

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

**APPROVED**  
Thursday, August 13, 2009

Meeting called to order at 6:12 p.m.

Members Present: Russell White, Michael Luekens, Joseph Carleton, George Burke, Doug Muir  
Members absent: D. Scott Mangiafico and Ernest Evancic

Jon Carter, Town Manager, presented the outgoing Town Planner, Sandra Mowery, a plaque of appreciation, and introduced the interim planner, Gerry Mylroie.

**PUBLIC COMMENT** – There was no public comment.

**ITEM 1 - Amendment to Title 16 Land Use and Development Code - Public Hearing** - The Town administration, proposes to amend the Kittery Land Use Code Section 16.08.20 Definitions, 'Structure'. The definition of structure is being amended in order to permit the placement of concrete slabs for the support of fuel tanks.

**Jon Carter**, Town Manager, spoke to the need for this definition that was prompted by the demand for propane-fueled electric generators, because the ordinance defines permanent generators on concrete slabs as structures, precluding placement within setbacks or impacting density calculations.

The proposed, new definition is: *Structure means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. It does not include fences less than eight (8) feet in height, flagpoles less than fifty (50) feet in height, or signs located in conformance with Article XII of Chapter 16:32.*

The current definition of structure found in the ordinance is: *Structure means anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, together with anything constructed or erected with a fixed location on fifty (50) feet on, or in the ground, exclusive of fences, flagpoles no higher than fifty (50) feet in height, and signs located in conformance with Article XII of Chapter 16:32. The term includes structures temporarily or permanently located, such as decks and satellite dishes.*

**Mr. Carleton** questioned whether the existing definition could be retained and the language regarding generators added. **Mr. Muir** proposed that the existing definition be corrected and amended, and the language for generators added. **Chairman White** asked if there was any further public comment. There being none, considerable discussion and recommendations followed.

The Board proposed that the following definition be forwarded:

*Structure means anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, or anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. It does not include fences less than eight (8) feet in height, flagpoles less than fifty (50) feet in height, or signs located in conformance with Article XII of Chapter 16:32. The term includes decks, but does not include electric generators for residential use or the pads they sit on.*

**Mr. Carleton motioned** to forward this amended definition to the Town Council for adoption.

**Mr. Burke** seconded

**Motion carries unanimously, 5 approved, 0 opposed**

**ITEM 2 – Frog Hollow Lane – Division of Land – Discussion with Action** – Peter Thomas, Owner, proposes to gain planning board approval for the division of the remaining land, approved January 8, 1998 by the Planning Board, to bring the amendment creating parcels B and C, approved by the Kittery Code Enforcement Officer on January 18, 2007, into compliance with the Kittery Ordinance; and then proposes to construct 2 dwelling units on parcel C. The property located at 2 Frog Hollow Lane is situated on Map 57 Lot 7 in the Kittery Rural Residential (**RR**) Zoning District. The Owner is his own agent.

**Mike Livingston**, Anderson Livingston Engineers, summarized the request. The original ROW approval was for two dwelling units on the remaining land. Discussion followed regarding the design of the ROW and public safety, maintenance agreements, and location of the hammerhead. The 1998 approval included a condition that the remaining parcel not be further divided. The Town Planner explained that after considerable investigation, there was no indication as to the rationale behind the condition on the plan. There is sufficient property area to allow for the division. Following further discussion about using the parcel for more than one dwelling, **Mr. Luekens** voiced concern about why the condition was placed on the plan. **Chairman White** explained that, while he did not specifically recall the reasoning, he believed the owner volunteered to restrict further development in order to receive timely Board approval, and that further division would have prompted review as a subdivision. He asked the Board if they felt a site walk was needed. As a minor amendment to an approved plan, Members did not.

**Peter Thomas**, owner, explained the intention to add two dwelling units on the large parcel, one of which would be used by in-laws. **Mr. Burke** stated that he did not object to the proposal as it was a family arrangement, not a multi-unit development. Given the request to change an approved plan, **Chairman White** stated that a new drawing would be needed from the applicant, and suggested that any waivers be considered after the new drawings are reviewed, and a letter from the fire chief is received. The applicant will return to the Board for review of this item at the August 27, 2009 meeting

**Mr. Carleton moved** to continue this item at the next scheduled Planning Board meeting.

**Mr. Muir** seconded

**Motion carries unanimously, 5 approved, 0 opposed**

**Minutes:** Planning Board Meeting, July 23, 2009

**Mr. Carleton moved** to accept the minutes as amended

**Mr. Luekens** seconded

**Motion carries – 4 approved, 1 abstained (Muir), 0 opposed**

#### **PLANNERS TIME:**

1. The Town Planner reviewed the upcoming Board calendar and items requiring review
2. Marshall Rental Center – Dick Marshall first spoke with the Town Planner in Fall 2007 with a building design that required parking lot changes and Board review. Mr. Marshall then suggested that he use the existing foundation and build over it. The Planner explained that this would then require CEO review, but not site plan review. The approved plan was a cape design with two floors, but what was eventually built did not match the approved plan, in that the height (37') was higher than what would have been approved by the CEO. The Town Planner and CEO may provide administrative approval as long as the parking does not increase more than six spaces. Staff worked with Mr. Marshall throughout the review process to insure that he did not exceed the administrative approval restrictions. Because the building under construction is larger than that approved, there is a stop work order in place on the property. Because the business is primarily storage, not requiring the parking of a retail business, the Town Planner suggested that Mr. Marshall document the parking patterns on the property, and possibly show that he has adequate existing parking. Alternatively, the CEO and Planner could submit a decision letter stating that the second floor of the business cannot be used until the owner submits a change of business use

application and receive Planning Board review. **Mr. Muir** suggested that no occupancy permit be given. **Chairman White** stated that he felt the Board has no jurisdiction on this issue, except to review the project as required by ordinance, that the CEO enforces violations. **Pat Bedard**, attorney, and **Dick Marshall** arrived at the meeting and spoke to the Board. **Mr. Bedard** met with the CEO and Town Manager who suggested that pictures be taken of the parking use over a three-day period to determine the impact. Mr. Bedard noted that pictures taken illustrate that parking is not a problem at the site. Mr. Bedard further presented that the height (28 feet) is within the ordinance restrictions and the use of the second floor is unknown at this time, and it will not be used. Use of the first floor will not increase the parking requirements beyond six spaces, and the owner is willing to return to the Board for approval when second floor use is determined. The Town Planner reminded the applicant that this is Planner's Time and that she was requesting direction from the Board. She stated that parking is determined by the square footage and use, and the applicant has increased the square footage beyond what was approved. **Mr. Bedard** summarized that the applicant will return to the Planner and CEO illustrating the parking on the property with the building's new square footage, and if it does not satisfy the criteria for administrative approval, will return to the Planning Board. **Mr. Muir** stated that the Board is not giving directions to the Planner or the CEO.

**Mr. Luekens** motioned to adjourn

**Mr. Carleton** seconded

**Motion carries unanimously**

The Planning Board meeting of August 13, 2009 adjourned at 8:20 pm

Submitted by Jan Fisk, Recorder – August 17, 2009