

**FINDINGS OF FACT
For 76 Dennett Road
Site Plan Review**

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner William J. Cullen and Sail Away, LLC and applicant, William Wharff, proposes 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 proposing to construct 303 residential units with 3,000-sf of commercial space together with associated site improvements and dedicated open space.

Hereinafter the “Development,”

And pursuant to the Plan Review meetings conducted by the Planning Board (*as duly noted in the Plan Review Notes dated 6/25/2020*);

Sketch Plan Acceptance/Approval	APPROVED	5/9/2019
Site Visit	HELD	7/23/2019
Preliminary Plan Review Completeness/Acceptance	ACCEPTED	7/11/2019
Public Hearing	HELD	8/8/2019
Preliminary Plan Approval	APPROVED	9/29/19
Final Plan Review and Decision	PENDING	PENDING

And pursuant to the application, plans and other documents considered to be a part of the plan approval by the Planning Board in this finding consist of the following { *as noted in the Plan Review Notes prepared for 6/25/2020* } (hereinafter the “Plan”):

1. Final Plan Application with Municipal Impact Statement dated May 21, 2020—Hoyle, Tanner Associates Inc.
2. Site Plan and associated plan set, Sheets C1 – C28, dated June 20, 2019, and last revised on June 17, 2020— Hoyle, Tanner Associates Inc.
3. Conceptual Floor and Elevation Plans, dated June 17, 2019 and last revised on August 21, 2019—Cube 3 Studio LLC
4. Inspection and Maintenance Plan, dated August 22, 2019—Hoyle, Tanner Associates Inc.
5. Waiver Application, dated May 21, 2020—Hoyle, Tanner Associates Inc.
6. Planning Board Peer Reviewer Comments and Reports, dated July 2, 2019, August 8, 2019, August 22, 2019, September 9, 2019, January 9, 2020, February 5, 2020, February 27, 2020 and June 1, 2020—CMA Engineers, Inc.
7. Landscape Design Review, dated December 9, 2019—Ironwood Design Group
8. Army Corps of Engineer Approval, dated January 8, 2020
9. Maine DOT Traffic Movement Permit Approval, dated March 23, 2020
10. Maine DEP Revised Final Stormwater Review Application and Correspondence, dated March 5, 2020
11. Maine Historic Preservation Commission, dated July 7, 2019
12. Kittery Water District Approval, dated May 30, 2019
13. Kittery Sewer Department Approval, dated May 23, 2019
14. Town of Kittery Department of Public Works Comments, dated July 2, 2019
15. Town of Kittery Fire Department Comments, dated July 3, 2019

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by section **16.10.8.3.4** and as recorded below:

<p>FINDINGS OF FACT</p> <p>Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:</p>
<p>A. Development Conforms to Local Ordinances.</p> <p><i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i></p> <p>Finding: The proposed development conforms to the primary objective of the comprehensive plan for economic development as it seeks to improve undeveloped property with a mixed-use residential development, while complying with the provisions under Title 16 for site plan review.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>B. Freshwater Wetlands Identified.</p> <p><i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i></p> <p>Finding: All wetlands and vernal pools have been delineated and are depicted on the overall site plan.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>C. River, Stream or Brook Identified.</p> <p><i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i></p> <p>Finding: A stream qualifying under 38 M.R.S. §480-B, Subsection 9. was identified at the southeast corner of lot 6-16A of the proposed development.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>D. Water Supply Sufficient.</p> <p><i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i></p>
<p>E. Municipal Water Supply Available.</p> <p><i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i></p>

<p>Finding: The Kittery Water District has the capacity to supply municipal water service for both domestic and fire protection purposes to the proposed development.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of ___ in favor ___ against ___ abstaining</p>
<p>F. Sewage Disposal Adequate.</p> <p><i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i></p>
<p>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.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of ___ in favor ___ against ___ abstaining</p>
<p>G. Municipal Solid Waste Disposal Available.</p> <p><i>The proposed development will not cause an unreasonable burden on the municipality’s ability to dispose of solid waste, if municipal services are to be used.</i></p>
<p>Finding: Solid waste disposal will be contracted to a private waste disposal company for dumpster pick-up. It is anticipated that solid waste will not be deposited at the Kittery Resource Recovery Facility.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of ___ in favor ___ against ___ abstaining</p>
<p>H. Water Body Quality and Shoreline Protected.</p> <p><i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i></p>
<p>Finding: The applicant is proposing to fill approximately 1,500 square feet of wetland in order to connect the two sections of the development. Nevertheless, the proposed development was designed thoughtfully to protect the existing vernal pool and other untouched wetlands with large vegetation buffers and other BMPs. Moreover, the project includes a design to provide access to common open space and a nature trail loop for residents and the public that overlooks the vernal pool and surrounding wetlands. Furthermore, during the course of this review, the Army Corps of Engineers approved the proposed project on January 8, 2020, while the applicant obtain tacit approval from Maine DEP, final approval for a Site Location of Development Act permit has yet to be granted and will need to be secured by the applicant prior to the commencement of construction.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of ___ in favor ___ against ___ abstaining</p>
<p>I. Groundwater Protected.</p> <p><i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i></p>

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

Conclusion: This standard appears to be met.

Vote of in favor against abstaining

J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

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

Conclusion: This standard appears to be met.

Vote of in favor against abstaining

K. Stormwater Managed.

The proposed development will provide for adequate stormwater management.

Finding: The use of stormwater wet 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 wet ponds and other designed best management practices.

Conclusion: This standard appears to be met.

Vote of in favor against abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

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

Conclusion: This standard appears to be met.

Vote of in favor against abstaining

M. Traffic Managed.

The proposed development will:

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

Finding: The applicant has provided a traffic analysis.

1. A traffic movement permit was issued by Maine Department of Transportation (MDOT) for an estimated trip generation of 149 trips during a typical weekday PM peak hour and 99 trip ends during a typical AM peak hour which will not adversely impact the site and surrounding neighborhood. To ensure the increase in trip generations shall not adversely affect the area, MDOT has conditioned their approval with mandatory mitigation measures the development must implement as enumerated in their March 23, 2020 approval.
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 __ in favor __ against __ abstaining

N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. Elevation of the land above sea level and its relation to the floodplains;
2. Nature of soils and sub-soils and their ability to adequately support waste disposal;
3. Slope of the land and its effect on effluents;
4. Availability of streams for disposal of effluents;
5. Applicable state and local health and water resource rules and regulations; and
6. Safe transportation, disposal and storage of hazardous materials.

Finding:

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

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Finding: The property does not include any significant aesthetic, cultural values that require protection. However, there is a vernal pool located on site. The proposed development seeks to preserve the natural elements and characteristics of the vernal pool by installing vegetation buffers and appropriate landscaping. Furthermore, the proposed development is designed to encourage residents and the public to enjoy the natural features of the lot by dedicating portions of the lot as open space and nature vista points.

Conclusion: The requirement appears to be met.

Vote of __ in favor __ against __ abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

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 in favor against abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these findings, determines that the proposed development will have no significant detrimental impact. The Kittery Planning Board hereby grants final approval, including approval for a permitted use request for the development at the above referenced property, including any waivers granted or conditions as noted.

Waivers

1. Section 16.10.8.3.A to provide to the Planning Board prior to final approval the Maine DEP Site Location of Development Act (SLODA) permit

Conditions of Approval (**to be depicted on the final site plan**):

1. Prior to endorsement of the final plan, the applicant shall revise the site plan to depict a call-out on Sheets C-5 and C-7 labeling the nature loop trail and wildlife station as an area dedicated for public access and use.
2. Prior to the issuance of a building permit, the applicant shall submit to the Planning and Development Department for review the Maine DEP Site Location of Development Act (SLODA) approval.
3. Prior to the issuance of a building permit, all fees and performance guarantees shall be submitted to the Town in a form deemed satisfactory by the Town.
4. Prior to the issuance of a building permit, the applicant shall submit a revised construction-sequencing plan and schedule to the Town for review and approval.
5. Prior to the issuance of a building permit, a pre-construction meeting shall take place to review with the applicant the revised construction-sequencing plan and schedule.
6. Prior to the commencement of grading and/or construction within a building(s) envelope, as shown on the Plan, the owner, or their designee, must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer, or their designee, determines construction is complete and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
7. Applicant and its designee shall follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.

8. No changes, erasures, modifications, or revisions may be made to the approved plan, including no further land division or additional dwelling units may be established without Planning Board-approval.
9. The Code Enforcement Officer shall not issue an occupancy permit until all the conditions of this approval have been satisfied.
10. The condition of this approval shall be reflected on the final plan and three (3) copies thereof, in a size deemed acceptable by the Planning and Development Department, shall be submit for compliance.
11. All Notices to Applicant contained in the Findings of Fact (dated: June 25, 2020)

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

1. 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.
2. Prior to any earthwork and clearing, all required Maine Department of Environmental Protection permits must be approved and submitted to the Town for recording.

Notices to Applicant (Not to be depicted on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.
5. Where required the applicant must provide to the Town a performance guaranty and an inspection escrow to cover the construction of all improvements that will be utilized in common use or by the general public.

The Planning Board authorizes the Planning Board Chairperson, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of in favor against abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON June 25, 2020

Dutch Dunkelberger, Planning Board Chair

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.