

Current Zoning:

Residential - Urban (R-U) Zone. The purpose of the Residential — Urban R-U Zone is to preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title.

The following use is a Permitted Use in the R-U Zone: (6) Dwelling, Single-family.

Current Use:

Vacant land, construction of the single-family dwelling has begun.

Site Description:

The subject property consists of roughly 0.18 vacant property. The buildable area is impacted by wetland setbacks per the attached survey.

Relevant Background:**Description of the Issue:**

The current owner of 17 Page Street purchased the property in 2023 with the intention of constructing a single-family dwelling. The property had been classified as “unbuildable” as it is under the State’s minimum lot size for subsurface wastewater systems and did not have direct access to the Town’s sewer system. The owner petitioned the Town for an easement across Town land for a sewer easement, which was granted, therefore making the lot buildable. The applicant applied for a building permit and supplied the following documentation:

- 1) Full construction documents;
- 2) Site plot plan;
- 3) CMP Form 1190;
- 4) Copy of the property owner’s deed; and
- 5) A wetland delineation prepared by Longview Partners, LLC dated 9/28/23

As part of the building permit review process, owner was asked for and provided the soil scientists name and license number (James Logan, Lic. #SS213). This license was verified by Staff to be current and valid through the State of Maine’s ALMS License Search tool. Code Enforcement was contacted by Mr. Taylor over concerns that the wetland delineation was performed was done incorrectly. Staff re-reviewed the provided documentation, as well as reached out to Mr. Logan to verify information regarding the wetland

delineation. Based on this, it was determined that the building permit was lawfully issued, Code Enforcement took no action and notified the abutter and his counsel of their right to appeal the issuance of the building permit.

Administrative Appeal:

Section ~~16.6.6~~16.2.12F requires the Board of Appeals to use the following process when hearing appeals:

§ ~~16.6.6~~16.2.12F *Basis for decision.*

A. *Conditions.*

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

LUDC Section ~~16.6.3~~16.2.12 states that “a Code Enforcement Officer decision may be appealed to the Board of Appeals as provided in § ~~16.6.4A~~16.2.12D(1).”

- (2) *In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) *The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

The use will not prevent the orderly and reasonable use of adjacent properties since all adjacent properties are zoned Residential Urban and contain the same occupancy classifications as the subject property.

- (b) *The 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;*

The use will not prevent the orderly and reasonable use of legally established uses in the zone as the use is permitted in the zone by right.

- (c) *The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

The use will not adversely affect the health and welfare of the Town.

- (d) *The use will be in harmony with and promote the general purposes and intent of this title.*

The use is in harmony with Title 16 as it falls under a permitted use in the Residential Urban zone.

Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

The use involved is a permitted use in the zone.

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

The use involved is a permitted use in the zone.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

The proposed development will add a single-family dwelling. This will create slightly more traffic, but as the lot was existing the road was designed for the traffic generated by the number of lots originally created.

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

This dwelling will be connected to the public sewer system.

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

The use will not produce obnoxious gases, odors, smoke or soot.

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

The use causes no disturbing emission of electrical discharges, dust, light, vibration or noise.

- (7) *Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

The property contains suitable space for paved off-street parking.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

No hazards should result from this use.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowding should result from this use.

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

The existing lot is a legally non-conforming lot.

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

Residential uses do not require screening or buffering.

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

The lot is a natural low point on Page Street. The owner is installing a crawl space foundation to limit potential for water intrusion, as well as adding foundation drainage to carry water to the natural low point in the back of the lot.

- (14) *Whether the proposed use will provide for adequate pedestrian circulation;*

The use will not interfere with pedestrian movement.

- (15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

The proposed use will not create a noise nuisance.

- (16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters [16.1](#), ~~16.6~~[16.2](#) and 16.7.*

The proposed use appears to adhere to the applicable standards in Title [16.1](#), ~~16.6~~[16.2](#) and 16.7 as a permitted use in the Residential Urban zone.