

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

APPROVED
December 3, 2009

Meeting called to order at 6:06 p.m.

Board Members Present: Russell White, Michael Luekens, Joseph Carleton, Ernest Evancic, Scott Lincoln, David Kelly

Members absent: George Burke

Staff: Gerry Mylroie, Town Planner

Minutes: November 19, 2009 Planning Board Meeting

Mr. Carleton moved to accept the minutes as amended

Mr. Lincoln seconded

Motion carries unanimously

PUBLIC COMMENT – There was no public comment.

ITEM 1 - Amendment to Title 16 Land Use and Development Code – (Public Hearing) - The mandatory Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt shoreland/resource protection zoning law consistent with, or no less stringent than, the minimum requirements in the Act and guidelines. A proposed amendment to Kittery's Title 16 Land Use Development Code including the Zoning Map incorporates the requirements into the Kittery Municipal Code. The amendment must be reviewed by the Planning Board and recommended to the Town Counsel for adoption. 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 are 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 involves:

Amendment to Chapter 16.04 – General;

Amendment to Section 16.08.20 – Definitions;

Amendment to Section 16.12 – Conservation Zone, Shoreland Overlay Zone,

Commercial Fisheries/Maritime Uses Overlay Zone, and Resources Protection Overlay Zone;

Amendment to Chapter 16.16 – Administration and Enforcement;

Amendment to Chapter 16.24 – Appeals, Special Exceptions and Variances;

Amendment to Chapter 16.32 – Design and Performance Standards;

Amendment to Chapter 16.28 – General Development Requirements;

Delete Section 16.32.490 – Shoreland Zoning; and

Amend previously recommended Chapter 16.34 – Shoreland Zoning.

Amendment to Chapter 16.37 – Marine Related Development.

Mr. Mylroie informed the audience that this is a hearing to inform the public on the Board's review of a working document. Additionally, he explained that Item 6 is part of the State's mandate for shoreland zone development, and the resource protection overlay is part of that process. He noted that individuals who received notice of tonight's meeting are currently in a resource protection zone, explaining there are no changes to the setback requirements in the amended ordinance, but tree and vegetation clearing in stream and shoreland areas is now more restrictive, per State regulations.

The Public Hearing opened at 6:20 p.m.

Bob Kaszynski asked where the resource protection overlay section is included within the revision, as it is not clear in the information provided. **Mr. Mylroie** located the document and provided the information. **Mr. Mylroie** advised the audience that the information is on the Town's website, individuals can meet with planning staff regarding specific properties, or request to have information mailed to them.

Ken McDavitt, inquired about the change of setback distances from the mean highwater mark to the top of a coastal bluff. Mr. McDavitt asked where these setback measurements should be taken, either from the unstable portion or from the stable portion of a bluff, as the language is unclear. The Town Planner noted that this is required language from the State and will be clarified.

There was no additional comment and the Public Hearing Closed at 6:32 p.m.

The Planner recommended further discussion on this item could be deferred to the end of the agenda. Board members agreed.

ITEM 2– Frog Hollow Lane – Division of Land – Amendment to Right of Way and Division of Land Plans – Public Hearing and Decision – 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.

Peter Thomas, owner, explained that abutting properties have not yet tied into the existing road. However, should they wish to tie into the road in the future, the deed includes language requiring they participate in the cost of maintenance. In no case will they be required to participate in the maintenance costs of the ROW extension, beyond the hammerhead.

Chairman White left the PB meeting at 6:57 p.m. to attend the Port Authority meeting as a representative of the Planning Board. **Mr. Carleton** took the Chairman’s position.

Mr. Luekens moved to accept the Findings of Fact for an amendment to the right of way and division of land at Frog Hollow Lane by reference and by vote as follows:

1. a, d, e, g, h, j through m, o through cc, and 2. a. through c do not apply.
- b. Sufficient Water. 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
- 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
- i. Conformity with Local Ordinances and Plans. The proposed development conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
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

NOW THEREFORE the Kittery Planning Board has in its Findings of Fact determined that the proposed project will have no significant detrimental impact, and the Kittery Planning Board hereby resolves to grant approval for a **division of land** at the above referenced property contingent upon the following conditions:

Conditions of Approval

1. The Owner must void the 2006 Division of Land plan signed by Heather Ross, Kittery Code Enforcement Officer. An affidavit must be recorded in YCRD that explains that the plan being voided did not have Kittery Planning Board approval as required per Kittery Ordinance Section 16.36.080.D.
2. This approval by the Planning Board is an agreement between the Town and the Owner of Map 57 Lot 07, incorporating as elements the Owner's application and the Board's Findings of Fact including such conditions as the Board may impose here in.
3. 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 recordation of the deeds and map must be completed.
4. Prior to the issuance of any building permits, the Owner must submit copies of the recorded map and deeds to the Code Enforcement Officer. The Code Enforcement Officer will issue no building permits until all conditions of this agreement have been satisfied.
5. 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.
6. The Owner's engineer needs to revise the signature block to read "Amendment to An Approved Right of Way Plan" and the title of the proposed plan needs to be "Amendment to Plans, Right of Way Plan for William H. Anderson, Jr."
7. The Owner's engineer needs to add note 9: "9. See Right of Way Plan, dated November 1997, approved by the Kittery Planning Board on January 12, 1998."
8. Lot A as shown on the 1998 plan shall be excluded from any responsibility to pay maintenance fees for any portion of the roadway beyond the originally approved roadway.

Vote of 5 in favor 0 against 0 abstaining

ITEM 3 – An Amendment to Title 16 Land Use and Development Code – Accessory Dwelling Units (ADU) - Public Hearing and Recommendation to Town Council. This amendment proposes to amend the accessory dwelling units definition in Section 16.08.020 and add a new Article for accessory dwelling units. Accessory dwelling units are a form of housing that contributes to the character and diversity of housing opportunities. The intent is to provide more affordable housing for family members at below average market rental rates within existing neighborhoods, to protect the character of the neighborhoods, and to respond to the Comprehensive Plan in regards to diversity in housing, as well as affordable housing.

The Public Hearing opened at 7:17 p.m.

Drew Fitch, asked why types of residents are included in the amended version (16.32.1181), noted that the limit of 800 sf per unit is too small (16.32.1184.B.1.), why ADU's are not permitted in "...accessory or detached buildings encroaching on yard setbacks", and feels that the restrictions make it impossible for individuals to take advantage of the ordinance.

Mr. Luekens stated that the Board has struggled to work with the ordinance as adopted by the voters, yet have it enforceable and workable with the rest of the community. **Mr. Carleton** added that ADUs are not subject to density requirements, but they must remain compatible with the neighborhood, which is why a size limitation was included in the amendment.

Bill McCarthy referred to the original language, Section 16.08.020.3.a. *All existing permitted structures that are legally nonconforming shall be grandfathered*, but in the proposed language, Section 16.32.1184.B.2.c. *an ADU will not be permitted in accessory or detached buildings encroaching on yard setbacks*, and this appears to contradict the language approved by vote.

Mr. Mylroie stated that this language applies to structures that are accessory to a primary dwelling unit such as a shed or garage that encroaches on setbacks.

Eileen McCarthy [inaudible – did not approach the microphone].

Mike Asciola [inaudible – did not approach the microphone].

Mr. Mylroie explained that the revised language evolved through joint Planning Board and Council review of the original language supported by the voters, in an attempt to make the ordinance workable.

Eileen McCarthy inquired about written notice to property owners following approval of an ADU. **Mr. Carleton** explained that appeals from these decisions would be made to the ZBA. She added that she did not believe any decision was made in workshops that restricted ADUs in accessory structures within setbacks.

Bill McCarthy asked:

1. why would an owner not be allowed under 16.32.1182 to expand their building to take advantage of the ADU ordinance;
2. would a lot currently in a commercial zone, that used to be in a residential zone, be grandfathered as a residential use under 16.32.1182, “*An accessory dwelling unit may be permitted in all zoning districts where single-family dwellings are a permitted use*”.
3. Under section 16.32.1184.3, “*The property on which an accessory dwelling unit is located must meet the size required by a zone’s standards*”. Would a grandfathered lot apply in this case if the lot was undersized?

Mr. Carleton noted that the purpose of the ADU language was to allow a property owner with a large home and large property taxes to provide affordable rental space, but not to add on to a home simply for the purpose of providing rental space and collecting rents.

Eileen McCarthy [inaudible - did not approach the microphone].

There being no additional comment, the Public Hearing closed at 7:40 p.m.

Mr. Luekens stated that the Board’s charge is to provide the Council with recommendations, and this item has been reviewed and discussed many times. **Wil Peirce** suggested that the ordinance go to Council noting the public’s questions and concerns, and have the Council determine whether these concerns should be further considered.

Mr. Luekens moved to recommend this amended language, section 16.08.020, be forwarded to the Council, including questions presented at the Planning Board public hearing of December 3, 2009.

Mr. Lincoln seconded

Motion carries unanimously by all members present

ITEM 4 –An Amendment to Title 16 Land Use and Development Code – Mobile Home Setback in Mobile Home Park – Public Hearing and Recommendation to Town Council. This amendment proposes to amend a section in Title 16 to set a standard for the setback of a mobile home in a mobile home park.

The Public Hearing opened at 8:54 p.m.

Mark Phillips, Johnsons Mobile Home Park, spoke in support of the proposed amendment language. The Public Hearing closed at 8:56 p.m.

Mr. Luekens moved to submit the revised language to Title 16.32.730.D.3. to the Council with a recommendation for adoption.

Mr. Kelly seconded

Motion carries unanimously by all members present

ITEM 5 – Amendment to Kittery Town Code - Planning Board and Zoning Board of Appeals Duties - Public Hearing and Recommendation to Town Council. The mandatory Maine Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt shoreland zoning law consistent with, or no less stringent than, the minimum requirements in the Act and in the guidelines. Some of these provisions relate to the duties of the Planning Board and Zoning Board of Appeals. A proposed amendment incorporates the requirements into Kittery’s Town Code. The amendment must be reviewed by the Planning Board and recommended to the Town Council for adoption.

The Public Hearing opened & closed at 8:58 pm

Mr. Carleton noted to add as number 5 in 16.04.050.B “and other appeals as may be authorized by this code”.

Mr. Luekens moved to approve language as presented in Chapter 16.04, with additional language proposed for 16.04.050.B.5.

Mr. Evancic seconded

Motion carries unanimously

BREAK - Chairman White returned to the meeting

ITEMS FROM PUBLIC HEARINGS – Discussion and Decisions

ITEM 6 – Amendment to Kittery Title 16 Land Use and Development Code – Resource Protection Overlay Zone – Schedule a Public Hearing. The mandatory Maine Shoreland Zoning Act, (38 M.R.S. Section 435-449) and guidelines from the Maine Board of Environmental Protection require municipalities to adopt resource protection zoning law consistent with, or no less stringent than, the minimum requirements in the Act and in the guidelines. A proposed amendment to Kittery’s Title 16 Land Use Development Code including the Zoning Map incorporates the requirements into Kittery’s Municipal Code. The amendment must be reviewed by the Planning Board and recommended to the Town Council for adoption. The proposed public hearing date is January 14, 2010.

Mr. Mylroie explained that the State requires a notification of a public hearing be prepared, and recommended that the Board return to this item under Planners time after a hearing has been scheduled.

Mr. Carleton moved to schedule a Public Hearing for this item on January 14, 2010.

Mr. Luekens seconded

Motion carries unanimously

ITEM 7 - Roylos Minor Subdivision – Final Plan Submittal Time Extension Request. Beth and John Roylos, owners, request a time extension to complete the final subdivision plan preparation. Preliminary Subdivision Plan was approved subject to conditions on June 11, 2009. The applicant applied for an extension on November 16, 2009. The deadline for final plan submittal was approximately December 10, 2009. Applicant requests a two year extension. The property is located on 32 Haley Road, Map 47 Lot 18-4 in the Rural Residential and Shoreland Zones.

Mr. Luekens moved to approve a one year extension to Beth and John Roylos for submittal of a final subdivision plan.

Mr. Kelly seconded

Motion carries unanimously

ITEM 8 - Woodside Meadows Estates – HDV Enterprises - Major Subdivision –Plan Implementation Time Extension Request. HDV Enterprises, Tom Haight, on behalf of Walter and Joyce

Borkowski, Owners, request a time extension to initiate construction of their subdivision due to litigation by Town of York property owners adjacent to the access roadway into the site located in Kittery. The Final Subdivision Plan was approved June 28, 2007 and must be started within one year and substantially complete within three years from Planning Board approval. However, per section 16.36.050.e.1., the Planning Board may by formal action grant extensions for an inclusive period from the original approval date not to exceed ten years. Applicant requests a time extension. Property is located off Woodside Meadow Road in York with the property located in Kittery, Map 67 Lot 22 in the Rural Residential Zone.

Tom Haight, HDV Enterprises, requested an extension of the Plan approval as they work through a litigation process. Board members discussed the project, pending issues the developer is facing, and the estimated time needed for substantial completion of the project.

Mr. Luekens moved to grant a one year extension for substantial completion to HDV Enterprises for the Woodside Meadows Estates subdivision, to June 28, 2011.

Mr. Carleton seconded

Motion carries unanimously

Mr. Carleton moved to amend the minutes and original Findings of Fact for Woodside Meadows to accurately reflect tax map 67 lot 22, correcting the incorrect reference of map 66 lot 22.

Mr. Lincoln seconded

Motion carries unanimously

ITEM 9 - York Hospital – Final Site Plan - Filing Time Extension Request. York Hospital, Stephen Pelletier, requests a 90 day time extension to file the Final Site Plan. The Preliminary Site Plan was approved on June 11, 2009. Town Code states the final plan must be submitted within 6 months. The owner proposes to construct a 28,571 square foot building for York Hospital consisting of 8 medical offices and 4 dwelling units at 35 Walker Street, Map 4 Lot 168, in the Local Business 1 (LB1) and the Kittery Foreside (KF) Zones. The owner's agent is Joseph Cheever, EIT, with Attar Engineering, Inc.

Mr. Luekens moved to grant a 90 day time extension beyond the ordinance deadline of six months for York Hospital to submit a Final Site Plan

Mr. Lincoln seconded

Motion carries unanimously

PLANNER'S TIME –

1. Election of Board Officers:

Mr. Carleton nominated Russell White as Board Chairman

Mr. Luekens seconded

Motion carries, 5 in favor, 1 abstention (White)

Mr. Evancic nominated Joe Carleton as Board Vice-Chairman

Mr. Luekens seconded

Motion carries, 5 in favor, 1 abstention (Carleton)

Mr. Carleton nominated Michael Luekens as Board Secretary

Mr. Evancic seconded

Motion carries, 5 in favor, 1 abstention (Luekens)

2. Planning Board Handbook – Additional/corrected pages distributed to Board members
3. Sign Ordinance. The Council would like the sign ordinance enforced, and input from the Board and Planning staff as to how to proceed is requested. Members suggested that some illegal signage may not be objectionable, such as in the Kittery malls.
4. Shoreland/Resource Protection Overlay. **Mr. Mylroie** summarized the progress to date, remaining issues, and the next steps in the codification process. Discussion continued regarding application formatting, submission requirements, review and appeal processes.

Mr. Luekens moved to adjourn
Mr. Carleton seconded
Motion carries unanimously

The Planning Board meeting of December 3, 2009 adjourned at 9:30 p.m.

Submitted by Jan Fisk, Recorder – December 8, 2009