

1 **CALL TO ORDER**

2

3 **ROLL CALL**

4

5 Present: John Perry, Member, Drew Fitch, Member, Russell White, Member, and Karen
6 Kalmar, Vice Chair,

7

8 Absent: Steve Bellantone, Ronald Ledgett, Dutch Dunkelberger, Chair

9

10 Staff: Bart McDonough, Town Planner

11

12 Advisory: Earledean Wells, Conservation Commission

13

14 **PLEDGE OF ALLEGIANCE**

15

16 **APPROVAL OF AGENDA**

17

18 **APPROVAL OF MINUTES-** None.

19

20 **PUBLIC COMMENTS**

21

22 Public comment and opinion are welcome during this open session. However,
23 comments related to development projects currently under review by the Planning
24 Board shall be heard only during their respective scheduled public hearing. Due to the
25 current pandemic, all meetings and public hearings held by the Planning Board are
26 conducted via Zoom webinar. To register in advance for the webinar, please submit a
27 request to bmcdonough@kitteryme.org. After registering, you will receive a confirmation
28 email containing information about joining the webinar. Webinar participants will be able
29 to submit questions and comments during the public hearing and public comment
30 period. Members of the public unable to participate during the webinar may submit
31 comments for agenda items via email, US Mail, or by dropping written comments in the
32 Drop Box outside the Town Hall entrance. Emailed comments should be sent to
33 bmcdonough@kitteryme.org. Comments received by noon on the day of the meeting
34 will be read into the record by the Planning Board Chair.

35

36 There being none the Vice Chair closed the public comments.

37

38

39

40

41 **OLD BUSINESS**

42

ITEM 1— 459 U.S. Route 1—Major Modification Review to a Master Site Development Plan and Subdivision / Site Plan

43 Action: Continue to a subsequent meeting; approve or deny plan; Pursuant to
44 §16.10.9.1.D Approved plan expiration and §16.10.9.3 Modifications to approved plan
45 and of the Town of Kittery Land and Use Development Code, owner/applicant Middlesex
46 Land Holdings, LLC requests approval for both an extension to an approved subdivision
47 plan and a major modification to an approved Master Site Development and Subdivision
48 plan proposing to reduce the residential dwelling unit count from 44 (32 age-restricted; 12
49 non-age-restricted) to 32 (16 age-restricted; 16 non-age-restricted) dwelling units within
50 8 buildings and make associated improvements on real property with an address of 459
51 U.S. Route 1, Tax Map 60, Lot 24, in the Mixed-Use (MU) Zone.

52

53 V.C. Kalmar asked Mr. McDonough to give the Board an update on the application's
54 status.

55

56 Mr. McDonough recited and gave a corresponding update to the Board on the items
57 needing further review by town staff or more information. These items included: review of
58 the homeowners association ("HOA") condominium documents and road / property
59 maintenance agreement between the HOA and hotel by the Town Attorneys, updated
60 construction schedule for work along U.S. Route 1 that aligned with Maine Department of
61 Transportation's ("MDOT") paving schedule, and an update on the status of the
62 applicant's stormwater management plan modification filing with the Maine Department
63 of Environmental Protection ("MDEP").

64

65 From that summary, Mr. McDonough informed the Board that the applicant's proposed
66 HOA documents and property maintenance agreement was determined satisfactory by
67 the Town Attorneys with the incorporation of slight amendments, for which the applicant
68 agreed to include in a revised document.

69

70 Mr. McDonough continued by informing the Board that the updated construction schedule
71 for US Route 1 was submitted and appeared reasonable but needed a slight revision, and
72 commented that the modification filing was or is to be sent to DEP for review. Mr.
73 McDonough added the caveat that DEP recently underwent a staff change and the review
74 timeframe could take longer than normal.

75

76 Mr. McDonough then described the responsibilities and liabilities of the applicant to
77 complete the road work along U.S. Route 1 and discussed what would happen if a road
78 moratorium were breached.

79

80 Mr. McDonough then relayed to the Board that applicant was in the process of applying
81 for permits and briefly discussed the next steps and key events to occur before
82 construction commenced.

83

84 In closing, Mr. McDonough clarified to the Board the permit extension process along with
85 the amount of time the Board is permitted to grant to complete the project. After updating
86 the Board Mr. McDonough requested Mr. Nielson to provide any information that was
87 missing or inaccurate.

88
89 Mr. Nielson followed up and gave more details regarding the construction schedule and
90 asked the Board if there any other outstanding issues that they wanted to discuss.

91
92 Ms. Wells asked whether or not the hotel is responsible for removing any of the excess
93 snow from the site. Mr. Nielson replied that the site plan directs the hotel to remove any
94 excess snow. Mr. Nielson continued further, stating that he would ensure that the owners
95 of the hotel understand their maintenance responsibilities.

96
97 V.C. Kalmar then asked the Board if there were any further questions to be posed to the
98 applicant, which there were none.

99

100 **Mr. White moved to approve the Permit Extension and Modification Plan**
101 **application to a Master Site Development and Subdivision plan from**
102 **owner/applicant Middlesex Land Holdings, LLC requesting approval to reduce the**
103 **residential dwelling unit count from 44 (32 age-restricted; 12 non-age-restricted) to**
104 **32 (16 age-restricted; 16 non-age-restricted) dwelling units within 8 buildings and**
105 **make associated improvements on real property with an address of 459 U.S. Route**
106 **1, Tax Map 60, Lot 24, in the Mixed-Use (MU) Zone with the following conditions:**

- 107
- 108 1. **Prior to the issuance of any certificate of occupancies for any of the**
109 **proposed buildings, all infrastructure that affects US Route 1 must be**
110 **installed.**
 - 111
 - 112 2. **The approved plan shall be extended until February 14, 2024.**
 - 113
 - 114 3. **Prior to the issuance of a building permit, the applicant shall submit**
115 **documentation demonstrating DEP approval of the modification.**
 - 116

117 **Seconded by Mr. Fitch. The motion passed by roll call vote, 4-0-0.**
118

ITEM 2— 52 State Road—Shoreland Development Plan and Sketch Plan Review

119 Action: Accept or deny application as complete; continue application to a subsequent
120 meeting, approve or deny sketch plan: Pursuant to §16.3.2.17 Shoreland Overlay Zone,
121 Article III Nonconformance of §16.7 General Development Requirements, §16.10.3.4
122 Shoreland Development Review and §16.10.4.2 Sketch plan review phase of the Town
123 of Kittery Land Use and Development Code, owner/applicant Kevin Cambridge and agent
124 Attar Engineering Inc. requests approval to expand a legally nonconforming commercial
125 structure and to construct a parking lot comprising 27 spaces with appurtenant

126 infrastructure and landscaping on real property with an address of 52 State Road, (Tax
127 Map 3, Lot 1) located in the Business-Local 1 (B-L1) Zone and the Shoreland Stream
128 Protection Overlay Zone (OZ-SL-75).

129

130 Mr. McDonough gave the Board an update on the application's status. He reviewed the
131 outstanding issues the Board wanted clarified before the sketch plan application could
132 move forward. This mainly included a report from a soil scientist analyzing the soil
133 characteristics of the area where a purported stream was located.

134

135 Mr. McDonough then went on to explain the events that took place prior to the meeting
136 and described future actions that the Board may need to take if it were determined that
137 the stream no longer exists as designated on the Town's zoning map. Mr. McDonough
138 continued by describing the site visit that took place between the applicant's agent, town
139 staff and Maine Department of Environmental Protection ("DEP") and remarked on the
140 preliminary opinion from DEP, which opined that a stream did not currently exist as
141 indicated on the zoning map with the caveat that the area was experiencing a prolonged
142 drought and conditions may change accordingly. Also, Mr. McDonough conveyed it was
143 the opinion of DEP that the application could move forward as the expansion of the
144 building is not moving any closer to the area designated as a stream.

145

146 Mr. McDonough went on further to describe the project's details and their relation to the
147 protective areas with further details added to the discussion by Mr. Nielson, the
148 applicant's agent.

149

150 Mr. Neilson then continued by describing in more detail the site plan's characteristics,
151 which included details regarding: the parking lot, building's expansion, stormwater
152 infrastructure, and landscaping.

153

154 V.C. Kalmar stated that since there were only four members present at the meeting, it
155 would be more fruitful to continue the application's progression, if it were the will of the
156 Board, and move out of sketch review so that more input and consideration may be
157 provided by other Board members.

158

159 Mr. Nielson concurred, and requested that he read a letter penned by the applicant, Mr.
160 Cambridge, to clarify purpose of the application, to which was recited into the record.
161 Thereafter, Mr. Nielson then asked the Board if they had any additional questions for him
162 regarding the application.

163

164 Mr. White inquired whether or not the parking calculation requirements were satisfied and
165 stated that he would like the applicant to consider reducing the amount of asphalt as much
166 as possible and consider alternative materials that would compose the parking lot.

167

168 Mr. McDonough followed up with a suggestion that it may be an opportunity to incorporate
169 LID technology to help with stormwater.

170

171 Mr. Nielson inquired whether or not the Town has any history with porous pavement, to
172 which Mr. White replied, that a former Road Commission used such materials along
173 Litchfield Road playgrounds, which, according to Mr. White's observations, has worked
174 and held out well over the years.

175

176 Thereafter, a brief discussion ensued revolving around parking count calculations,
177 followed by an appeal by V.C. Kalmar on how the Board would wish to proceed with the
178 application.

179

180 **Mr. White move to approve the shoreland development and site plan sketch**
181 **application from owner/applicant Kevin Cambridge and agent Attar Engineering**
182 **Inc. requesting approval to expand a legally nonconforming commercial structure**
183 **and construct a (27) parking lot on real property with an address of 52 State Road,**
184 **(Tax Map 3, Lot 1) located in the Business-Local 1 (B-L1) Zone and the Shoreland**
185 **Stream Protection Overlay Zone (OZ-SL-75).**

186

187 **Seconded by Mr. Fitch. The motion passed by roll call vote, 4-0-0.**

188

189 **V. C. Kalmar read the findings of fact and the Board voted to affirm each finding by**
190 **roll call vote 4-0-0.**

191

192 **ITEM 3— 2 Old Ferry Lane—Shoreland Development Plan Review**

193 Action: Continue application to a subsequent meeting; or approve or deny plan: Pursuant
194 to §16.7.3.3.B Nonconforming structure repair and/or expansion and §16.10.3.4
195 Shoreland Development Review of the Town of Kittery Land Use and Development Code,
196 owner Forbes-Taylor Trust and applicant Elliot Architects requests approval to expand a
197 legally nonconforming dwelling unit on a legally nonconforming lot within the base zone
198 setback of the Shoreland Overlay Zone by 225-sf on real property with an address of 2
199 Old Ferry Lane, Tax Map 17 - Lot 14, located within the Residential-Urban (R-U) zone
200 and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

201

202 Mr. McDonough gave the Board an update on the application's status. He reviewed the
203 outstanding issues the Board wanted clarified before the shoreland development plan
204 application could move forward. This included the condition that a registered surveyor
205 needed to delineate the land to be conveyed to the applicant. Moreover, Mr. McDonough
206 described how the site walk was informative and allowed the Board to obtain a good
207 understanding of the site's constrictions.

208

209 Mr. McDonough continued with a brief update of the new deed's status, went on to
210 describe the issue with expanded the retaining wall and potential alternatives. Mr.
211 McDonough then asked Mr. Papadopoli to give an updated to the Board.

212
213 Mr. Papadopoli then discussed how the lot line adjustment plan was filed with the York
214 County Registry of Deeds and that the deed modification is currently being drafted and
215 finalized. Mr. Papadopoli continued by suggesting that he was in favor of the idea that the
216 Board grant a conditional approval and that no building permit would be issued until the
217 modified deed was recorded.

218
219 Mr. Papadopoli went on to describe his plan on expanding the retaining wall, to which
220 solicited a question from V.C. Kalmar to Mr. McDonough clarifying in what instance the
221 retaining wall could be expanded upon in this context. A discussion between Mr.
222 Papadopoli and the Board then ensued with a resolution that vertical granite curbing
223 would be used.

224
225 Mr. Papadopoli then handed the discussion over to the Board for further questions.

226
227 Mr. McDonough inquired how construction management would be handled, to which
228 elicited a response from Mr. Papadopoli stating that he was working with the builder to
229 develop best site management practices to handle parking, storage of construction
230 materials and equipment and to incorporate carpooling so as to take up as little space as
231 possible on Old Ferry Road.

232
233 Mr. Fitch inquired whether a plan from a licensed surveyor was required instead of the
234 plan before the Board, to which a discussion ensued with the resolution that the plan as
235 presented was suitable for recording at the York County Registry of Deeds.

236
237 V.C. Kalmar then asked if the Board had any other questions for Mr. Papadopoli. Hearing
238 none, V.C. Kalmar then invited the Board to make a motion.

239
240 **Mr. White moved to approve the shoreland development plan application from**
241 **owner Forbes-Taylor Trust and applicant Elliot Architects requesting approval to**
242 **expand a legally nonconforming dwelling unit on a legally nonconforming lot within**
243 **the base zone setback of the Shoreland Overlay Zone by 225-sf on real property**
244 **with an address of 2 Old Ferry Lane, Tax Map 17 - Lot 14, located within the**
245 **Residential-Urban (R-U) zone and the Shoreland (OZ-SL-250) and Resource**
246 **Protection (OZ-RP) Overlay Zones with the following conditions:**

247
248 **1. Prior to the endorsement of the shoreland development plan by the Planning**
249 **Chair or Vice Chair, the applicant shall submit an updated plan depicting all**
250 **missing elements as directed by the Planning Board at their June 24, 2021**
251 **meeting and Planner's Review Notes, dated June, 24, 2021.**

252

253 **2. Prior to the issuance of a building permit, the applicant shall file with the**
254 **Code Enforcement Officer a recorded Lot Line Adjustment Plan and**
255 **corresponding deed for Map 17, Lot 14 that clearly depicts the conveyance**
256 **of land from Map 17 Lot 15 to the lot and that all setbacks are adhered to.**

257
258 **Seconded by Mr. Fitch.**

259
260 **The motion passed by roll call vote, 4-0-0.**

261
262 **V. C. Kalmar read the findings of fact and the Board voted to affirm each finding by**
263 **roll call vote 4-0-0.**

264
265 **NEW BUSINESS**

266
267 **ITEM 4— Land Use Development Code Amendments—Proposed Revisions to Title**
268 **16 to Amend Distant Requirements between a Gas Station and Protective**
269 **Structures.**

270 Action: Continue to a subsequent meeting, or schedule a public hearing date: Pursuant
271 to M.R.S.A Title 30-A, Chapter 187, §4352 and §16.1.9 Amendments of the Town of
272 Kittery Land Use and Development Code, the Planning Board seeks to set a public
273 hearing date for a proposed amendment to §16.3 Land Use Regulations from petitioner
274 Cumberland Farms Inc., and agent Archipelago Law, LLP by amending
275 §16.3.2.11.C(1)(b.) to reduce the required distance between Gasoline Sales and
276 protected uses and certain types of structures.

277
278 Mr. McDonough gave the Board brief overview of the proposed amendment changes
279 which sought to amend the distance requirements for Gasoline Stations in the C-1 Zoning
280 District.

281
282 Mr. McDonough then asked Ms. Guay to introduce the project and state the reasons for
283 the proposed amendments. Before Ms. Guay introduced herself, her team and the
284 project, V.C. Kalmar made it a point for the discussion to be brief as three members of
285 the Board were absent.

286
287 Ms. Guay gave a concise presentation on the reason the corporation was pursuing an
288 amendment to the code, emphasized how the existing language was needlessly
289 burdensome given the geographic context of the area; mentioned briefly the manner in
290 which the proposed language would comport with the Town's Comprehensive Plan, and
291 provided a power point presentation of existing conditions and conceptual architectural
292 renderings of the gas station in the targeted location, if the amendment were to pass.

293
294 V.C. Kalmar requested from staff that a brief presentation be created to determine the
295 potential impacts if the proposed amendments were adopted.

296

297 Ms. Guay clarified an error Mr. McDonough made during his introduction regarding the
298 proposed amendment's language and further expounded upon the rational and
299 justification for the changes.

300

301 A discussion on the procedural steps ensues and it was determined the best path forward
302 was to set the public hearing date for the second meeting in July.

303

304 **Mr. White moved to set the public hearing date at the Planning Board's July 22,**
305 **2021 meeting.**

306

307 **Seconded by Mr. Perry.**

308

309 **The motion passed by roll call vote, 4-0-0.**

310

311 **ITEM 5 – Board Member Items/Discussion**

312

313 No Board Member Items or Discussion.

314

315 **ITEM 6 – Town Planner/Director of Planning & Development Items**

316

317 Mr. McDonough told the Board that there were no applications to be reviewed at the
318 July 8, 2021 meeting. Given the death of applications, Mr. McDonough suggested it
319 would be an opportune time to review the priority list at the next meeting.

320

321 A brief discussion took place on returning to in-person meetings, which the Board
322 agreed would be a good idea.

323

324

325 **Adjournment**

326

327 **Mr. White moved to adjourn the meeting. Seconded by Mr. Perry. The motion**
328 **passed by roll call vote 4-0-0.**

329

330 The Kittery Planning Board meeting of August 13, 2020 adjourned at 7:28 p.m.

331

332 Submitted by Bart McDonough, Town Planner on July 8, 2021.

333

334 Disclaimer: The following minutes constitute the author's understanding of the meeting.

335 Whilst every effort has been made to ensure the accuracy of the information, the
336 minutes are not intended as a verbatim transcript of comments at the meeting, but a
337 summary of the discussion and actions that took place. For complete details, please
338 refer to the video of the meeting on the Town of Kittery website at

339 <http://www.townhallstreams.com/locations/kittery-maine>.