

1 **CALL TO ORDER**

2

3 **ROLL CALL**

4

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

7

8 Absent: Steve Bellatone, Member

9

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

12

13 Advisory: Earledean Wells, Conservation Commission

14

15 **PLEDGE OF ALLEGIANCE**

16

17 **PUBLIC COMMENTS**

18

19 The Chair opened the Public Comments session.

20

21 There being none the Chair closed the Public Comments session.

22

23 **PUBLIC HEARING**

24

25 **ITEM 1 – 96 Pepperrell Road – Shoreland Development Plan Review**

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

31

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

36

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

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

45
46 There was discussion amongst the Board and Ms. Kellogg regarding the boathouse
47 use, and the remodeling of the interior of the structure. Ms. Kellogg explained that the
48 use as dwelling of any kind would not be permitted by Staff.

49
50 Mr. Ledgett explained his concern that there does not appear to be any record of the
51 work that has been done to the pier deck and railings. Chair Dunkelberger stated that if
52 there were any violations related to that work it would need to be pursued separately.
53 The proposal before the Board was for modifications to the main house.

54
55 Vice Chair Kalmar stated that she would like to have Staff input on Code items provided
56 in a more timely fashion. Chair Dunkelberger suggested having workshop with Staff to
57 discuss the reviewing authority for these types of situations.

58
59 **Mr. White moved to approve the Shoreland Development Plan application dated**
60 **6/14/19 from owners/applicants Paul J. & Jessica O. McKeon for**
61 **repair/replacement of an existing stone revetment and other site improvements**
62 **on a 12,333 sf parcel located at 96 Pepperrell Road (Tax Map 27 Lot 47) in the**
63 **Residential – Kittery Point Village (R-KPV) and the Shoreland Overlay (OZ-SL-**
64 **250’) Zones. Seconded by Vice Chair Kalmar.**

65
66 **The motion carried 5-1-0.**

67
68 Chair Dunkelberger opened the Public Hearing.

69
70 No one from the public wished to speak.

71
72 Chair Dunkelberger closed the Public Hearing.

73
74 **FINDINGS OF FACT**

75
76 The Planning Board made the following factual findings and conclusions:

77
78 **Section 16.3.2.17.D Shoreland Overlay Zone**

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

84

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

88

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

93

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

98 **Conclusion:** The standard appears to be met.

99

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

101

102 **Section 16.7.3.1 Prohibitions and Allowances**

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

105

106 **Finding:** This is an existing, nonconforming lot with an existing single family dwelling
107 structure that is nonconforming to the 100-foot setback from the water and the side yard
108 setback. A dwelling is a special exception use in the Shoreland Overlay Zone.

109 The proposed development does not increase the nonconformity as permitted in
110 16.7.3.3.B. Nonconforming structure repair and/or expansion.

111 **Conclusion:** This requirement appears to be met.

112

113 **Vote of 5 in favor 1 against 0 abstaining**

114

115 **Section 16.7.3.3 Nonconforming Structures**

116 **16.7.3.3.B Nonconforming structure repair and/or expansion**

117

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

121 **Conclusion:** This requirement appears to be met.

122

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

124

125 **Section 16.6.6. Basis for Decision**

126 **16.6.6.A.2** In hearing appeals/requests under this Section, the Board of Appeals [note:
127 Planning Board is also subject to this section per 16.7.3.3.B.(1) above] must use the
128 following criteria as the basis of a decision:

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

138

139 **Finding:** The proposed development does not pose a concern.

140 **Conclusion:** The requirement appears to be met.

141

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

143

144 **Section 16.10.10.2 Procedure for Administering Permits**

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

148

149 **Finding:** The Planning Board made a positive finding on Criteria 1-10 with all of the
150 criteria appearing to be met.

151

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

153

154 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied
155 each of the review standards for approval and, therefore, the Planning Board approves
156 the Shoreland Development Plan.

157 :

Vote of 5 in favor 1 against 0 abstaining

158

159

160 **OLD BUSINESS**

161

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

163 Action: Accept or deny application. Approve or deny plan. Owner/Applicant, Joshua

164 Philbrick requests consideration for an additional dwelling on a 4.89-acre lot on a private
165 right-of-way off Remicks Lane (Tax Map 65 Lot 17) in the Residential Rural (R-RL)
166 Zone.

167

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

170

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

173

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

174

175 The Planning Board made the following factual findings and conclusions:

176

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

178

179 **Finding:** The right-of-way serving the duplex conforms to applicable Title 16 standards
180 with the waivers and conditions of approval included herein.

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

182

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

184

185 **B. Freshwater Wetlands Identified.**

186

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

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

189

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

191

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

193

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

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

196

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

198

199 **D. Water Supply Sufficient.**

200 **E. Municipal Water Supply Available**

201

202 **Finding:** The proposed development has received a building permit for the construction
203 of a duplex.

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

205

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

207

208 **F. Sewage Disposal Adequate.**

209

210 **Finding:** The proposed duplex has an approved septic system.

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

212

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

214

215 **G. Municipal Solid Waste Disposal Available**

216

217 **Finding:** The proposed duplex will not cause an unreasonable burden on the Town's
218 facility.

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

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

221

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

223

224 **Finding:** This right-of-way is not located in the Shoreland or Resource Protection
225 Overlay Zones.

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

227

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

229

230 **I. Groundwater Protected.**

231

232 **Finding:** The proposed duplex will not adversely affect groundwater.

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

234

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

236

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

238

239 **Finding:** There are no flood prone areas present.

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

241

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

243

244 **K. Stormwater Managed.**

245

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

248
249 **Conclusion:** This standard appears to be met.

250
251 **Vote of 6 in favor 0 against 0 abstaining**

252
253 **L. Erosion Controlled.**

254
255 **Finding:** The contractor is following MDEP best management practices for erosion and
256 sedimentation control with site work for the duplex.

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

258
259 **Vote of 6 in favor 0 against 0 abstaining**

260
261 **M. Traffic Managed.**

262
263 **Finding:** There will be a negligible increase in traffic with the additional dwelling.
264 However, note Stoneridge Way right-of-way (ROW) is at maximum capacity and no
265 other homes will be allowed until the ROW is upgraded per condition of approval #2.

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

267
268 **Vote of 6 in favor 0 against 0 abstaining**

269
270 **N. Water and Air Pollution Minimized.**

- 271
272 **1.** All proposed development is located outside of a Flood Hazard Area.
273 **2.** Addressed in the previous standard on waste disposal.
274 **3-6.** Not applicable to the proposed development.

275
276 **Finding:** The proposed duplex will not result in undue water of air pollution.

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

278
279 **Vote of 6 in favor 0 against 0 abstaining**

280
281 **O. Aesthetic, Cultural and Natural Values Protected.**

282
283 **Finding:** The property does not impact any significant aesthetic, cultural or natural
284 values that require protection.

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

286

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

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

289

290 **Finding:** The applicant has received financing to construct the proposed duplex on the
291 lot.

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

293

294 **S. For a Right-of-Way.**

295

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

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

299

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

301

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).

302

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

306

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

308

309 Per Title 16.6.2.A – An aggrieved party with legal standing may appeal a final decision
310 of the Planning Board to the York County Superior Court in accordance with Maine
311 Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the
312 decision by the Planning Board was rendered.

313

314 **ITEM 3 - 76 Dennett Road – Mixed-Use Residential Development – Site Preliminary**
315 **Plan Review**

316 Action: Accept or deny application. Schedule public hearing. Owners William J. Cullen
317 and Sail Away, LLC and applicant William Wharff request consideration of a mixed-use
318 residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map 6 Lots
319 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use - Neighborhood (MU-N) Zone.
320 Agent is Shawn Tobey, P.E. Hoyle, Tanner Associates, Inc.

321

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

323

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

325

- 326 • COAST bus service for the project and location of a bus stop if service is
327 provided. Mr. Tobey responded that bus service and provisions of sidewalks in
328 front of the property would be coordinated with Maine DOT for the traffic scoping
329 meeting.
- 330
- 331 • Minimum square footage of the studio apartments. Mr. Tobey responded that the
332 minimum size would be 650 sf per the Land Use and Development Code (LUDC)
- 333
- 334 • Responses to CMA Engineers plan review comments. Soils map and wetlands
335 delineations need to be stamped and signed.
- 336

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

341
342 Ms. Wells asked for more plant diversity for the proposed landscaping and to have a
343 landscape architect look at the proposed plantings to see if they are acceptable. She
344 also voiced a concerns about the proposed wet ponds 2 and 3 being close to wetlands
345 and a stream. She also asked if the Planner could provide information on the wetlands
346 impact permit for the existing road crossing. Her concern was that it be a properly sized
347 culvert. Mr. Tobey stated that the culvert was sized based upon their modeling and that
348 those calculations were provided to CMA Engineers.

349
350 **Vice Chair Kalmar moved to accept and approve the site preliminary plan dated**
351 **June 20, 2019 as prepared by Hoyle, Tanner & Associates, Inc., for owners**
352 **William J. Cullen and Sail Away, LLC and applicant William Wharff for a mixed-**
353 **use residential development on 23.3+- acres of land at 76 Dennett Road (Tax Map**
354 **6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use - Neighborhood (MU-N)**
355 **Zone. Seconded by Mr. Ledgett.**

356
357 **The motion carried 6-0-0.**

358
359 **Mr. White moved to schedule a site walk for Tuesday, July 23rd at 10:30 am.**
360 **Seconded Mr. Ledgett.**

361
362 **The motion carried 6-0-0.**

363
364 **Mr. White moved to schedule a public hearing on August 8, 2019 for the site**
365 **preliminary plan, dated June 20, 2019 as prepared by Hoyle, Tanner & Associates,**
366 **Inc., for owners William J. Cullen and Sail Away, LLC and applicant William**
367 **Wharff for a mixed-use residential development on 23.3+- acres of land at 76**
368 **Dennett Road (Tax Map 6 Lots 15B & 16A and Tax Map 13, Lot 4) in the Mixed Use**
369 **- Neighborhood (MU-N) Zone. Seconded by Vice Chair Kalmar.**

370
371 **The motion carried 6-0-0.**

372
373 **ITEM 4 - Old Post Road / Bridge Street – Cluster Residential Development –**
374 **Sketch Plan Review**

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

380
381 Mr. Tobey gave an overview of the conceptual site plans. He explained the cluster
382 proposal and noted that they were looking at clustering the units in the center of the site
383 and providing over 50% open space around the perimeter in exchange for more units
384 through the cluster modifications.

385
386 The Board had the following questions / comments on the proposed plans:
387

- 388 • Concern about the amount of site work, ledge removal required to get the
389 driveway in. Mr. Tobey stated that the design for the driveway would be at a
390 10% grade or less.
- 391
- 392 • Clarification on the proposed parking for the units at ground level.
393
- 394 • Concern about access to the site in winter conditions. Mr. Tobey discussed
395 trying to lower the grades. He also noted that they would be utilizing a
396 professional maintenance contract for snowplowing / removal.
- 397
- 398 • Concern was also expressed about the sheer drop-off of the property where it
399 meets Old Post Road.

400
401 **Mr. White moved to accept and approve the cluster residential sketch plan –**
402 **major subdivision, dated June 20, 2019 as prepared by Hoyle, Tanner &**
403 **Associates, Inc., for owner MAC Properties Bridge Street, LLC and applicant**
404 **Silver Holdings, LLC for a three (3) building, 11-unit cluster residential**
405 **development on 3.02+- acre parcel on Old Post Road / Bridge Street (Tax Map 3**
406 **Lot 77A) in the Residential – Urban (R-U) Zone. Seconded by Mr. Fitch.**

407
408 **The motion carried 6-0-0.**

409
410 **ITEM 5 - 60 Route 236 – Sketch Site Plan Review**

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

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

415
416 Mr. Chagnon gave an overview of the proposal. He spoke to the challenges of
417 redeveloping the site which included access and parking, narrowness and grade and
418 proximity of wetlands in the rear.

419
420 He spoke to the need for variances from the setback requirements. He also to the
421 parking regulations. Concerning the parking requirement for the proposed use, Mr.
422 Steffen noted that the Code (Section 16.8.9.4 C.) has built in some flexibility. He
423 commented that even though the proposed use includes a retail sales component with a
424 showroom he felt that utilizing the retail parking requirement of 1 parking space for each
425 175 square feet was excessive in this case.

426
427 The Board had the following questions / comments on the proposed plans:

- 428
- 429 • Frequency of the truck traffic and the size of the trucks. Mr. Chagnon noted that
430 the design vehicle was WD-40.
 - 431
 - 432 • Had the applicant been to the Board of Appeals yet for the necessary relief from
433 the setback requirements. Mr. Chagnon replied that application had been made
434 and they would be meeting with the Board on July 23rd.
 - 435

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

440
441 **The motion carried 6-0-0.**

442
443 **ITEM 6 – Board Member Items / Discussion**

444
445 Vice Chair Kalmar discussed the need to get a common understanding among the
446 Board and Staff on the shoreland zoning provisions of Section 16.7.3.3 –
447 Nonconforming structure reconstruction. A workshop with Staff was suggested and a
448 date and time of August 22nd at 5 pm was set.

449
450 **ITEM 7 - Town Planner Items**

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

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

455 **Adjournment**

456
457 **Mr. White moved to adjourn the meeting.**

458 **Mr. Ledgett seconded the motion.**

459

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

461

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

463

464 Submitted by Jamie Steffen, Town Planner, on September 17, 2019.

465

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

467 Whilst every effort has been made to ensure the accuracy of the information, the

468 minutes are not intended as a verbatim transcript of comments at the meeting, but a

469 summary of the discussion and actions that took place. For complete details, please

470 refer to the video of the meeting on the Town of Kittery website at

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

472

473