer addition. There would be no changes to parking requirements of traffic flow.

Adjournment

Mr. White moved to adjourn the meeting.

Mr. Ledgett seconded the motion.

The motion carried 6-0-0.

The Kittery Planning Board meeting of July 11, 2019 adjourned at 7:37 p.m.

Submitted by Jamie Steffen, Town Planner, on September 17, 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 refer to the video of the meeting on the Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>.