

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

APPROVED
November 19, 2009

Meeting called to order at 6:05 p.m.

Board Members Present: Joseph Carleton, Ernest Evancic, George Burke, Scott Lincoln, David Kelly

Members absent: Russell White, Michael Luekens

Staff: Gerry Mylroie, Town Planner

Minutes: November 5, 2009 Planning Board Meeting

Mr. Evancic moved to accept the minutes as amended

Mr. Burke seconded

Motion carries unanimously

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Amendment to Title 16 Land Use and Development Code – Public Hearing and Discussion -

The mandatory Shoreland Zoning Act (Act), 38 M.R.S.A. Section 435-449 and the guidelines for the Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, the minimum guidelines set forth in the Act and by the Board. This amendment to Title 16 incorporates the most current State shoreland zoning ordinances into the Kittery Municipal Code. In working with the Town Council's Ordinance Review Committee to improve administrative efficiency, clarity and eliminate redundancy, re-formatting of the Planning Board's recommended amendments is proposed. Additionally some substantive changes are recommended to improve the working relationship between the Planning Board and Zoning Board of Appeals. Finally the Zoning Map must be amended consistent with the Planning Board's recommendation to the Council. Overall, incorporating State recommendations for the Shoreland Zoning including:

Amendment to Chapter 16.04 – General;

Amendment to Section 16.08.20 – Definitions;

Amendment to Chapter 16.16 – Administration and Enforcement;

Amendment to Chapter 16.24 – Special Exceptions and Variances;

Amendment to Chapter 16.28 – General Development Requirements;

Delete Section 16.32.490 – Shoreland Zoning; and

Amend previously recommended Chapter 16.34 – Shoreland Zoning.

Mr. Carleton, Acting Chairman, explained to the audience that the Planning Board has been working for almost one year on this ordinance to meet shoreland standards as mandated by State law, noting that local ordinance must be at least as strict as the State guidelines. The **Town Planner** summarized the efforts to date, announced the scheduled public hearings on this ordinance, and described the new overlay zones.

Mike Asciola, Assistant Planner, summarized changes to the zoning map in conjunction with the ordinance, highlighting the Resource Protection Overlay zone, explaining the setbacks from the high water mark have not changed.

Public Hearing opened at 6:18 pm

Brenda Payne, Brave Boat Harbor Road, inquired about grandfathering permits and properties under the new Shoreland Overlay Zone. **Mr. Carleton** believed that she would be grandfathered, but she should consult with her lawyer regarding property specifics. **Mr. Mylroie** explained the area measured as shoreland from the high water mark, and construction and tree-cutting restrictions within the shoreland area. He further explained that the standards are written to protect water resources from runoff and pollution by providing a buffer to human activity.

David O'Brien, Badgers Island, inquired about the impact of this ordinance upon additions to existing structures or homes. **Mr. Carleton** explained there are rules and it can be complicated, suggesting a meeting with the Town Planner could better answer these questions.

Jerry Ilara, Badgers Island, asked what changes will impact existing properties. **Mr. Carleton** explained that properties currently existing are protected. **Mike Asciola** stated that there has been little change to properties on Badgers Island as the majority of the Island is part of the current shoreland zone. Adding the floodplain maps may add an additional twenty feet to some properties, but there are no changes to standards in the underlying zones. The perimeter of Badgers Island has been included in the CFMA Overlay, identifying existing working waterfront areas.

Wayne Harris, Kittery Point, asked about his property, and stated he felt the town should not be more restrictive than the state. **Mr. Asciola** suggested a professional determination of his property be made to help identify wetland areas on his property.

Ron Lawrence, Kittery Point, inquired about setbacks. **Mr. Carleton** explained there are three "setbacks" and they are currently in the ordinance: the shoreland zone boundary which is 250 feet from the high water mark, and building setbacks which are 75 feet from a stream and 100 feet from the water's edge within a shoreland zone.

There being no further testimony, the Public Hearing closed at 6:37 p.m.

ITEM 2 – Cutts Ridge Lane – Right of Way Extension/Wetland Alteration *Final Review/Decision* – Ann M. Colson, Owner, proposes to extend Cutts Ridge Lane. The property located off 2 Cutts Ridge Lane is situated on Map 65 Lot 13 in the Kittery Rural Residential (**RR**) Zoning District. The Owner's agent is Michael Livingston of Anderson, PE, Livingston Engineers.

The Town Planner reminded the Board of their recommendations and details that are to be included on the plan. **Michael Livingston** stated Board recommendations had been included on the plan or in the notes, including requested waivers. He explained that note 3 was changed to reflect the property is restricted to three dwelling units but, under homestead exemption, the owner could divide the property in the future without Planning Board approval.

Mr. Carleton read the Findings of Fact as follows:

The applicant proposes to modify and extend the right of way known as Cutts Ridge Lane for possible future land division under M.S.R. Title 30-A §4401.4.A. The extension of the right of way will also consist of improving the existing right of way to meet Town road construction standards. In widening the right of way a wetland alteration will be required resulting in 991 square feet of wetland filled. The property is 26-acre parcel located at 2 Cutts Ridge Lane is situated on Map 65 Lot 13 in the Rural Residential (RR) Zoning District.

[The plan submittal documents were not read into the minutes]

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.

1. a. **Pollution**. The proposed development will not result in undue water or air pollution.
Vote of 5 in favor 0 against 0 abstaining

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 abstaining

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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.

Vote of 5 in favor 0 against 0 abstaining

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

Mr. Carleton stated the Board could not vote on this item as it was not applicable at this time.

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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 abstaining

- 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 M RSA Title 38, Section 480-B, Sub-section 9;

Vote of 5 in favor 0 against 0 abstaining

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

Vote of 5 in favor 0 against 0 abstaining

NOW THEREFORE 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 Final Approval for the Extension of a Right of Way and Wetland Alteration at the above referenced property, contingent upon the following conditions per Title 16.36.070.D., Conditions of Approval.

[Board members agreed to include the Conditions in the record without a reading]

1. Prior to the issuance of building permits for any of the lot proposed herein, the Applicant/Developer must have met all conditions of this agreement, and must have submitted copies of the recorded documents and copies of the recorded mylar map to the Town Planner.
2. Prior to any road construction, a pre-construction meeting with the Owner, Applicant/Developer and Town must be held. At that meeting, an inspection schedule and escrow account for inspection fees will be established.
3. The Applicant/Developer and the Applicant/Developer's Contractor(s) must adhere to the Best Management Practices documented for this site. See Road Design and Profile Plan.
4. Prior to the beginning of construction, the Applicant/Developer must pay the Wetlands Preservation Fee and post the required conservation markers as required by the Planning Board.
5. This Approval by the Planning Board constitutes an agreement between the Town and the Applicant/Developer, incorporating as elements the Project Plans and Reports and the Planning Board Findings of Fact, and any Conditions of Approval imposed by the Planning Board.
6. The right of way must remain privately owned in common and maintained by the land owners. No more than three dwelling units can use the right of way as approved by the Board, as an 18-foot wide road.
7. Six evergreen hemlock or spruce trees, a minimum of 6-feet in height, must be installed along the property line where noted on the Plans.
8. A road maintenance association must be established consisting of any parcels using the road in order to maintain the 18 foot wide travel way, landscaping, drainage, and buffer specified on the Plans. The association's responsibilities and requirements including a common maintenance agreement will be recorded and binding to each lot owner and their heirs or assigns.
9. The "Buffer Area" delineated on the plan consisting of 4,819 sq. ft. of upland and 10,332 sq. ft. of freshwater wetland must be observed. This area is to be preserved as an undisturbed buffer area and is to be noted and binding in any future deed conveyances of the property or right of way. Said

"Buffer Area" shall be monumented with iron pipes and posted with Town of Kittery "Protected Wetland" markers.

10. Signing of this instrument by the Planning Board constitutes approval. A period of one year is hereby set forth for the guaranty time within which required improvements must commence and within two years be completed.

Mr. Lincoln moved to approve the project as determined in the foregoing Findings of Fact

Mr. Evancic seconded

Motion carries unanimously by all members present

ITEM 3 – Frog Hollow Lane – Division of Land – Amendment to Right of Way and Division of Land Plans – Plan Completeness Review – 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's agent is Michael Livingston of Anderson, PE, Livingston Engineers.

Mr. Mylroie explained the previously approved ROW is being extended. A letter of approval for the extension has been received from the Fire Chief. The Board's action would be to find the application complete and schedule a public hearing for this item.

Mr. Burke moved to find the application complete and to schedule this item for a Public Hearing

Mr. Lincoln seconded

Motion carries unanimously by all members present

Mr. Livingston asked about a site walk and, following further discussion, determined a site walk would not be necessary for this revision.

PLANNER'S TIME

Discussion continued on Item 1. **Mr. Mylroie** explained the Council and Ordinance Committee has been involved in amending additional Title 16 chapters to more efficiently dovetail with the shoreland zone changes, while also reviewing the ADU ordinance, ZBA and Planning Board duties and responsibilities, and recent change to the mobile home language. The Council hopes to undertake adoption of these changes by the end of this calendar year. Board members will take the November 6, 2009 amended revision and forward recommended adjustments or changes via email to the Town Planner, in preparation for the December 3, 2009 public hearing.

Mr. Asciola presented a letter to the Chairman from John and Beth Roylos requesting extension of the June 11, 2009 preliminary approval of a subdivision amendment.

This past June, 2009 my wife and I received preliminary approval for a three lot minor subdivision on our 32 Haley Road property. Unfortunately, soon afterwards, I was laid off from my job which cut our income in half. I found new employment and was re-hired in November. While we are anxious to complete our permitting process, we are asking for more time to prepare for final approval. We are requesting a two year extension to complete work for final approval that is being prepared by Jim Nadeau, our representative to the Planning Board. Thank you for your time and consideration.

Following discussion, the Board asked that this request be placed on the December 3, 2009 agenda for review and consideration, allowing the Planning staff sufficient time to gather the necessary information to help the Board make a decision.

Mr. Mylroie will focus on the special exception criteria found in the new shoreland ordinance and attempt to clarify these changes for the Board, and will share the information via email. **Mr. Lincoln** offered his computer experience to the Town Planner while attempting to format the numerous edits to Title 16.

Mr. Lincoln moved to adjourn

Mr. Burke seconded

Motion carries unanimously

The Planning Board meeting of November 19, 2009 adjourned at 8:08 p.m.

Submitted by Jan Fisk, Recorder – November 24, 2009