

**TOWN OF KITTERY
PLANNING BOARD MEETING**

Thursday, January 27, 2004

APPROVED
Council Chambers

Meeting called to order at: 6:09 p.m.

Present: Doug Muir (Doug), Ron Ledgett (Ron), Chairman Russell White (Chairman White), Scott Mangiafico (Scott), Janet Gagner (Janet), Megan Kline (Megan), Jerry Solich (Jerry)

Also present: Town Planner, Jim Noel (Planner Noel), Mark Eyerman

1. ROLL CALL

Roll call noted.

2. REVIEW OF MINUTES

The Board begins making corrections to the January 13, 2005, minutes, but defers the remaining pages to the end.

3. DISCUSSION (ORDINANCE REVIEW)

Mark took the mixed use district and made all of the changes talked about in the minutes. He reformatted it so it makes sense. He went back to the revised landscape standards re: mature trees, landscape planters, etc., that were put in the commercial district and carried those back to MU. He incorporated Town Council's comments.

- *Housekeeping: Board members should check the latest revision against the minutes and their memories of what was said and make sure that this latest revision is the final draft.*
- *Housekeeping: An extra meeting for KPB is scheduled for February 8. As Planner Noel and Mark will not be present for the meeting on 2/8, homework has been given that can be done without their presence, such as proofreading MU and the revised lighting amendments.*

Hopefully, the photos will be ready by 2/8, as Mark anticipates Terry will be taking photos next week, the week of January 31.

Chairman White would like to get to the Town Council ASAP.

- *Housekeeping: The Board at the last meeting received a pretty final version of the C District dated January 12. The Board should go through that in detail on 2/8.*

Commercial has been forwarded to Town Council and they have scheduled a workshop on it for Monday.

- *Housekeeping: Chairman White suggests that a Board member attend Council's workshop.*

Councilor Frank Dennett has raised some concerns. He had asked Chairman White whether it is a re-zone and whether it is permissible. Ron believes that Councilor Dennett now believes it is OK. If Councilor Dennett still has questions on this issue, Chairman White would like to defer to the Town Attorney on that.

Councilor Dennett has also requested that we get a very accurate overlay that is large enough and accurate enough to show how we are drawing the line, as we do not want to disenfranchise anyone on the border. Chairman White says that will help us to carve our LB line locations, which Mark hopes will be done tonight.

Councilor Dennett believes it is prohibited to break the zone among lot lines. Mark says it is a policy, but not a rule. There was a rejected recommendation from the Comprehensive Plan Committee that the zoning requirements be drawn along lot lines where it makes sense.

- *Housekeeping: Kittery Planning Board will have a second additional meeting on February 17, with the option of cancelling it.*

There is some discussion as to whether the extension of the moratorium must be for a full 180-day period. Chairman White asked for less than 180 days, as he thinks that "not more than" governs the second sentence. Ron thinks that Council can design the moratorium as needed, regardless.

Mark says that the Kittery Foreside Committee came and made a presentation. There was a follow up from Ray re: extension of the Foreside zone. A document dated 11/20 provides two recommendations: 1. Add a provision to limit the maximum footprint of any building on any lot to 1,500 sf. One issue is if there will be separate buildings, do you need to require a setback? 2. Any new construction should go through an advisory design review process. Mark was unclear whether the Foreside Committee was looking for this to be simply advisory or mandatory.

- *Housekeeping: Determine whether one or both of these proposals meet with the Board's approval.*

Ray also indicated that he does not think that the Foreside zone should be extended more onto Route 1 going North. The Committee does support going into Wentworth. They do not have any opinion about the area with the gas station and the bed and breakfast. An aerial photo needs to be obtained to facilitate the discussion. Currently, the Foreside zone does not include the church or the Citgo station. The boundary comes up the RR tracks, and down Central. At the meeting

with the Foreside Committee, there was discussion about including additional area. The e-mail from Ray indicates that the Foreside Committee would support including the triangle within the Foreside district. Chairman White thinks it makes sense to have both sides of the street in the zone. Janet says that there is an issue of waterfront there as well. Do we want to look at that as a marine area? Scott says these are probably in a shoreland zone. Jerry says these people can't go closer to the water because of the RR tracks. If the RR track served as the boundary, it would not be a lot line. Jerry says the RR track is now a road as well. Jerry, Mark and Ron agree that the RR track is under the shipyard's control. Scott says that the church is OK in a residential zone and the gas station is a nonconforming use. Consensus is reached that the Foreside zone will not be extended any further along Route 1 North and that the RR track will be a good boundary.

- *Housekeeping: Ron says the ME State GIS office has the latest aerial survey, which is the latest photographic survey. He would like Planner Noel to get those maps.*

Mark wants to know what the Board wants to do about the boundary of Kittery Foreside District. The Committee, although without legal quorum, looked at the left side of Wentworth and thought it should be included in the Kittery Foreside District. They did not look at the other side of the street. It was not on the table when he discussed it with them. He could go back and ask them about it. Chairman White recommends including both sides of the street, as does Scott.

There is a discussion about whether the Board should agree to the Foreside Committee's recommendation to include in the zoning recommendations a 1,500 sf maximum footprint of a building. Chairman White wants to look at the zone as it is now. It has some apartment blocks and one or two churches, so there are some existing buildings bigger than 1,500 sf. Chairman White is comfortable with the size restriction for residential, but not for commercial structures. Doug thinks that is a good approach. Chairman White says that if we look to adopt a 1,500 sf limitation, we need to look at two things: 1. Is it politically viable and 2. If we do that, we cannot enhance the district by adding a new and well-designed commercial building. Megan is concerned about encouraging business in Foreside. The desire is to keep Foreside as it is and not allow excessive, non-characteristic growth. Scott considers Jones Ave., where the old Post Office is located, to have good, historic homes there that are worth saving.

Mark suggests a maximum of 1,500 sf unless someone is replacing an existing building as of 4/1/05 that has a larger footprint. Doug likes that.

Ron asks about changing the use of a building. Janet is in favor of not allowing the use to change.

Jerry suggests a restriction on how many square feet of view they can take, rather than how many square feet of area they can cover. Mark gives an example. Let's assume that you now have 2 side by side, 50'x100' lots down there, each with a house on it, with the narrow end toward the street, 24' wide, maybe only 40' frontage. At this point, something like 50, 60, 65% of the frontage has building face behind it and most of those are 2 - 2 ½ story. It is an interesting idea. Mark says that one of the concerns is that someone will buy up multiple lots and create the wall

that people are concerned about.

There is discussion about imposing a height restriction. Mark reminds the Board that the idea of relaxing some of the regulations was that some of the big buildings would be re-used. Mark had a copy of Kittery Foreside Committee's proposal with notes in the left margin.

Megan is also concerned about residential taking up commercial parking spaces in the Foreside zone. Mark says that Kittery Foreside reduces the residential parking requirement to one space per unit.

There is discussion about how much power the Foreside Committee has and should have. So far, they have served in an advisory capacity, but there is a question as to whether to make that more official, like with the Conservation Committee. Mark says that the way the design review process was presented was that it would be mandatory that you do it, but only advisory in terms of effect. Ron is concerned that this type of process wastes a lot of time. Ron wants to have firm standards in place to protect the Town. To him, it is quicksand to get into a preference structure. You want the strength to say no. If you meet the standards, then the KPB has the ability to agree with that. Mark gives examples of how Freeport and Bar Harbor are making use of their design review processes. There is consensus that Town Council is more likely to approve review by the Foreside Committee in an advisory capacity. Mark says that one model would be to add some performance standards and include an advisory review by this design board to determine whether the application does conform to those standards. Chairman White thinks this committee should look at every application, even those which will not go to the KPB.

There is discussion about having the Foreside Committee draft the ordinance. In the end, it is agreed that Mark will draft it.

- *Mark will prepare a draft for Board review on February 8*

Ron would like the ordinances to be simpler to read, with things very well defined.

Mark wants direction on the LB districts. At the last meeting, there was a memo going around about the LB district format. What Mark tried to do was summarize where he thought we were. His notes said that there was some agreement to create some separate zone for Pepperrell Cove that was limited marine resources - residential only on the upper floors of the buildings. It is a very tiny zone, only 4 lots. Chairman White says that the rest is residential, with the B&B and KAA the only exceptions.

Mark says the second one is Lewis Square. If you look at the zoning map, there is a radius around something, presumably the middle of the street. It is an LB district, and there is discussion about whether it should be LB1. The Board has no desire to change the boundaries. Lewis Square is to be left as LB.

- *Housekeeping: define farmer's market and put it into commercial, local business.*

Mark asks if there are any problems or issues re: Post Office Square. The new building was built close to the street because the idea was to create more of a downtown atmosphere, rather than a mall atmosphere, and tuck parking behind the buildings. Ron says that it is a nightmare right now coming out of the movie gallery. What is the requirement re: pedestrian traffic? What would we like to see between the road curb and the building face. What kind of sidewalk do we want – one like in Newburyport or Boston’s Back Bay? Do we want nice pavers and gas lights? Ron would like to have a standard for sidewalks. Scott thinks that a lot of the green space and landscaping is in the town’s Right Of Way that could be used for sidewalk area. Mark says that sidewalks are a municipal responsibility unless it’s a new development that someone is doing.

- *Housekeeping: Mark will look at sidewalks.*

For Wentworth/Whipple/Love, Jerry suggests, and there seems to be consensus, that it be LB1 from the busy part - RR tracks up to where the stream comes under the road. From there up, do LB. That would include the vet place, and across the street at Pepperell Green/Meeting House Village, and Marshalls. It would bring more of a downtown feel. Golden Harvest and Carl’s would be in LB1 and if they wanted to redo their buildings, they would have to put them up close to the road, with parking behind, and a sidewalk in front. The dividing line is where the wetlands drain under the road right close to Pepperell Green, right where that land is for sale.

- *Housekeeping: Scott thinks we should do a site walk on every boundary. Ron agrees.*

There is an orphan LB down at Warren’s that may be able to be moved into Foreside.

- *Housekeeping: Mark will do something with Warren’s.*

Mark asks about Dennett/Old Post Road piece in there. The proposal is to make the upper portion of it C and the lower portion LB. Megan says the transition would be at Gilford Marine, but there has been other discussion about using the old 103 where 103 starts to break off, and include the old Mobil gas station on the corner. Mark says it is currently zoned C. Megan says the Danish Health Club is now in commercial. People were talking about stopping LB where 103 goes under the bridge, but then you would have a little chunk of commercial down there. Mark says that if you think about that area, the character in LB and LB1 is different. LB is more suburban, with building set back, and LB1 is more like downtown, with buildings on the road. He remembers a bunch of those buildings on the road. If we said they needed to be setback, it would not be in character. Mark will put stuff together on LB for the 2/10 meeting. Chairman White says that is a funky area and is hard to put it in a category. Megan asks whether the break off point then is the bypass for commercial on the other side. Mark says the question is whether LB or LB1 fits it better. Ron says that from a frontage point of view, it is LB1.

- *Housekeeping: go take a look at that and look at where the plan talked about it and think about what the character of that should be.*
- *Housekeeping: Janet would like a tax map of that area before the meeting.*
- *Housekeeping: Mark gives one other assignment: if there are any edits to C, MU, or*

Lighting, one edited copy that will be given to Mark

- *Housekeeping: When we take pictures, we should write down the address so that Terry can take another picture if necessary.*

Break 8:47-8:57.

4. OLD BUSINESS

None.

5. PLANNER'S TIME

A. Deborah Lane

There is a cover memo from Planner Noel to Commissioner Rossiter re: Deborah Lane. Rossiter recommends it be accepted as a public street. Attorneys McEachern and Bouffard say that they have all the documentation necessary. Commissioner Rossiter recommends it. It is up to the Board. It is at Whispering Oak Development.

Scott moves that we concur with Rossiter and recommend that the Council accept Deborah Lane as a town road.

Jerry seconds.

It is located on Map 13, Lot 2-11.

Janet asks if there is any note on the plan that it never be a public street.

Megan says no.

Ron asks if it meets the standard.

Megan says yes.

Chairman White is relying on Planner Noel's memo and memory of it. Chairman White has not looked at as built.

Ron says that Rossiter says it is.

All in favor. Motion passes.

B. Kittery Retail Ventures

Planner Noel says that Kittery Retail Ventures has appealed to the US Supreme Court, but we do not know at this point whether the case will be heard. Planner Noel thinks that the money for the lawsuit comes from a fellow named Heinz out of British Columbia.

C. Gorham House

Chairman White got a letter re: Gorham House from Ward Hand. They want to do it. They have gotten DHHS funding in place.

Planner Noel has spoken with Mr. Hand 2 or 3 times, today most recently. They have some wetland issues. This outfit went tax exempt in Gorham with a big project, which hit Gorham in the pocket book hard.

Chairman White says this is for profit.

D. Working with Town Council

Ron has a question on how some of our housekeeping items fold into how our recommendations go to the town. Paragraph 16.04.040, page 210, says that we are a 5-man board with 2 associates. Our charter says we are a 7-person board. We need to clean that up. We have a number of these kind of items, all which may be subject to public hearing. We need to package them up and get them to Town Council. How do we do that more efficiently?

Chairman White says his concern is the electronic format.

Scott has heard that the new Town Manager is computer savvy.

Chairman White would like it posted online as a pdf. We should have our stuff posted that way. It is the universal format and is easy to use.

Ron wants to know who would pull together the list of housekeeping changes for the Town Council.

Chairman White would like to extract all the lists.

Planner Noel has all the lists.

Planner Noel would like to give the housekeeping lists separately to Council so they don't have to hold a separate meeting on the lists.

Planner Noel says that they want the Board to work on redefining the word variance and there was also a discussion re: offering a 20% reduction on offering a wetlands setback. There are a multitude of other areas within the ordinance that need to be changed which he works on as he has time. At the appropriate time, he will give it to the Board to look over.

Doug is concerned that we are building too big a pill for them to swallow.

Jerry does not think that we need to give the housekeeping lists.

Planner Noel says the housekeeping lists are just what we need to work on.

Doug says to give them specific portions and let them go through that.

Planner Noel says that initially they were befuddled by what was not included.

Ron says that a lot of work is going on there. The Chairman does a workshop for each. As Ron listens to their discussions, they recognize there is a preliminary phase to get them up to speed. They are looking at the process to take them through the hearings. They are looking at the most efficient way to handle the process.

Planner Noel says that what they have seen, aside from the lighting, is that there are not a lot of changes in the mixed use and the commercial.

Ron says it is the combination of the performance standards, zoning, and design guidelines. There is a growing desire to make it easier to understand and use.

Ron says that as he watched it, the decision of council was to send a letter to us requesting that we do something on the wetland setback

Chairman White has some letter from a while back. He is not sure if it was with respect to that.

Planner Noel says that is part of the zoning overview that we are doing here.

Ron thinks it would be useful for us to look at that discussion - he has on tape. This was at the Council meeting. Pat Bedard and the Town Attorney spoke on this. They have a pretty sharp disagreement about ZBA and it is on the record and they discussed it.

E. Meeting House Village

Janet wants to know if the Conservation Commission got the DEP permit for Meeting House Village.

Planner Noel is not aware that they have it. He has been in contact with Ken Wood. He has a couple messages from Earldean.

Janet asks whether he got feedback from Scarborough re: light issues.

He did not.

Janet asks about the number of units per development acre for Meetinghouse Village.

Planner Noel says that he sent an e-mail, but he hasn't looked at it.

Planner Noel says that once he has the minutes in draft form, he sends them to the applicant.

Ron says that there was also a waiver needed on the length of the road.

Megan says that they got two temporary waivers in 2001, one traffic, and one storm water, that Planner Noel needs to address. That's where her question came up. Are we doing the whole storm water plan, or only a chunk of phase 2? She could not figure out if that was all they were going to have.

Planner Noel thinks they probably have an overall plan so that it all fits together at the end of the day.

Megan says it was hard to tell from what they gave us.

Planner Noel thinks that the DEP permit was for the whole thing, not in pieces.

Megan wants to make sure the current offering for storm water is the one that they would be using.

Ron says the problem is that they have incomplete drainage and it is not satisfactory for phase 2.

Scott says that presumably the storm water is going away from the development. The questionable one is phase 3.

Megan wants to know if phase 1 and phase 2 land drains under the road into Legion Pond area. He said it went to Spruce Creek. She was staggered.

Scott thinks it goes to all the water between the two campuses. Scott does not know if that is correct. It is one big wetland.

Megan thinks it is surprising to have it swing back around.

6. JANUARY 13 MINUTES

The January 13, 2005, minutes are reviewed and amended.

Doug leaves at 9:30.

Jerry moves to extend until 10:15 pm, but no later.

Janet seconds.

All in favor.

- *Housekeeping: Janet would like to know if there is an ADA standard for sidewalks. She does not think that stone dust would meet it. Ron says the requirement is that it does not dig in. Planner Noel will need to confirm whether or not stone dust sidewalks would meet the ADA standards.*
- *Housekeeping: There is a question as to whether to allow the extra parking the applicant is requesting, as it does not seem that it is required and it seems to be too much impervious surface.*

Jerry reopens his motion to extend until 10:25.

Scott seconds.

All in favor.

Scott moves to accept minutes of January 13, 2005 as amended.

Jerry seconds.

All in favor.

10. ADJOURNMENT

Scott moves to adjourn.

Ron seconds.

All in favor.

Meeting ends at 10:20.