

Chris DiMatteo

From: Leah Rachin <lrachin@bergenparkinson.com>
Sent: Tuesday, October 31, 2017 3:26 PM
To: Chris DiMatteo
Cc: Eamonn Healy; Barrett Bilotta
Subject: Proposed Amendment Re: Inns in KF
Attachments: Proposed Amendments Incorporated Suggestions from 9-28-17 Meeting.docx

Hi Chris:

As per our discussion and your request, attached please find the updated proposed amendments. I've incorporated all of the suggested revisions from the September 28, 2017 meeting as identified in the minutes and highlighted them in yellow so that they were readily apparent.

Speaking of minutes – just wanted to note a few typos that you might want to flag for the board.

- On page 4, line 177 – it notes that the “applicant agreed to change the word “hotel” to “inn” with 12 to 20 rooms.” This is incorrect. As discussed at page 6, line 231, the number of guest rooms for inns is proposed to be between 12 and 30 (not 20).
- On page 5, line 192, it cites section 13.3.2.15(e), when I think it was intended to refer to section 16.3.2.15(e).

In reviewing the minutes of the September 28th meeting (page 5, line 223), you mentioned that “the Board can itemize if they vote against this so Town Council has clarity.” Could you just explain what you meant by this? Were you saying that the Planning Board can give specific reasons why they are opposed, i.e., they are OK with it in principle but want the number of rooms to be limited to a smaller number? My clients would definitely appreciate an explanation for any decision not to support the proposal as I think that would be helpful as we move through the process.

We appreciate your and the Board's efforts as we work through this and look forward to having a final recommendation at the close of the Board's meeting on November 9th.

Please let me know if there is any additional information that we can provide that would be helpful.

Best,

Leah

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139 Terry Lochhead, 16 Old Armory Way, endorsed the previous comments from residents and this
140 item be held off. She also endorses affordable housing.

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142 Laney McCartney questioned why the applicant needs more than 12 rooms and following the
143 code. She is not in support of this code amendment and is concerned with the scale. She added
144 losing the demographic will price people out of the town.

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146 Holly Zurr reminded the Board the Town is in the middle of a traffic study for the foreshore.

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148 Lynn Rosoff, 61 Tilton Street, agrees with idea about scale she feels it is too big and will the area
149 will be more congested with traffic. She likes the idea of 12 rooms.

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151 Ms. Richen responded to the comments:

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- The applicant stated the project would “enhance” the vitality of the area.

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- The proposed changes to the amendment include a reduction of the number of rooms, a limitation on the number of inns like this within a 1,000-foot buffer. Ms. Richen added the buffer was at the suggestion of the Planning Board and they will strike this out if needed.

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- Workforce housing - there is no requirement for workforce housing due to owner purchasing the property.

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- The studies have been going on for a long time and there is a process the Town has established. They have gone through the process and request the process for amendments be followed.

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- Parking - the ordinance requires a permitted use before applying. The parking plan is not developed now because it is not a permitted use. Current parking standards and those being suggested would need to be met. She listed the permitted uses in the zone including a grocery store, theaters and restaurants. Ms. Rachin added just because these are listed, does not mean it will be allowed because of regulations.

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- Opening the flood gates - larger scale would not be consistent with the stated goals of the foreshore and permitted uses.

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Comments sent via email are attached to these Minutes.

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There being no further comment, the Chair closed the public hearing.

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Board Discussion

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Chair Grinnell explained the 1,000-foot buffer was brought up at the last meeting with the applicant. Also, the applicant agreed to change the word “hotel” to “inn” with 12 to 20 rooms.

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Ms. Driscoll-Davis explained she suggested a 500-foot buffer to avoid having more of this kind of inn added in the Wallingford Square area. She now feels the statement would not be fair to the abutters. Mr. Alessi added changes were not to be anti-competitive it was for the town’s benefit not the applicants.

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183 Mr. Dunkelberger stated there are current parking restrictions that limit growth and he would like
184 the last paragraph of the proposed amendment be struck. Mr. Di Matteo explained a meeting has
185 been scheduled to present to the public recommendations of the Foreside Study on October 25th.

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187 Chair Grinnell realizes they have met with the applicant five times and explained government
188 moves slowly.

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191 and she would like to see fewer than 20. Another concern is the impact to parking and she
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193 Private Parking Lots - *“The creation of a surface parking lot as a principal use is prohibited
194 where an existing building is displaced on a property that fronts along the following streets:
195 Walker, Government, Wallingford Square and Wentworth. The prohibition includes accessory
196 parking for use on another lot. Vice Chair Kalmar explained this will ensure buildings aren’t
197 destroyed to increase surface parking. The applicant agreed to add her proposal as part of their
198 amendment. Mr. Dunkelberger expressed he would like to have stronger language for the
199 parking management plan. Vice Chair Kalmar requested to see commercial added to the list of
200 private lots if a lot was to be used as a parking outside of the area. The applicant agreed.*

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202 Chair Grinnell stated she does not have all the information to decide tonight because the studies
203 for foreside have not been completed and she does not want to shortcut resident initiatives. Ms.
204 Rachin stated they are asking for due process and a recommendation be made this evening.
205 Discussion of the timeframe and the importance of being consistent ensued. Mr. Di Matteo
206 explained the Board should use the same procedure as plan applications and a continuance of the
207 plan is allowed for 90 days, if needed and a mutual agreement exists. Ms. Rachin stated the
208 applicant is requesting a decision tonight.

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210 The Board asked if it is possible to have an inn manager be within a reasonable driving distance
211 instead of requiring an owner live at the inn. Ms. Rachin stated there would always be a
212 manager available. The applicant stated less than 20 rooms is not feasible. The applicant agreed
213 to remove the word “reasonably” on Line 125. Discussion of keeping the 1,000 feet buffer
214 ensued.

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216 Mr. Harris commented housing and parking is a problem in the foreside and the Comprehensive
217 Plan hasn’t been approved. He believes there is not enough room in the area for what they want.
218 He hasn’t heard any one tonight saying this is a good idea.

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220 Mr. Dunkelberger commented he appreciates the work done between the Board and applicant but
221 believes a 1,000-foot buffer is too much. He would like to see the Foreside Study before he can
222 decide. Mr. Alessi agreed about seeing the Foreside Study first as well. Mr. Di Matteo stated
223 the Board can itemize if they vote against this so Town Council has clarity. After further
224 discussion, the applicant agreed to wait until after the Foreside Study meeting on October 25th
225 with the condition that the Board gives their decision at the November 9th Board meeting. Mr.
226 Di Matteo added he would like to have a workshop before the November 9th meeting to go over
227 the recommendations from the Foreside Study meeting.

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229 The following changes to the proposed document were agreed upon:

- 230 • Lines 147 - 151 will be taken out;
- 231 • Keep the number of guest rooms to 12 with no more than 30;
- 232 • Line 125 - take out "reasonably";
- 233 • Addition under number 5 prohibiting destroying a structure for parking lots in certain
- 234 areas. agreement that the addition to a new number 5
- 235 • Line 129 - use and/or in place of "or".
- 236 • Line 678 - add would have a manager available 24/7.

237

238 **Mr. Dunkelberger moved to continue the adoption of the proposed amendments to Title 16**
239 **regarding Inns within sections: 16.2.2 Definitions and 16.3.215 Mixed Use Kittery Foreside**
240 **Zone, to November 9, 2017 and make a final decision at that meeting.**

241 **Mr. Alessi seconded the motion.**

242

243 **The motion carried 5-1-0.**

244

245 **Item 2- Wood Island Life Savings Station - Shoreland Development Plan - Sketch Plan**
246 **Review**

247 Action: Accept or deny application: approve or deny concept plan. Owner, Town of Kittery,
248 and Applicant, Wood Island Life Saving Station Association (WILSA), requests consideration of
249 the reconstruction of the existing Historic building marine seawalls and railway to be used as a
250 museum located on Wood Island, Tax Map 51, Lot 14, in the Residential - Rural Conservation
251 (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-250'/OZ-RP) zones. Agent
252 is Sam Reid, WILSA and Tristan Donovan, Tighe & Bond.

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254 Chair Grinnell explained in 2009 she worked to negotiate the agreement with WILSA and was
255 on the Wood Island Advisory Committee. The group was disbanded and she feels she can
256 review this item objectively. The Board agreed.

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258 Sam Reid thanked the Town for helping with their application. He reported the Maine National
259 Guard is planning to come this spring with 50 men and women to help with the project for 30
260 days. Mr. Reid introduced the team who included members of their Board of Directors, Butch
261 Rickey, project manager, Jim White, videographer, Duncan Malore and Tristen Donovan from
262 Tighe & Bond, Attorney Alan Shepherd and Captain Doan and Captain Howard of the National
263 Guard.

264

265 Mr. Reid gave a history of the island and the creation of WILSA. He pointed out the concession
266 agreements that are included in the board packet and gave an update on the project.

267

268 A waiver for the high intensity class A soil survey will be submitted because there is adequate
269 information about the soil for the septic system. The subservice wastewater system will be
270 explained in future documents.

271

272 The following staff comments were addressed:

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- 274 • The Board decided the museum be designated as public recreation.

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

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446 After Board discussion regarding the extension date, the following motion was made:

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448 **Ms. Driscoll-Davis moved to reconsider the extension of the approval of the Sawyer Lane**
449 **Subdivision, Brave Boat Harbor Road.**

450 **Ms. Day seconded the motion.**

451

452 **The motion carried 5-1-0.**

453

454 **Ms. Driscoll-Davis moved to add two years to the required completion date of the Sawyer**
455 **Lane Subdivision, Brave Boat Harbor Road.**

456 **Ms. Day seconded the motion.**

457

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

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460 Mr. Di Matteo announced the public hearing will take place on October 25th for the Foreside
461 Report draft recommendations.

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463 **BOARD COMMENTS**

464

465 None.

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467 **APPROVAL OF MINUTES**

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469 Site Walk Minutes - 412 Haley Road

470 **Vice Chair Kalmar moved to approve as written the site walk Minutes of 412 Haley Road**

471 **Mr. Alesse seconded the motion.**

472

473 **The motion carried 4-0-2**

474

475 Minutes of September 28, 2017

476 Line 50 - change "Earl Dean to "Earldean"

477 Ms. Wells pointed out the letter from the Conservation Committee regarding Huntington Run
478 should be attached. Mr. Di Matteo explained the public comment segment was not the correct
479 forum to provide information. Ms. Wells stated the Chair told her to do it in that way.

480 Line 84 - "application" not site

481 Line 86 - change to "is spending money and requested"

482 Line 93 - add "the Board" after requested

483 Line 114- strike out "and"

484 Line 148 strike out "will"

485 Line 36 - strike the whole line

486

487 **Mr. Dunkelberger moved to accept the September 28, 2017 Minutes as amended.**

488 **Ms. Driscoll-Davis seconded the motion.**

489

490 **The motion carried 5-0-1.**

491

492 Minutes of August 24, 2017

493 The Board agreed to address this at the next meeting on October 26, 2017.

494

495 **Mr. Alesse moved to adjourn the meeting.**

496 **Vice Chair Kalmar seconded the motion.**

497

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

499

500 The Kittery Planning Board meeting of October 12, 2017 adjourned at 9:25 p.m.

501

502 Submitted by Mary Mancini, Minute Recorder, on October 17, 2017

503

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

505 every effort has been made to ensure the accuracy of the information, the minutes are not

506 intended as a verbatim transcript of comments at the meeting, but a summary of the discussion

507 and actions that took place. For complete details, please refer to the video of the meeting on the

508 Town of Kittery website at <http://www.townhallstreams.com/locations/kittery-maine>

The Chair opened the public comment.

Earl Dean Wells, Conservation Commission, handed out a memorandum from the Commission regarding Huntington Run which is attached to these Minutes.

There being no further comment, the Chair closed the public comment section.

OLD BUSINESS/PUBLIC HEARING

ITEM 1 - Town Code Amendment - 16.2.2 Definitions, 16.3.2.15 Mixed Use Kittery Foreside Zone

Applicant, Wallingford Square, LLC, requests consideration of an amendment to Title 16, Land Use and Development Code to allow as a special exception Inns with greater than 12 and no more than 30 rooms in the Mixed-Use Kittery Foreside (MU-KF) Zone. Agent is Leah Rachin, Bergen & Parkinson, LLC.

Ms. Rachin gave a summary of their initial application and of their proposed amendment to expand the definition of an inn to the Land Use and Development Code. She added tonight's meeting is the fifth time they have been in front of the Board regarding this item.

Ms. Rachin explained the proposal will allow inns that are between 12 and 30 rooms be a special exception within the mixed-use Foreside Zone. The proposed amendment adds additional criteria and stringent rules for inns of this kind. They have listened to the Board's concerns. A requirement of a parking management plan, which is required to be approved prior to any inn of this kind, was added to the proposal. Ms. Rachin added there are permitted uses currently in the zone that would need more parking than their plan and they have included a 1,000-foot buffer to address the concern of too many of this kind of inn being allowed in the foreside. Ms. Rachin read from the current and proposed Comprehensive Plan and believes their plan will enhance the area and is compatible of the area.

The Chair opened the public hearing.

Deane Rykerson, resident of Kittery Point and State Representative of District 1, commented he has not have a problem with economic revitalization or hotels but they need to look at the effect for parking and affordable housing program. He recommended placing conditions and require this developer to initiate a shuttle for all people in the foreside for parking. Mr. Rykerson recommended adding affordable housing as a condition of the application.

Resident Roger Cole commented of a work group that Town is spending money and requested the Board to wait until the recommendations come from the group. He added there is nothing in the pending Comprehensive Plan that the Town should change the town use code to serve applicants. He stated the foreside has a very healthy economic growth. There are current short-term accommodations available in many in-home units. He believes the applicant bought the property knowing of the code and now wants to change it. There are forums stating to keep

mixed-use housing and work force housing integrated into the district. He requested the Board asked the applicant to withdraw and look at workforce housing.

Shannon Hill, former business owner in the foreside, mentioned the Comprehensive and the Foreside Study are going and she agrees to ask the Board to wait. She added Kittery does not owe these people only come into the town and done research and require them to change their zoning laws.

Susan Tavelon, 64 Government Street, only someone who is not for the foreside says hotel will revitalize the foreside. She referred to the Comprehensive Plan and the Kittery Foreside Committee along with the Rice Library referendum and requested to allow these projects to end before a decision is made regarding this item. She also stated her concerns with parking and the congestion of the delivery trucks.

Duncan McCallum, standing in for his wife who owns property on Stimson Street, stated he fought against the overgrowth in Portsmouth. Wife is renting the house now. Fought runaway projects in Portsmouth. They have run out of land in Portsmouth and are turning their attention to Kittery. He stated a large in does not belong here and will serve as a precedence for the future. He said it will destroy the character of Kittery.

Aaron Trainor, Government Street, asked if preserving the character of the Foreside includes a commitment to renovate instead of replacing the existing building. Chair Grinnell responded the code would not prevent developers from replacing a building.

Matt Brock Kittery Point, spoke of the lack of a plan in Kittery for affordable housing or workforce housing. He added people have lost their homes from the property being purchased and the applicant wants something, the Town should get something back. He doesn't believe the time is now for a decision and questioned why the proposal to change the ordinance came after the purchase. He asked the Board to consider more detail on project before going forward.

Lucinda Schlaffer, Kittery Point, spoke of her participation in the Foreside Group Study and listed other planning studies she has taken part in, which had a good number of citizens come out and express ideas. She is an architect and explained the first thing to look at is what is allowable in the zone before you purchase properties. The applicant is out of sequence. Workforce housing has been the number one issue that has come out of the studies and there was no mention of a larger inn in her recollection. She recommends allowing the current projects completed before deciding on the ordinance.

Kathy Wolfe, foreside resident, asked why an amendment instead of a request of a variance and if the Planning Board denies this, will it still go before Town Council. She also questioned if the owner will live at the inn as and owner lives at inn. She stated her concern of seeing Kittery changing as Portsmouth has and would prefer this be put on hold, have less rooms and add some workforce housing.

Chair Grinnell stated the application statute for variances cannot be changed so the plan if board denies plan because it is a recommendation it will go to the Town Council.

Terry Lochhead, 16 Old Armory Way, endorsed the previous comments from residents and this item be held off. She also endorses affordable housing.

Laney McCartney questioned why the applicant needs more than 12 rooms and following the code. She is not in support of this code amendment and is concerned with the scale. She added losing the demographic will price people out of the town.

Holly Zurr reminded the Board the Town is in the middle of a traffic study for the foreside.

Lynn Rosoff, 61 Tilton Street, agrees with the idea about scale and she feels it is too big and the area will be more congested with traffic. She likes the idea of 12 rooms.

Ms. Richen responded to the comments:

- The applicant stated the project would “enhance” the vitality of the area.
- The proposed changes to the amendment include a reduction of the number of rooms, a limitation on the number of inns like this within a 1,000-foot buffer. Ms. Richen added the buffer was at the suggestion of the Planning Board and they will strike this out if needed.
- Workforce housing - there is no requirement for workforce housing due to owner purchasing the property.
- The studies have been going on for a long time and there is a process the Town has established. They have gone through the process and request the process for amendments be followed.
- Parking - the ordinance requires a permitted use before applying. The parking plan is not developed now because it is not a permitted use. Current parking standards and those being suggested would need to be met. She listed the permitted uses in the zone including a grocery store, theaters and restaurants. Ms. Rachin added just because these are listed, does not mean it will be allowed because of regulations.
- Opening the flood gates - larger scale would not be consistent with the stated goals of the foreside and permitted uses.

Comments sent via email are attached to these Minutes.

There being no further comment, the Chair closed the public hearing.

Board Discussion

Chair Grinnell explained the 1,000-foot buffer was brought up at the last meeting with the applicant. Also, the applicant agreed to change the word “hotel” to “inn” with 12 to 20 rooms. Ms. Driscoll-Davis explained she suggested a 500-foot buffer to avoid having more of this kind of inn added in the Wallingford Square area. She now feels the statement would not be fair to the abutters. Mr. Alessi added changes were not to be anti-competitive it was for the town’s benefit not the applicants.

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Chair Grinnell realizes they have met with the applicant five times and explained government moves slowly.

Vice Chair Kalmar commented of her concern that the applicant is proposing over 20 rooms now and she would like to see fewer than 20. Another concern is the impact to parking and she proposed the following addition from 13.3.2.15(e) be the new number 5: Commercial and Private Parking Lots - *“The creation of a surface parking lot as a principal use is prohibited where an existing building is displaced on a property that fronts along the following streets: Walker, Government, Wallingford Square and Wentworth. The prohibition includes accessory parking for use on another lot.* Vice Chair Kalmar explained this will ensure buildings aren’t destroyed to increase surface parking. The applicant agreed to add her proposal as part of their amendment. Mr. Dunkelberger expressed he would like to have stronger language for the parking management plan. Vice Chair Kalmar requested to see commercial added to the list of private lots if a lot was to be used as a parking outside of the area. The applicant agreed.

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- Line 129 - use and/or in place of “or”.
- Line 678 - add would have a manager available 24/7.

Mr. Dunkelberger moved to continue the adoption of the proposed amendments to Title 16 regarding Inns within sections: 16.2.2 Definitions and 16.3.215 Mixed Use Kittery Foreside Zone, to November 9, 2017 and make a final decision at that meeting.

Mr. Alessi seconded the motion.

The motion carried 5-1-0.

Item 2- Wood Island Life Savings Station - Shoreland Development Plan - Sketch Plan Review

Action: Accept or deny application: approve or deny concept plan. Owner, Town of Kittery, and Applicant, Wood Island Life Saving Station Association (WILSA), requests consideration of the reconstruction of the existing Historic building marine seawalls and railway to be used as a museum located on Wood Island, Tax Map 51, Lot 14, in the Residential - Rural Conservation (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-250'/OZ-RP) zones. Agent is Sam Reid, WILSA and Tristan Donovan, Tighe & Bond.

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