

**TOWN OF KITTERY
PLANNING BOARD MEETING
Council Chambers**

APPROVED
Thursday, June 11, 2009

Meeting called to order at 6:10 p.m.

Members Present: Russell White, Ernest Evancic, Michael Luekens, George Burke, Joseph Carleton
Members absent: Douglas Muir, D. Scott Mangiafico
Staff: Sandra Mowery, Town Planner

Minutes:

Site Walk, April 9, 2009

Mr. White moved to accept the minutes as corrected

Mr. Evancic seconded

Motion carries unanimously

Planning Board Meeting, May 28, 2009

Mr. White moved to accept the minutes as presented

Mr. Evancic seconded

Motion carries unanimously

Re-scheduled Site Walks:

Landmark Hill: June 25, 2009 at 4:30 pm

Cutts Ridge Lane: July 2, 2009 at 4:30 pm

PUBLIC COMMENT – There was no public comment.

ITEM 1 – Amendment to Title 16 Land Use and Development Code Zoning Ordinance - Post-Construction Stormwater Ordinance - Continuation of Public Hearing. The proposed amendments address methods for compliance to the Federal Clean Water Act and State law. The Town administration, endeavoring to incorporate State mandated practices for Post-Stormwater Management proposes to amend Sections 16.08.020, 16.12.140, 16.16.040, 16.16.050, 16.20.020, 16.28.390 16.28.450, 16.28.470, 16.32.390, 16.32.440, 16.32.470, 16.32.680, 16.32.690, 16.32.730, 16.32.960, 16.36.060 and to create Section 16.32.395 of the Kittery Ordinance.

The Town Planner stated that Councilor Gary Beers and Mark Bergeron (Sevee & Mahar) had reviewed Version 4R and included some comments for the Board to consider. Otherwise, they felt that the ordinance was ready for Board action and forward to Council. **Mr. Carleton** suggested that the definition of “routine maintenance” not be included as a definition, but to add as text within the applicable areas of the ordinance. **Mr. Luekens** concurred, and the Town Planner will make the necessary adjustments on page 2 and page 11 of version 4R.

Mr. Carleton moved to forward to Council for consideration, the amended version 4R of the Stormwater Ordinance with the provisions regarding routine maintenance, and with no recommendation for threshold for permit requirements.

Mr. Luekens seconded

Motion carries unanimously

ITEM 2 – Plenary Site Plan Review – Final Plan Review. - B & F Land Development, Owner, proposes to remove the existing building and parking lot and to construct one new office buildings and parking lot on 1.29 acres at 240 US Route 1, located on Map 22 Lot 13 situated in the Commercial 1 (C-1) zoning district. The Owner’s agent is Christopher Baudo, RA.

Christopher Baudo reviewed his previous offer to remove the ramp along the side yard buffer and if the removal would be sufficient to move the project forward. Mr. Baudo reviewed the staff notes and noted compliance as follows: the ramp was removed as proposed; sewer plan notes from the Kittery Sewer Department have been added to plan sheet 3; building materials have been presented to the Board in previous meetings and have been included on elevation plan sheets; the retaining wall notation has been included on the landscape plan, sheet 4; the plan index has been corrected. **Chairman White** asked the applicant to summarize the revisions made to the plan since the last review. **Mr. Baudo** noted the following revisions: elimination of the ramp on the northeast side of the property; parking area behind lower portion of building, and relocated; smaller building #2 removed from the site plan; dumpster re-located. The loading area remains in the same location.

Chairman White noted a letter provided by abutters Bill and Eileen McCarthy [letter was not read into the minutes, but is included in the record] and opened the meeting to public comment.

Pat Bedard, attorney representing abutters, referenced the letter and stated that the CEO erred in determining the maximum building height, summarizing that the proposed building is 2 ½ feet too high, and the building is too large given its proximity to a residential area; the front yard buffer (setback to Route 1) should be 40 feet with no activity, including a driveway, within the buffer; the loading area (Outdoor Service Area) located at the front and blocking the exit lane to Route 1, should be located to the side or rear of the development per ordinance. **Mr. Baudo** stated that deliveries would be received prior to 6:00 a.m. and that there would be no interference with customers. **Mr. Evancic** asked about customers picking up materials from the building. Mr. Baudo stated that pick-ups would use smaller box trucks and park in the existing parking spaces. **Earldean Wells** inquired about snow storage/removal, mix of tree plantings, and smaller plantings at exit. Mr. Baudo noted that the smaller plantings were included to improve the line of site for exiting vehicles, keeping them at 24"; snow will be removed from the site as previously agreed. **Earldean Wells** further explained that the variety of street trees is required in the Design Handbook to prevent wholesale loss of a particular species from winter or salt damage. **Mr. Baudo** stated that there is nothing in the Handbook that requires specific spacing or choice of species, but recommends specific species that are salt tolerant and perform well. The proposed landscape plan provides numerous specie variations on the site. **Eileen McCarthy** summarized the points made by Mr. Bedard and re-iterated the scale of the building is out of character with the surrounding neighborhood; the loading dock is not located in conformance with the ordinance; the buffer does not adequately shield the abutting property; the abutters do not object to the development, but believe the size could be decreased to accommodate the residents who have been there for over 20 years. **Mr. Baudo** responded that the loading dock was not an issue until this evening, though on the plan and under review for many months; the existing fence and vegetation has been maintained, as the McCarthy's requested; the building height had been reduced from a previous submittal, and the height had been reviewed a number of times. **Chairman White** asked about the area of vegetation alongside the property line toward US Route 1. **Mr. Baudo** pointed out the property line and noted that the area is owned by the State and would remain as is, including the existing fence. **Chairman White** asked the abutters if they understood his question and Mr. Baudo's response. The abutters, Board members, and attorney approached the dais and reviewed the site plan. These discussions were not audible.

David Durling, abutter, asked how the building height was viewed differently by the CEO and the peer review engineers, CMA. The Town Planner responded that the Code Enforcement Officer reviewed the plan and submitted a memo on January 13, 2009 that the height of the building meets the ordinance requirements. There were a total of seven peer reviews and, following additional review, CMA concurred with the CEO. Further review of the CEO's height calculations was presented by the Town Planner. **Mr. Carleton** stated that he would be disinclined to second-guess the determination of the Code Enforcement Officer. **Chairman White** stated that both CMA and the CEO are now in agreement that the building is in compliance. The Town Planner explained that, occasionally, the information shared by the Planning Office to CMA is not received by all peer review engineers and, in this case, the reviewing engineer had not received the calculations prepared by the CEO, but concurred with them when reviewed. **Bill McCarthy, abutter**, approached the Board regarding the height issue [inaudible],

stated that CMA originally demonstrated that the building height did not meet the ordinance requirements, but dropped the issue following the CEO review. **Mr. Luekens** stated that CMA concurred the issue regarding the height of the building had been resolved, and he was not prepared to second guess the peer review engineers and the CEO. Regarding the front buffer issue presented by Mr. Bedard, considerable discussion followed regarding the use, existing conditions, and ownership of the buffer area. **Chairman White** noted that there were provisions on this project regarding hours of operation as imposed by the Zoning Board of Appeals.

Mr. Carleton moved to waive section 16.32.470, review of the stormwater management and erosion control plan by the York County Soil and Water Conservation District, as requested by the applicant on June 2, 2009.

Mr. Evancic seconded

Motion carries unanimously

Break at 7:50 p.m.

Reconvene at 7:55 p.m.

The Board reviewed the Findings of Fact and conditions. **Mr. Burke** suggested changing condition #7 to state: ~~A forty (40) foot~~ The vegetated buffer area as shown on the site plan must be maintained ...(etc.)

The Town Planner will add the hours of operation under part *i* of the Findings; the reference to a water plan under part *b* will be removed; the approval date of June 11, 2009 will be included where applicable within the Findings.

Mr. Carleton read the Findings of Fact as follows:

Relative to the application of Christopher Baudo for a planned development on property located at 240 US Route 1, located on Map 22 Lot 13 situated in the Commercial 1 (C-1) zoning district, now therefore, based on the entire record before the Board and pursuant to the applicable standards set out in the Land Use and Development Code, the Board makes the following factual findings as required by Section 16.36.070(C)(1):

Findings of Fact

1. a. **Pollution.** The proposed development will not result in undue water or air pollution.
 - i. The elevation of the land above sea level and its relation to the floodplains;
 - ii. The nature of soils and subsoils and their ability to adequately support waste disposal;
 - iii. The slope of the land and its effect on effluents;
 - iv. The availability of streams for disposal of effluents
 - v. The applicable state and local health and water resource rules and regulations;
 - vi. The safe transportation, disposal and storage of hazardous materials;

Vote of 5 in favor 0 against 0 abstained

- b. **Sufficient Water Supply.** The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

Vote of 5 in favor 0 against 0 abstained

- c. **Municipal Water Supply.** The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

Vote of 5 in favor 0 against 0 abstained

- d. **Erosion.** The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Vote of 5 in favor 0 against 0 abstained

e. **Traffic.** The proposed development will 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. Furthermore, the proposed development will provide adequate traffic circulation, both on-site and off-site.

Vote of 5 in favor 0 against 0 abstained

f. **Sewage Disposal.** The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Vote of 5 in favor 0 against 0 abstained

g. **Municipal Solid Waste Disposal.** The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.

Vote of 5 in favor 0 against 0 abstained

h. **Aesthetic, Cultural and Natural Values.** 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 or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Vote of 5 in favor 0 against 0 abstained

i. **Conformity with Local Ordinances and Plans.** The proposed development conforms to duly adopted subdivision regulations and ordinances, the comprehensive plan, and the land use and development codes. In making this determination, the municipal reviewing authority may interpret these ordinances and plans. *(Chairman White requested that the hours of operation condition of the June 10, 2008 Zoning Board of Appeals meeting be included in the narrative part of this section. This item was re-read following his request. The vote was unanimous, 5-0-0, following both readings)*

Vote of 5 in favor 0 against 0 abstained

j. **Financial and Technical Capacity.** The developer has adequate financial and technical capacity to meet the standards of this section.

Vote of 5 in favor 0 against 0 abstained

k. **Surface Waters – Outstanding River Segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in MRSA Title 38, Chapter 3, Subchapter I, Article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Vote of 5 in favor 0 against 0 abstained

l. **Ground Water.** The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Vote of 5 in favor 0 against 0 abstained

m. **Flood Areas.** All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant.

Vote of 5 in favor 0 against 0 abstained

n. **Freshwater Wetlands.** All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

Vote of 5 in favor 0 against 0 abstained

o. **River, Stream or Brook.** Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in MRSa Title 38, Section 480-B, Sub-section 9;

Vote of 5 in favor 0 against 0 abstained

p. **Stormwater.** The proposed development will provide for adequate stormwater management;

Vote of 5 in favor 0 against 0 abstained

NOW THEREFORE on the 11th day of June 2009, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed project will have no significant detrimental impact, and the Kittery Planning Board hereby votes to grant **A Plenary Site Plan** approval to **B & F Land Development** for demolishment of the existing building and parking lot and for the construction of one new office building and parking lot, contingent upon the following conditions per Title 16.36.070(D) Conditions of Approval.

Conditions of Approval

1. Grading or construction of driveway entrances, grading of the site, building demolition or construction is prohibited until such time as the Final Plans have been duly prepared, submitted, reviewed, approved and endorsed as provided in the Kittery Land Use Ordinance - Title 16, and until a complete set of the Final Plans so approved and endorsed are duly recorded in the York County Registry of Deeds, and a mylar copy of the signed and recorded plans is submitted to the Kittery Planning Department for archive.
2. Grading and construction work is prohibited on this site until the Developer has acquired approval from CMA, Inc., that states the retaining wall has been satisfactorily designed by a professional engineer certified in the State of Maine.
3. Prior to the issuance of any permits for this project, the Developer must submit a performance guarantee, acceptable to the Town Manager, in the form of a bond or escrow account to cover the full costs of the proposed improvements. A period of one year is hereby set forth for the guaranty time within which required improvements must be completed.
4. The Developer and the Developer's contractor(s) must adhere to the Best Management Practices (BMPs) documented for this site and required by the Maine Department of Environmental Protection. See the Grading and Drainage Plan (sheet 6 of 12) and Drainage and Erosion Control Plan (sheet 7 of 12), prepared by CLD Consulting Engineers.
5. Prior to the issuance of a Plumbing Permit, a \$2000.00 per unit Betterment Fee will be assessed by the Kittery Code Enforcement Officer.
6. Prior to the commencement of sewer construction, a \$15.00 Sewer Permit Connection Fee must be paid to the Kittery Sewer Department.
7. The vegetated buffer area as shown on the site plan must be maintained by the Owner(s) of this property, unless or and until, the abutting property owner(s) petition the Kittery Planning Board to reconsider the buffer requirement.
8. Snow will be removed from the site and not stored on site.
9. The improvements shown on the landscaping plan must be maintained throughout the life of the developed site.
10. The following notes must be placed on the site plan:
 1. Connection to the Pressure Manhole: After the 2 inch force main enters the pressure manhole, the 2 inch force main line must be constructed with the proper elbow so that flow from the force main is directed straight into the manhole outlet. Construction of the force main line to the gravity flow line must be such that splashing is minimized and debris will not collect in the pressure manhole.
 2. All turns in the gravity pipe must have a cleanout installed. All cleanouts must be brought to grade for access.
 3. A manhole, not a cleanout, must be installed where the building sewer line connects to the main sewer line.

4. Manholes and inverts must be constructed to the specifications of the Kittery Sewer Department. Contact the Sewer Department for typical specifications and drawings.
5. Manholes and sewer pipe must be tested per Kittery Sewer Department specifications. Manholes must be vacuum tested under 10-inch of Hg vacuum. The system is acceptable if a vacuum remains at 10-inch Hg or drops no lower than 9-inch Hg after 60 seconds. Sewer pipe must be air tested by pressurizing to 4 psi for 3 minutes or more.

11. Prior to the installation of sign structures and prior to the mounting of signs, the Developer must submit an application for signage to the Kittery Code Enforcement Officer and acquire approval for signs.
12. The Code Enforcement Officer will issue no building permits until all conditions of this agreement are satisfied.
13. This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the project plans and reports, Board of Appeals and Planning Board Findings of Fact, and any Conditions of Approval imposed herein by the Planning Board.
14. Signing of this instrument by the Planning Board constitutes approval and sets forth the guaranty time period of one year within which required improvements must be completed.
15. Signing of this instrument will not occur until the Developer has paid all peer review fees in full.
16. By vote of the Planning Board herein, the Chairman is authorized to sign the Final Plan and this Findings of Fact on behalf of the Planning Board.

Vote of 5 in favor 0 against 0 abstained

Mr. Carleton left the meeting at 8:30 pm. A quorum of four Board members remained.

ITEM 3 – Plenary Site Plan Review – Preliminary Plan Review. Stephen Pelletier, Owner, proposes to construct a 28,571 square foot building for York Hospital consisting of 8 medical offices and 4 dwellings units at 35 Walker Street, located on Map 4 Lot 168, situated in the Local Business 1 (LB1) Zoning District, parcel area is ±2.5 acres. The owner's agent is Joseph Cheever, EIT, of Attar Engineering, Inc.

The Town Planner provided information regarding the project: The applicant submitted the plan for peer review and, following review, submitted additional information requiring further peer review. The Board has been provided updated staff notes and may choose to review the project based on these updated notes, though they were not provided to the Board prior to the meeting. Members agreed to review the proposal using the most updated staff notes and peer review.

Steve Pelletier, York Hospital, introduced the project consultants and summarized the proposal to date. Based on the recommendations by the Board at the February meeting the building has been moved back from Walker Street and, following a meeting with neighbors, the landscaping management and plan was revised.

Joe Cheever, Attar Engineering, noted that the water district had submitted a letter and that a traffic study had been submitted. The Town Planner stated that the traffic study had been received on the Monday prior to the meeting and was not included in the Board's packets, but that she would make it available to them. A page including the building elevations and list of materials was distributed to the Board members. Issues identified in the staff notes were addressed. Members discussed runoff and catch basin issues, open areas and benches. It was agreed that York Hospital could place seating areas for employee use where they thought most appropriate. **Earldean Wells** asked if there was adequate snow storage on site. The applicant will note the limits of snow storage relative to the wetlands, and proposed to have excess snow removed from the site. There was considerable discussion regarding the

landscaping plan and ordinance requirements, and whether a waiver in the number of trees is required. The Town Planner will include waiver language for Board consideration at the next review.

Mr. White moved to grant preliminary site plan approval to York Hospital as presented, subject to the outstanding items noted by the Board and Town Planner.

Mr. Luekens seconded

Motion carries unanimously by members present

ITEM 4 – Amendment to an Approved Subdivision – Preliminary Plan Review (continued). Beth and John Roylos, Owners, propose to construct a 3-lot subdivision at 32 Haley Road, located on Map 47 Lot 18-4, in the Rural Residential (RR) Zoning District, parcel area is ±9.6 acres. The Owner's agent is Jim Nadeau and Associates.

Jim Nadeau, agent, summarized plan changes and remaining issues regarding the proposed amendment. Mr. Nadeau noted that the proposed dock location will be removed from the plans. The applicant is requesting waivers for: stormwater management and erosion control plan; road intersection grade at Haley Road, and road length to a cul de sac. Staff notes were reviewed and issues discussed. Waivers will be presented and acted upon prior to final approval.

Mr. White moved to grant preliminary plan approval as presented subject to conditions and discussions as set forth.

Mr. Luekens seconded

Motion carries unanimously by members present

Mr. Luekens moved to adjourn

Mr. Burke seconded

Motion carries unanimously

The Planning Board meeting of June 11, 2009 adjourned at 9:50 p.m.

Submitted by Jan Fisk, Recorder
June 17, 2009