

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

APPROVED
Thursday, September 24, 2009

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

Council Members Present: Frank Dennett; Gary Beers

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

Members absent:

Staff: Gerry Mylroie, Interim Town Planner; Mike Asciola, Planning Clerk

Other: Earldean Wells, Kittery Conservation Commission; Wil Peirce

ITEM 1 - Amendment to Title 16 Land Use and Development Code – Accessory Dwelling

Units (ADU) Definition. *Joint Workshop*: This amendment proposes to make minor amendments to the Accessory Dwelling Units definition in Section 16.08.020 to removing portions of the ordinance that may not be enforceable.

Chairman White summarized the Board's review process to date regarding the development of the ADU ordinance. **Councilor Dennett** suggested that the majority of the work had been done. **Mr. Muir** noted that the Board struggled with the minimum and maximum sizes of the ADU and other similar details.

Mr. White stated that while there may be minimal changes to the proposed language, the ordinance impacts the entire town. One approach may be to limit the number of ADU's permitted and then review the impact of the ordinance on an annual basis. **Mr. Beers** suggested placing a cap on the number of permits and, if the cap is exceeded in the first year, to consider meeting the level of demand rather than stringently limiting homeowner involvement. Lengthy discussion followed regarding the definitions, contradictory language, parking impact, sizing of septic systems, existing dwelling space vs. newly constructed ADUs, etc. **Mr. Luekens** added additional items that should be addressed, including trip ends, separate entrances, increasing the footprint of the primary dwelling, setback issues, and yearly quotas. There followed general discussion regarding setbacks and side yard, front yard and rear yard minimums as included in the ordinance. **Mr. Dennett** noted that the definitions section includes all the ordinance language under *16.08.020 Definitions*, and this should be corrected. **Mr. Beers** stated that because this ordinance was adopted through referendum, revisions need to retain the spirit of what was adopted, while creating language that makes it workable and enforceable [in Kittery]. **Mr. Mylroie** will incorporate the issues discussed in the workshop in a revised ADU ordinance draft.

The joint workshop ended at 7:10 p.m.

Mr. Mangiafico left the meeting as the Council had officially accepted his resignation from the Planning Board.

The Planning Board meeting resumed at 7:20 p.m.

Planning Board, September 10, 2009 Minutes:

Mr. Burke moved to accept the minutes as amended

Mr. Evancic seconded

Motion carries unanimously

PUBLIC COMMENT – There was no public comment.

ITEM 2 – Sluiceway Condominiums - Minor Subdivision *Preliminary Plan Review (continued)* – Tudor and James Austin, Owners, propose a four (4) unit condominium development on a 6.25 acre parcel located at 37 Pepperrell Road, situated on Map 18 Lot 22 in the Kittery Point Village (**KPV**) Zoning District. The owner's agent is Thomas Harmon, PE, with Civil Consultants.

Mr. Carleton recused himself from review of this item due to a conflict.

Mr. Mylroie summarized the opinion of the CEO regarding side yard setbacks and buffers, specifically:

1. The property abutting Sparhawk Lane is a side yard;
2. A minimum 20 foot green strip is required, and;
3. The Board has the authority to increase setbacks, buffers and screens.

Additionally, the Board needs to determine the dimension of the green strip and whether this areas should be in a common or limited common area.

Tom Harmon noted that he had not have the opportunity to review and comment on the CEO's decision in time for this meeting [inaudible], and that he disagrees with the CEO's determination that a 20 foot wide green strip is required as the ordinance states, "Subdivision design shall minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least twenty feet wide between the abutting properties that are so endangered." as this subdivision is not an endangered property. **Mr. White** asked about the applicant's decision to extend the separation between the proposed development and Sparhawk Lane. **Mr. Harmon** stated that they would provide a buffer, but ask to reserve the right through Board review to change the buffer after the homes are built, as they do not want to dictate what plantings will be included. He stated that he believed his client would agree to a 20 foot buffer. **Mr. White** stated that he felt the sense of the Board was to require a 20 foot buffer and that the maintenance of that buffer will be addressed in the deeds and declarations, and that the maintenance in perpetuity will be with the Association, not the homeowner. **Mr. Harmon** stated that the condominium documents will be provided to the Town Attorney for review.

Kathy Conner, 31 Pepperell Road, asked if the planting plan will be provided to abutters to review and requested that the Kittery Conservation Commission weigh in on the selected materials used in the landscape plan. **Tom Harmon** stated that he confirmed with the CEO that, though cutting had occurred, there was no cutting violation on record.

Mr. Carleton returned to the meeting.

ITEM 3 – Landmark Hill - Sketch Site Plan Review – Amendment to a Previously Approved Site Plan. Frederick Hart, Owner, proposes to construct a two story 10 unit apartment building with parking underneath, laundromat, 3 offices and a public storage facility. This will be an addition to an existing mixed office and retail development consisting of professional office, nursery and pre-school, retail and restaurant on 5 acres. Tax Map 67 Lots 2, situated in the Mixed Use (MU) zoning district. The owner's agent is Thomas Harmon, PE, with Civil Consultants.

Site Walk Minutes of June 25, 2009

Mr. Muir moved to accept the minutes as amended

Mr. Carleton seconded

Motion carries unanimously

Mr. Harmon introduced the applicant, Rick Hart, and George Chobanian, and noted some discrepancies in the site walk minutes:

1. There has been no drainage report/study conducted. His statement at the site walk was that in the 21 years the owner has held the property, drainage has been no problem.
2. The drainage basin is under the proposed building, not driveway, as noted in the minutes.

The building has been moved forward, as discussed previously, as the existing parking can be shared with the proposed uses. Additionally, the fire chief indicated he had no problems with the separation between the two buildings on the plan.

Rick Hart, owner, provided a video to confirm the amount of parking in the parking lot over a period of time (9/21/09 to 9/24/09) to demonstrate that the lot has sufficient existing parking spaces (141 spaces) for the existing use and the proposed uses. The highest recorded parking in this time period was 43 spaces, though it peaked to 63 parking spaces during the summer. **Mr. Luekens** noted that the busiest time for parking must be in the mornings and afternoons for the childcare and adult care centers, and is temporary at those times, for drop off and pick up only. **Mr. Hart** concurred. With the proposed development, an additional 16 spaces (10 under the proposed apartments) will be added, for a total of 157 spaces. The open

area behind the parking lot is used by the daycare centers. **Mr. Mylroie** advised the Board that this is an amendment to an approved site plan and any changes need to be reviewed as a part of a complete plan. **Mr. Hart** noted that Building 4 on the original plan will not be built. Additional items to review:

1. 100' setback / buffer from the adjoining residential use;
2. Retention basin under the building - how will that work? [Mr. Harmon responded, but did not speak into the microphone, and the response was inaudible]

There followed discussion regarding the side yard dimension requirements between residential and commercial use. The Board cannot vary dimension requirements in the ordinance. **Mr. White** explained that the buffer and side yard issues are separate. **Mr. Muir** stated that the ordinance requires a 40 foot vegetated buffer and the applicant is proposing a driveway alongside the property. **Mr. White** observed that the abutting property contains a residence, a lobster pound, a boat manufacturing facility, a storage shed and other buildings. **Mr. Luekens** read from 16.12.130.9: *Buffer to neighboring lot with an existing residence within 100 feet of the lot line* is 40 feet. **Mr. Carleton** read the definition of buffer area: *neutral area separating conflicting areas*, but noted that the two lots did not appear to be conflicting. **Mr. Hart** stated that Mr. Crawford's lot also includes batting cages. **Mr. Muir** stated that this project is not the same as the B&F project as this is a residential use abutting a residential use, that the abutting uses are similar. **Earldean Wells** asked if this project is required to include landscaping within parking areas, as per ordinance. **Mr. White** observed that, because there is no new exterior parking proposed, the inclination is no. The Planner will work with the applicant to advance the application for further review.

Planners Time

Meeting dates and anticipated agenda items were discussed.

Mr. Luekens moved to re-schedule the November 12 meeting to November 5, 2009 and the December 10 meeting to December 3, 2009.

Mr. Carleton seconded

Motion carries unanimously

Mr. Carleton moved to adjourn

Mr. Burke seconded

Motion carries unanimously

The Planning Board meeting of September 24, 2009 adjourned at 8:47 p.m.

Submitted by Jan Fisk, Recorder – September 28, 2009