



TOWN OF KITTEERY MAINE
Town Planning and Development Department
200 Rogers Rd. Kittery, Maine 03904
(207) 475-1323

NOTICE OF DECISION

PROPERTY OWNER: Chatham Street, LLC,
APPLICANT: Ann Kendall
MAILING ADDRESS: P.O. Box 67, 88 Pepperrell Road, Kittery,
ME 03905
PROPERTY LOCATION: 87 & 88 Pepperrell Road, Kittery ME 03905
MAP LOT: **MAP 27 LOTS 2A & 49**
APPLICATION: **Business Use Change**
ZONE(S): Business Local (B-L) & Residential –
DATE: Kittery Point Village (R-KPV)
January 10, 2019

Per Section 16.4.3.E of the Town of Kittery Land Use and Development Code, the Town Planner and Code Enforcement Officer are to review and approve, or refer to the Planning Board for action all Business Use Changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

The review of “The Bistro” was to consider if the proposed change from retail (Frisbee’s Market) to restaurant (the Bistro) is significantly different in intensity of use per Section 16.10.3.6.C. The application was referred by the Town Planner to the Planning Board for its consideration at the October 26, 2017 meeting. After considerable discussion regarding the business use change at that meeting, the Planning Board voted to return the applicant to the Town Planner and the Code Enforcement Officer as a business use change but not of such intensity that requires Planning Board perview with the condition that the applicant prior to opening the final project the Wharf come back with a detailed plan for parking for the entire project. Since that time, the applicant has changed the order of the opening of the new businesses with the Bistro now being the final project.

A detailed parking plan has been submitted which was considered by the Planning Board at the meetings of December 13, 2018 and January 10, 2019.

At the meeting of January 10, 2019 the Planning Board approved the parking plan dated 01/10/2019 as revised by and with the following conditions:

- 1) Curb stops must be installed for each parking space and securely anchored in place except in the parallel spaces in the paved portion of the lot.
- 2) Any parking signs placed in the interior of the parking lot must be affixed to a wooden post – no metal sign posts are allowed.
- 3) The applicant shall design and construct pedestrian improvements subject to Department of Public Works review and approval.
- 4) The applicant shall work with CMP to install adequate screening or shielding on any existing street

NOD
87 & 88 Pepperrell Road
Business Use Change

pole mounted lights utilized by the businesses. Any new permanent lighting added will be CMP approved cut-off fixtures with adequate shielding to direct light down and away from adjacent properties.

- 5) Food and beverage service for The Wharf is restricted to the area designated in the approved license.
- 6) Restoration of the crushed sea shell area to its previous limit must be performed to the satisfaction of the Shoreland Resource Officer prior to the opening of The Wharf in the spring.
- 7) A parking management plan shall be developed in conjunction with staff which will be reviewed annually and certified as to compliance by April 1st of every year.

This Notice of Decision IS NOT a building permit or a sign permit.

Any proposed field changes, diversion or revisions to the plan and construction documents after approval shall be reported to the Code Enforcement Officer prior to proceeding with the proposed changes. Any site changes not approved in this Notice of Decision will be in violation of State law and Town Codes.

Sincerely:

Jamie Steffen
Town Planner

Stephen Wilson
Code Enforcement Officer

Dutch Dunkelberger
Planning Board Chair

**KITTERY PLANNING BOARD
FINDINGS OF FACT**

UNAPPROVED

**For
88 Pepperrell Road – The Bistro
Parking Plan Review for Business Use Change**

WHEREAS: Owner Chatham Street, LLC and applicant Ann Kendall are establishing a new business entity in an existing facility, where intensity of use is significantly different, located at 88 Pepperrell Cove (Tax Map 27 Lots 2A & 49) in the Business Local (B-L), Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones.

Hereinafter the “Development”

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

Parking Plan Review	12/13/2018
Site Walk	12/27/2018
Parking Plan Review	01/10/2019

And pursuant to the Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Parking Plan, The Bistro, The View, Provisions, Frisbees Wharf, 88 Pepperrell Road, and associated exhibits, Attar Engineering, December 27, 2018, Parking Layout revision dated 01/10/2019.
2. Waiver Request, prepared by Attar Engineering, entitled The Bistro, The View, Provisions, Frisbees Wharf, 88 Pepperrell Road, dated January 10, 2019.

NOW THEREFORE, based on the entire record before the Planning Board, and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

A. Development Conforms to Local Ordinances.
<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>
Finding: The proposed redevelopment does not meet the off-street parking standards outlined in 16.8.9. The Board of Appeals has approved miscellaneous variations from the off-street parking standards, specifically 16.8.9.4.G, 16.8.9.4.K (2), 16.8.9.4.K (3), 16.8.9.4.K (4), 16.8.9.4.K (5).
Conclusion: This standard appears to be met.
Vote of __ in favor __ against __ abstaining

- B. Freshwater Wetlands Identified;
- C. River, Stream or Brook Identified;
- D. Water Supply Sufficient;
- E. Municipal Water Supply Available;
- F. Sewage Disposal Adequate;
- G. Municipal Solid Waste Disposal; Available;
- H. Water Body Quality and Shoreline Protected;
- I. Groundwater Protected;
- J. Flood Areas Identified and Development Conditioned;
- K. Stormwater Managed;
- L. Erosion Controlled;
- N. Water and Air Pollution Minimized;
- O. Aesthetic, Cultural and Natural Values Protected;

Finding: The Board finds that the standards B-N, excepting K, M are not applicable to the proposed parking plan.

Vote of __ in favor __ against __ abstaining

K. Stormwater Managed.

M. Traffic Managed.

O. Aesthetic, Cultural, and Natural Values Protected

The proposed development will provide for adequate stormwater management.

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.*

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 of the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Findings K: There is one open storm drain existing in the north parking lot that appears to be functioning properly. The Board of Appeals approved a miscellaneous parking variation of Section 16.8.9.4.K (3) to waive the requirements for additional storm water infrastructure.

Finding M: The proposed redevelopment requires eighty-one (81) parking spaces which is satisfied by the proposed parking layout. The plan proposes a two-way drive aisle for the 90-degree angle parking areas and a one-way exit drive aisle along parallel parking spaces at the western property boundary. The parking plan shows that traffic flow is to be clearly marked with signs and surface directions at all times. Site distances at the parking lot entrance/exit are shown to be 425' to the west and 350' to the east.

A parking management plan will be developed in conjunction with staff which will be reviewed and certified as to compliance by April 1st of every year.

Findings O: The applicant has agreed to conduct a Phase I Archaeology Survey to investigate the existence of unmarked remains beneath the parking lot adjacent to the Pepperrell tomb.

Conclusion: These standards appear 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 successfully developed three-fourths of the property to date.

Conclusion: The Applicant appears to meet this standard.

Vote of __ in favor __ against __ abstaining

Waivers: Waiver requested for sidewalks, specifically Sections 16.8.4.13.A & B is denied. Vote: 6-0-0.

Conditions of Approval:

1. Curb stops must be installed for each parking space and securely anchored in place except in the parallel spaces in the paved portion of the lot.
2. Any parking signs placed in the interior of the parking lot must be affixed to a wooden post – no metal sign posts are allowed.
3. The applicant shall design and construct pedestrian improvements subject to Department of Public Works review and approval.
4. The applicant shall work with CMP to install adequate screening or shielding on any existing street pole mounted lights utilized by the businesses. Any new permanent lighting added will be CMP approved cut-off fixtures with adequate shielding to direct light down and away from adjacent properties.
5. Food and beverage service for The Wharf is restricted to the area designated in the approved license.
6. Restoration of the crushed sea shell area to its previous limit must be performed to the satisfaction of the Shoreland Resource Officer prior to the opening of The Wharf in the spring.
7. A parking management plan shall be developed in conjunction with staff which will be reviewed annually and certified as to compliance by April 1st of every year.

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these findings determines the proposed parking plan will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the parking plan at the above referenced property with the above noted waivers and conditions.

The Planning Board authorizes the Planning Board Chair or Vice Chair to sign the Final Parking 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 _____ 02/14/2019

Karen Kalmer, Planning Board Vice Chair

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board of Peer Review Engineer, and submit for Staff review prior to presentation of final Mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) Mylar copy of the final plan and all related state/federal permits or legal documents that may be required must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a Mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

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.