

**TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING**

**APPROVED
NOVEMBER 12, 2015**

Chairperson Ann Grinnell called the meeting to order at 6:05 p.m.

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, David Lincoln, Secretary Debbie Driscoll-Davis and Mark Alesse.

Members Absent: Deborah Lynch.

Staff present: Chris DiMatteo, Town Planner.

Pledge of Allegiance

Ms. Grinnell led those present in the Pledge of Allegiance.

Minutes: Foreside Site Walk of October 22, 2015

MS. DRISCOLL-DAVIS MOVED TO ACCEPT THE MINUTES OF OCTOBER 22, 2015 AS AMENDED, MR. ALESSE SECONDED. MOTION CARRIED 6/0/0.

Minutes: October 22, 2015

Ms. Grinnell will hold the minutes until the next meeting of November 19 in order to give Ms. Davis time to review the tape of the October 22nd meeting for suggested corrections.

Public Comment: None.

OLD BUSINESS

ITEM 1 – Kolod Seawall Replacement–Shoreland Development Plan Review

Action: Approve or deny Plan. Owner/Applicant Jeffrey and Deborah Kolod requests consideration of plans for replacement of an existing seawall and associated wetland alteration. The 0.45-acre lot is located at 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Barney Baker, Baker Design Consultants.

Mr. Barney Baker of Baker Design Consultants and Mr. Jeffrey Kolod approached the podium to answer questions of the Committee.

Ms. Kalmar asked if changes to the new Plan concerned the pad under the hot tub and the step into the garage as additions to the de-vegetative calculations, and also a reduction in the size of the pool.

Ms. Grinnell asked if the shed would be moved and then moved back. She asked what would be done to protect the shed. Applicant explained that great care would be taken as it is a non-conforming use and they don't want to jeopardize the right to that use.

Ms. Davis asked if the dimensions of the shed should be documented, and Ms. Kalmar asked if there was a more complete set of plans. Ms. Kalmar asked if there was another plan showing the dimension of all the buildings. Mr. Barney said that the buildings were carefully surveyed and that they could be added to the Plan. Ms. Kalmar would like the Plan to show the dimensions of all the features including the pool. The pool dimension was reserved for the Plan but not included on the Plan as they were not sure if the pool would be added at the time the Plan was done in 2013. Mr. Barney noted that the shape of the pool could possibly be changed.

Mr. Di Matteo suggested what the committee is looking for is the applicant to demarcate the devegetated areas by showing the dimensions of the other devegetated areas like the 2015 paver pad.

Ms. Earldean Wells, Chair of the conservation Commission expressed concern that the Plan does not indicate the impervious areas.

Mr. Alesse asked if the six questions that Staff had asked have been complied with. It is indicated that two have been and it is unsure if the remaining four have been

Mr. Barney addressed the four additional questions. He showed where the 2013 approved plan book and page is indicated on the Plan. He pointed to the area table which addresses the request for a plan note table reflecting the three primary requirements of the shoreland overlay zone existing and proposed areas and percent increase allowed and proposed for. He also noted that the 100 foot setback has been added to the Plan. He indicated that the 45 square foot wetland fill area will be clarified on the Plan. The devegetative coverage calculations indicating the deduct items for 2013 and the 2015 changes are shown in the two columns of the table.

MS. KALMAR MOVED TO APPROVE WITH CONDITIONS THE SHORELAND DEVELOPMENT PLAN REVISION DATED OCTOBER 26, 2015 AND WETLAND ALTERATION APPLICATION FOR 92 WHIPPLE ROAD (TAX MAP 10, LOT 19) IN THE RESIDENTIAL-URBAN AND SHORELAND OVERLAY ZONES FOR OWNER/APPLICANT JEFFREY AND DEBORAH KOLOD, LINCOLN SECONDED.

Ms. Davis asked if an amendment to add the dimension of all structures should be added to the motion. Mr. DiMatteo offered to draft a condition regarding the temporary movement of the shed. He also noted that the question of dimensions are in the minutes and also in Condition five which states that revisions by Staff, Planning Board and peer review will be incorporated. He also suggested a new item two stating that in the event that the existing shed planned to be temporarily relocated on site is damaged and greater than 50% of its market value of the structure is removed, the Planning Board must approve the shed's final location.

FINDINGS OF FACT

**For 92 Whipple Road, Sea Wall Reconstruction
Shoreland Development Plan Review**

WHEREAS: Owners and applicants Jeffrey and Deborah Kolod requests consideration of plans for replacement of an existing seawall. The 0.45-acre lot is located at 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Barney Baker, Baker Design Consultants.

hereinafter the "Development;" and

And pursuant to the Plan Review meetings conducted by the Planning Board as noted *;**{in the Plan Review Notes prepared for 11/12/2015}*

Shoreland Plan Appl. Completeness Review	August 20, 2015
Site Walk	September 3, 2015
Public Hearing	September 9, 2015
Approval	TBD

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following *;**{as noted in the Plan Review Notes prepared for 11/12/2015}* (hereinafter the "Plan"):

1. Shoreland Overlay Zone Project Plan Review Application, August 25, 2015.
2. Supplemental information, October 28, 2015
3. Shoreland Development Plan; Baker Design Consultants, REV. October 26, 2015.
4. Plan Set including Site Details; Baker Design Consultants, entitled *Kolod Seawall Replacement*, REV. October 26, 2015.

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...

Findings: The lot size is effectively larger than in 2013 by 45 square feet due to the intertidal fill associated with the new seawall as depicted on Sheet S-1. In addition, as shown in the table on Sheet C-1 regarding the devegetated area calculations, impervious features identified in 2013 are being removed and re-vegetated. The results are the proposed improvements do not increase the lot's devegetated area greater than the allowed 22.8% (reduced from 33.6% in 2013).

Conclusion: this standard appears to have been met.

Vote: 6 in favor 0 against 0 abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Finding: The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

See 16.6.6.1 and its reference to 16.6.6.2 below.

Finding: There are no proposed changes to nonconforming structures

Conclusion: The standard is not applicable

Vote: 6 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs [A through C] below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

Finding: There are no proposed changes to nonconforming structures

Conclusion: The standard is not applicable

Vote: 6 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

<p>1. Maintain safe and healthful conditions;</p> <p><u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>2. Not result in water pollution, erosion or sedimentation to surface waters;</p> <p><u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. With the suggested conditions #2, and #3, this requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>3. Adequately provide for the disposal of all wastewater;</p> <p><u>Finding:</u> The development is connected to town sewer. <u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</p> <p><u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the Plan. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</p> <p><u>Finding:</u> Shore cover is conserved in accordance with this Code. There are no points of access. <u>Conclusion:</u> With the proposed conditions #7 and #8, this requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>6. Protect archaeological and historic resources;</p> <p><u>Finding:</u> There does not appear to be any resources impacted. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</p> <p><u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>

<p>8. Avoid problems associated with floodplain development and use; <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>9. Is in conformance with the provisions of this Code; <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code, including Title 16.3.2.17 Shoreland Overlay Zone and 16.9.3 Conservation of Wetlands Including Vernal Pools. <u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>10. Be recorded with the York County Registry of Deeds. <u>Conclusion:</u> As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.</p>
<p>Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>

<p>16.9.3.7 Wetlands Alteration Approval Criteria (A through F)</p>
<p>A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.</p>
<p>B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.</p>
<p>C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.</p>
<p>D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).</p>
<p>E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Board will consider the following:</p>

The proposed use:

1. *Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;*
2. *Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;*
3. *Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and*
4. *Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.*

F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives:

The proposed use will not:

1. *Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;*
2. *Unreasonably increase the flow of surface waters through the wetland;*
3. *Result in a measurable increase in the discharge of surface waters from the wetland;*
4. *Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;*
5. *Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;*
6. *Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.*
7. *Result in a measurable alteration or destruction of a vernal pool.*

Finding: A wetland fill of 45 square feet is proposed along the new seawall. This activity has received approvals by the applicable state and federal agencies. An area in excess of the fill area located along the impacted costal wetland is proposed as a vegetated no-disturb buffer. This mitigation meets the intention of 16.9.3.9.B.1 for preservation of upland adjacent to the impacted wetland.

Conclusion: Considering the approval criteria including the overall benefit of the new seawall and mitigation proposed as a vegetated buffer, the proposed wetland impact is approved.

Vote: 6 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application and Wetland Alteration Application of Jeffrey and Deborah Kolod for the replacement of an existing seawall, located at 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be included on final Plan to be recorded and as noted in the Plan Review Notes prepared for 11/12/2015):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final Plan. (Title 16.10.9.1.2)

2. In the event that the existing shed planned to be temporarily relocated is damaged by more than 50% of the market value and more than 50% of its market value is removed from the structure the Planning Board must approve its final location.
3. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
4. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
5. All Notices to Applicant contained herein (Findings of Fact dated 11/12/15).

Conditions of Approval (not to be included on final Plan):

6. Incorporate any plan revisions on the final Plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 6 in favor 0 against 0 abstaining

Approved by the Kittery Planning Board on November 12, 2015

Notices to Applicant:

1. Incorporate any plan revisions on the final Plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final Plan in the Signature Block. After the signed Plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 2 – Morgan Court Road Multi-Family Subdivision – Major Modification to an Approved Cluster Subdivision Plan

Action: approve or deny modification to approved Plan. Owner and Applicant Peter J. Paul, Trustee of AMP Realty Holdings, LLC, requests consideration of a plan modification to change the building coverage for the lots of a cluster subdivision located on Tax Map 28, Lot 14 with frontage along Fernald Road in the Residential – Suburban (R-S) Zone with portions in the Commercial – 2 (C-2) and Resource Protection Overlay (OZ-RP) Zones. Agent is Tom Harmon, Civil Consultants.

Mr. Tom Harmon approached the podium. Mr. Lincoln asked Mr. Harman why he wants to make the change. Mr. Harman noted that the absolute limits of the buildings were put on the lots from 20% coverage for a 40,000 square foot lot to 21.5% for a 10,000 square foot lot and more room is needed on the lots. Setbacks and pavement won't change and there will be the same number of buildings

MS. KALMAR MADE A MOTION TO ACCEPT THE CLUSTER SUBDIVISION PLAN APPLICATION DATED OCTOBER 26, 2015 FROM OWNER AND APPLICANT PETER J. PAUL, TRUSTEE OF AMP REALTY HOLDING, LLC, FOR THE PROPERTY LOCATED ON FERNALD ROAD (TAX MAP 28, LOT 14) IN THE RESIDENTIAL – SUBURBAN (R-S) ZONE WITH PORTIONS IN THE COMMERCIAL – 2 (C-2) AND CONSERVATION ZONES, AND MOVE TO APPROVE THE PLAN MODIFICATION PRESENTED IN THE CLUSTER SUBDIVISION PLAN APPLICATION DATED OCTOBER 26, 2015 AND AMEND THE PREVIOUSLY APPROVED FINDINGS OF FACT DATED AUGUST 20, 2015 AS PRESENTED IN THE 11/12/2015 PLAN REVIEW NOTES. OWNER AND APPLICANT PETER J. PAUL, TRUSTEE OF AMP REALTY HOLDINGS, LLC, FOR THE PROPERTY LOCATED ON FERNALD ROAD ROAD (TAX MAP 28, LOT 14) IN THE RESIDENTIAL – SUBURBAN (R-S) ZONE WITH PORTIONS IN THE COMMERCIAL – 2 (C-2) AND CONSERVATION ZONES. THE MOTION WAS SECONDED BY MR. LINCOLN.

FINDINGS OF FACT

**For
“Morgan Court” Cluster Residential Subdivision Review**

{As presented in the plan review notes dated 8/20/2015 and 11/12/2015 and amended by the Board}

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: AMP Realty Holdings, LLC, owner and applicant requested approval for a cluster residential subdivision consisting of four lots with three duplexes and one triplex at Fernald Road and Route 236 on 17.97 acres (Tax Map 28, Lot 14) in the Residential – Suburban (R-S), Commercial -2 (C-2), and Resource Protection Overlay (OZ-RP) Zones,

Hereinafter the “Development,”

And pursuant to the Plan Review meetings conducted by the Planning Board as noted *;**in the Plan Review Notes prepared for 8/20/2015 and 11/12/2015}*

Sketch Plan Review	Approved	8/8/2013
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Site Visit	Held	8/8/2013
Preliminary Plan Review	Held, Accepted	10/10/2013
Public Hearing	Held	11/14/2013
Preliminary Plan Review	Held, Continued...	11/14/2013

Note: The original plan application was continued not to exceed 90 days from 11/14/2013. More than 90 days passed without further submissions or review; The plan was resubmitted and accepted by the Board and preliminary review began again in 2015.

Preliminary Plan Review	Held, Accepted	4/9/2015
Site Walk	Held	5/6/2015
Public Hearing	Held	5/14/2015
Preliminary Plan Review	Held, approved with conditions	5/14/2015
Final Plan Review	Held, approved with conditions	8/20/2015
Plan Modification Review		11/12/2015

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following ;{ as noted in the Plan Review Notes prepared for 8/20/2015 and 11/12/2015} (hereinafter the “Plan”):

1. Cluster Development Plan Review Application, March 26, 2015
2. Stormwater Management Plan, June 2015
3. B1 – Boundary and Existing Conditions, April 8, 2013
4. S1 – Final Subdivision Plan Clustered Multifamily Development, September 12, 2013 rev 10/23/15
5. C1 – Existing Conditions Plan, September 12, 2013 rev 6/22/15
6. C2 – Overall Multifamily Site Plan, September 12, 2013 rev 6/22/15
7. C3 – Layout & Landscape Plan, September 12, 2013 rev 7/24/15
8. C4 – Erosion Control Plan, September 12, 2013 rev 6/22/15
9. C5 – Utility Plan, September 12, 2013 rev 6/22/15
10. C6 – Grading & Drainage Plan, September 12, 2013 rev 6/22/15
11. C7 – Sections, September 12, 2013 rev 6/22/15
12. R1 – Roadway Plan and Profile, September 12, 2013 rev 6/22/15
13. R2 – Construction Details, September 12, 2013 rev 6/22/15
14. R3 – Maintenance Notes, September 12, 2013 rev 6/22/15

NOW THEREFORE, based on the entire record before the Planning Board, including previously approved Findings of Fact dated 8/20/2015, and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by section **16.10.8.3.4** and as recorded below:

FINDINGS OF FACT

Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

<p>A. Development Conforms to Local Ordinances.</p> <p><i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i></p> <p><u>Findings:</u> The site consists of 17.97 acres, predominantly in the Residential – Suburban Zone with a small portion in the Commercial – 2 Zone. A cluster residential development is a permitted use in the Suburban Zone. The proposal is three duplexes and one triplex on four lots. These four lots total 35,210 square feet, with a building coverage limit of 35% per lot. A total of 709, 299 square feet (including both common reserved open space) is proposed. The state’s minimum lot size law (12 MRSA § 4807) requires a minimum 20,000 s.f. lot size per 300 gallons per day with a portion of the lot area allowed to be reserved in open space. A total of 90.6% of the parcel is reserved in open space which accommodates lot size requirements.</p> <p><u>Conclusions:</u> The proposed development conforms to local ordinances.</p> <p style="text-align: center;">(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining (At the 11/12/2015 Meeting) Vote of <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>B. Freshwater Wetlands Identified.</p> <p><i>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.</i></p> <p><u>Findings:</u> Wetlands have been identified and shown all applicable plans.</p> <p><u>Conclusions:</u> The requirement appears to be met</p> <p style="text-align: center;">(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>C. River, Stream or Brook Identified.</p> <p><i>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 38 M.R.S. §480-B, Subsection 9.</i></p> <p><u>Findings:</u> A stream has been identified and shown all applicable plans.</p> <p><u>Conclusions:</u> The requirement appears to be met</p> <p style="text-align: center;">(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>D. Water Supply Sufficient.</p> <p><i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i></p> <p style="text-align: center;">(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>E. Municipal Water Supply Available.</p> <p><i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i></p> <p><u>Findings:</u> The site will be serviced by public water via an easement across abutting commercial lots on Route 236. . Kittery Water District has found there is sufficient capacity for the proposed development.</p>

<p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i></p>
<p>F. Sewage Disposal Adequate.</p>
<p><i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i></p>
<p><u>Findings:</u> The proposal is three duplexes and one triplex on four lots. These four lots total 35,210 square feet. A total of 709, 299 square feet (including both common reserved open space) is proposed. The state’s minimum lot size law (12 MRSA § 4807) requires a minimum 20,000 s.f. lot size per 300 gallons per day (gpd) with a portion of the lot area allowed to be reserved in open space. Multifamily units are calculated with 120 gpd per bedroom. 22 bedrooms proposed in submitted HHE-200 application requires 176,000 s.f. in lot size, and in this instance 140,790 s.f. must be reserved in open space.</p>
<p><u>Conclusions:</u> A total 709,299 s.f. is reserved in open space which accommodates the lot size requirement whereby the requirement appears to be met.</p>
<p><i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i></p>
<p>G. Municipal Solid Waste Disposal Available.</p>
<p><i>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 used.</i></p>
<p><u>Findings:</u> Applicant states the Homeowners Association will contract for solid waste pick-up.</p>
<p><u>Conclusions:</u> With the inclusion of condition #7, the requirement appears to be met.</p>
<p><i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i></p>
<p>H. Water Body Quality and Shoreline Protected.</p>
<p><i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i></p>
<p><u>Findings:</u> The proposed development is outside required setbacks and does not adversely affect the adjacent wetlands and stream</p>
<p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i></p>
<p>I. Groundwater Protected.</p>
<p><i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i></p>
<p><u>Findings:</u> The proposed development adheres to the state plumbing code and MDEP BMPs for erosion control that pertain to sewage disposal and stormwater management.</p>
<p><u>Conclusions:</u> The requirement appears to be met</p>

<i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i>
J. Flood Areas Identified and Development Conditioned.
<i>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. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
<u>Findings:</u> A portion of the site is located within the 100 year flood plain, however, the proposed development is located at a considerable distance from the flood boundary and the basement floor elevations for the proposed buildings are 10 feet plus above the approximate flood elevation.
<u>Conclusions:</u> The requirement appears to be met
<i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i>
K. Stormwater Managed.
<i>The proposed development will provide for adequate stormwater management.</i>
<u>Findings:</u> The applicant has provided a stormwater management plan resulting in adequate stormwater management. This consists of combining a closed drainage system comprised of catch basins and closed piping with roadside swales and level spreader outlets to restore sheet flow. The applicant is also submitting a Permit By Rule to Maine Department of Environmental Services.
<u>Conclusions:</u> The requirement appears to be met.
<i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i>
L. Erosion Controlled.
<i>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.</i>
<u>Findings:</u> The site is stabilized both during and after construction using MDEP best management practices.
<u>Conclusions:</u> The requirement appears to be met.
<i>(At the 8/20/2015 Meeting) Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</i>
M. Traffic Managed.
<i>The proposed development will:</i> <i>1. 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; and</i> <i>2. Provide adequate traffic circulation, both on-site and off-site.</i>
<u>Findings:</u>

<p>It is not anticipated the proposed development's increase in vehicle trips to Fernald Road/Rt. 236 will have an adverse impact and the site design allows for safe and adequate circulation with consideration of condition #7.</p> <p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting)</i> Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>N. Water and Air Pollution Minimized.</p> <p><i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"> 1. Elevation of the land above sea level and its relation to the floodplains; 2. Nature of soils and sub-soils and their ability to adequately support waste disposal; 3. Slope of the land and its effect on effluents; 4. Availability of streams for disposal of effluents; 5. Applicable state and local health and water resource rules and regulations; and 6. Safe transportation, disposal and storage of hazardous materials.
<p><u>Findings:</u> The proposed development adheres to the state plumbing code and MDEP BMPs for erosion control that pertain to sewage disposal and stormwater management. Hazardous materials do not pertain to the proposed development.</p> <p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting)</i> Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p> <p><i>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.</i></p>
<p><u>Findings:</u> Maine Historic Preservation Commission and the Maine Department of Inland Fish and Wildlife has no objection the proposed development nor is the site designated as a scenic resource. Potential impacts to the adjacent Remick Preserve are minimized and mitigated through, proposed signage, a no-cut/no-disturb buffer and on-street parking in condition #5</p> <p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting)</i> Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>P. Developer Financially and Technically Capable.</p> <p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p><u>Findings:</u> Per 16.8.11.8 Pre-Development Requirements and 16.10.8.2.2 Performance Guaranty Conditions, the applicant is required to file with the Town a performance guaranty and inspection escrow for improvements that will be utilized in common use or by the general public.</p> <p><u>Conclusions:</u> The requirement appears to be met</p>
<p><i>(At the 8/20/2015 Meeting)</i> Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines that the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

1. 16.10.5.2.B.2 Plan Scale (s)
2. 16.10.5.2.C.6 Erosion and Sedimentation Control Plan Reviewed by York County Soil and Water Conservation District or Town's Engineering Consultant

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications, or revisions may be made to any Planning Board-approved final plan (Title 16.10.9.1.2).
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. Per Title 16.8.8.2 Post Construction Stormwater Management and the MDEP General Permit for Small MS-4 the applicant and/or the Homeowners Association is responsible for the establishment and execution of: a) Maintenance Agreement for Stormwater Management Facilities; and b) Annual Stormwater Management Facilities Certification.
5. The construction of three paved on-street parking spaces with associated drainage measures in the vicinity of the Kittery Land Trust's easement on Fernald Road to the satisfaction of Staff and Commissioner of Public Works.
6. There is to be no access from the development to the abutting land trust property located to the southerly boundary of subdivision except along Fernald Road where an easement exists.
7. All Notices to Applicant contained in the Findings of Fact (dated: August 20, 2015 and November 12, 2015).

Conditions of Approval (NOT to be included on the final plan):

8. Revise draft Homeowners Association by-laws and declarations as recommended by Staff and the Town Attorney and as presented at the 8/20/15 meeting.
9. Prepare draft proposed easements and submit to staff prior to the issuance of a building permit. Revise final plan to show an easement for the shared driveway proposed for lots 1 and 2.
10. Add a plan note on Sheet C-5 that reads: All proposed lighting must conform to 16.8.24 and conformance demonstrated with the submittal of lighting specifications prior to the issuance of a building permit.

11. Incorporate any plan revisions on the final plan as recommended by Planning Board, and outlined in item 8 in the 8/20/15 Plan Review Notes, and submit for Staff review prior to presentation on final Mylar.

(At the 8/20/2015 Meeting) **Vote of 5 in favor 0 against 0 abstaining**
(At the 11/12/2015 Meeting) **Vote of 6 in favor 0 against 0 abstaining**

APPROVED BY THE KITTERY PLANNING BOARD ON August 20, 2015 & November 12, 2015.

Notices to Applicant (NOT to be included on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.
6. Where required the applicant must provide to the Town a performance guaranty and an inspection escrow to cover the construction of all improvements that will be utilized in common use or by the general public.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Per Title 16.6.2.A – An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

NEW BUSINESS

ITEM 3 - 13 Lawrence Ln –Shoreland Development Plan

Action: Approve or deny Plan. Owner/Applicant Rose Marie Howells requests consideration of plans to adjust a property line and expand an existing driveway located at 13 Lawrence Ln (Tax Map 18, Lot 32A)

in the Residential – Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250'), Zones. Agent is Robbi Woodburn, Woodburn & Company Landscape Architects.

Robbi Woodburn approached the podium and explained the Plan. This is an application for a minor adjustment for a driveway in a lot that is non-conforming and in the shoreland zone. The plan is to widen the driveway to allow passage and access by emergency vehicles. Currently the driveway pitches towards the house and Ms. Woodburn explained how the Plan will address drainage and improve the filtration situation. Ms. Woodburn explained how the plan will widen the driveway and add a 15 x 12 foot turnaround.

Ms. Woodburn provide a letter from Ryan McCarthy of Tidewater Engineering and Surveying who visited the site during a rainstorm stating that there are no drainage or erosion issues and that the plan will make the site even better. A Permit By Rule will be applied for pending approval of the Committee.

Earldean Wells of the Conservation Commission stated that rock walls are protected in Maine and asked if the stones are to be removed, how they will be used. Ms. Woodburn said that they could be used in the retaining wall at the end of the driveway.

Mr. Lincoln asked whether the court area pavers will be pervious or impervious. Ms. Woodburn said that Engineer McCarthy felt impervious pavers with a drain would be best. Mr. Lincoln asked where the drainage will go. Woodburn said that the tree well will act as a tree box filter at the bottom of the drive. The existing impervious pavers will be replaced with new impervious pavers.

MR. ALESSE MOVED TO GRANT CONDITIONAL APPROVAL FOR THE SHORELAND DEVELOPMENT PLAN APPLICATION DATED OCTOBER 5, 2015, FROM OWNER/APPLICANT ROSE MARIE HOWELLS FOR 13 LAWRENCE LANE (TAX MAP 18, LOT 32A) IN THE RESIDENTIAL KITTERY POINT VILLAGE IN SHORELAND OVERLAY ZONE AND MOVE TO ACCEPT SHORELAND DEVELOPMENT PLAN APPLICATION DATED OCTOBER 5, 2015 FROM OWNER/APPLICANT ROSE MARIE HOWELLS FOR 13 LAWRENCE LANE (TAX MAP 18, LOT 32A) IN THE RESIDENTIAL KITTERY POINT VILLAGE IN SHORELAND OVERLAY ZONE. SECONDED BY MS. DAVIS.

Discussion as to whether the plan needs a public hearing. Committee agreed that no public hearing is necessary. Grinnell asked if the neighbors are aware. Woodburn indicated on the plan which neighbors have been notified. Staff recommendations were provided to Ms. Woodburn. Mr. DiMatteo commented that the majority of the recommendations were plan revisions to make the Plan suitable for recording. Mr. DiMatteo clarified some of the conditions for Ms. Woodburn.

**Findings of Fact
For 13 Lawrence Ln
Shoreland Development Plan Review**

WHEREAS: Rose Marie Howells requests approval of her Shoreland Development Plan to adjust a property line and expand an existing driveway located further than 100 feet from the HAT at 13 Lawrence Lane (Tax Map 18, Lot 32-A) in the Residential-Kittery Point Village and Shoreland Overlay Zones, hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

Shoreland Development Plan Review	11/12/2015
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And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Development Plan Application, received October 5, 2015.
2. Site Plan, Easterly Surveying, Inc., August 20, 2015; Woodburn & Company, October 3, 2015.

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town Planning board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D Shoreland Overlay Zone

1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...

Findings: The lot’s current de-vegetated area is 6287 sq. ft., 31.33% of the total property area. The proposed driveway expansion will increase the lot’s de-vegetated area by 600 square feet, increasing the total de-vegetated area to 34.32%. To avoid becoming more non-conforming, the applicant proposes an adjustment to the property line that will increase the total lot size from 20,070 to 22,070 square feet. With the adjusted boundary line, the driveway expansion would decrease the total de-vegetated area to 31.21% and does not increase non-conformity.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming conditions must not be permitted to become more nonconforming

Finding: With the adjusted property line the devegetated area is being decreased from 31.33% to 31.22%

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more conforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

See 16.6.6.1 and its reference to 16.6.6.2 below.

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above] must use the following criteria as the basis of a decision:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

The Board must also give consideration to the factors listed in 16.6.6.2.

Finding: The proposed development does not include repair or expansion of nonconforming structures.

Conclusion: The requirement is not applicable.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs [A through C] below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

Finding: The existing nonconforming structure is not expanding within the 100-foot setback from the HAT. The proposal does not increase nonconformity.

Conclusion: Standards A-C are not applicable.

Vote: 6 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The proposed development doesn't connect to two sewer.

Conclusion: This requirement is not applicable.

Vote: 6 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

<p><u>Conclusion:</u> The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p>
<p><u>Finding:</u> Shore cover is not adversely impacted</p>
<p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>6. <i>Protect archaeological and historic resources;</i></p>
<p><u>Finding:</u> There does not appear to be any resources impacted.</p>
<p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p>
<p><u>Finding:</u> The proposed development is not located in a CFMU Zone.</p>
<p><u>Conclusion:</u> This requirement is not applicable.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>8. <i>Avoid problems associated with floodplain development and use;</i></p>
<p><u>Finding:</u> the proposed development is not within the floodplain</p>
<p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>9. <i>Is in conformance with the provisions of this code;</i></p>
<p><u>Finding:</u> The proposed development appears to be in conformance with the provisions of this code.</p>
<p><u>Conclusion:</u> This requirement appears to be met.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>
<p>10. <i>Be recorded with the York county Registry of Deeds.</i></p>
<p><u>Finding:</u> A plan suitable for recording has been prepared.</p>
<p><u>Conclusion:</u> As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.</p>
<p>Vote: 6 in favor 0 against 0 abstaining</p>

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of owner/applicant Rose Marie Howells requests consideration of her plan to expand an existing driveway located on, and adjust the property line for the referenced property and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization. In additions, applicant/contractor must submit a copy of a MDEP permit by rule to staff for town records.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 11/12/15).

Conditions of Approval (not to be depicted on final plan):

6. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 6 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON November 12, 2015

Notices to Applicant:

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.

4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 4 - Wentworth Dennett Artist Studios – Subdivision Completeness Review

Action: Accept or deny preliminary site plan application; Schedule a public hearing. Owner/Applicant Jeff Apsey requests consideration of plans to add 4 1-bedroom apartments to the top floor of an existing principal building located at 78 Government St. (Tax Map 3, Lot 144) in the Business Local 1 (BL-1) zone.

Mr. Apsey approached the podium. Ms. Grinnell commented that Mr. Apsey is a friend and neighbor but she can be fair. Mr. Lincoln also added that he is a tenant of Mr. Apsey but will be able to be fair as well.

Mr. Dimatteo said that this is a completeness review and a public hearing will need to be scheduled. He added that Staff finds the application to be complete. There was a time lapse and therefore Mr. Apsey needs to get another approval. Ms. Davis asked if there have been any changes in Code that will affect this plan. Mr. DiMatteo added that Mr. Apsey has spoken with Code Enforcement and has been told that there have been no changes to the plan but will check with Code Enforcement for compliance. The plan has been changed to be more ADA compliant.

MR. ALESSE MOVED TO ACCEPT THE SUBDIVISION APPLICATION DATED SEPTEMBER 29 , 2015, FROM JEFF APSEY FOR 78 GOVERNMENT STREET (TAX MAP 3 , LOT 144) IN THE BUSINESS LOCAL 1 (BL-1) ZONE. SECONDED BY MS. DAVIS.

Mr. Lincoln asked how many apartments will be in the plan. Mr. Apsey responded that there will be one on the first floor and four on the second floor for a total of five. Mr. Lincoln noted that he and John Emerson have discussed a condition called “adaptive reuse” and this is the first example of this type of rehab of an old building that he has seen. Ms. Davis advised Mr. Apsey that another plan in town has been challenged due to a flat roof. Mr. Lincoln noted that this is not a flat roof but is a mansard roof according to the plan.

MR. ALESSE AMENDED MOTION TO CALL FOR A PUBLIC HEARING ON DECEMBER 10TH. ACCEPTED BY MS. DAVIS. SECONDED BY MS. DAVIS. A VOICE VOTE WAS TAKEN AND MOTION APPROVED 6/0/0.

ITEM 5 - Betty Welch Road Cluster Subdivision - Sketch Plan Review

Action: Accept or deny plan: Owner Landmark Properties, LTD., and applicant Chinburg Builders, Inc., requests consideration of plans to develop a 20-lot single family cluster subdivision on 86.5 +/- acres. The site is identified as Tax Map 66 Lots 2A & 8 in the Residential Rural (R-R) and Shoreland Overlay (OZ-SL-250') zones. Agent is Jeff Clifford, P.E., Altus Engineering.

Mr. Clifford approached the Podium. Mr. Harris recused himself because he is an abutter. Ms. Grinnell would like to discuss the modifications of dimensional requirements necessitated by the proposal sketch plan and what modifications he will be looking for when the project is presented to the Committee. He noted that the proposal was for 24 lots and it has been reconfigured such that the road will not need a

secondary means of access. He is asking the board to relax some of the setback requirements to allow for a smaller footprint and a shorter narrower road requirement. Jim Gove of Gove Environmental has observed and addressed the vernal pools for 2 years and the Army Corps will be involved and will make an assessment. That assessment will be part of the preliminary application. The development will have an advanced wastewater treatment system. Maine DEP will look at flooding, erosion control, historic sites and wildlife habitat (cotton tail habitat). The Plan will get the highest level of review from State and Federal Agencies. Ms. Grinnell asked how the pipe from the wastewater treatment will cross the wetlands. Applicant explained how these two wetland crossings will work. It will be a Tier 1 permit through DEP.

Earldean Wells of the Conservation Commission provided a letter from the Commission to Mr. Clifford that expresses their concerns and read the letter aloud to the Committee.

Ms. Kalmar noted that this is a Sketch Plan Application. DiMatteo noted that Applicant might want to indicate that they are not near any thresholds. Ms. Kalmar mentioned that there may need to be another site walk. Mr. Lincoln noted that the Water District has a main line running under the development and asked if they have been contacted. Mr. Lincoln noted that there is a main line running under the construction site and inquired if the Water District has been contacted. Mr. Clifford noted that they have been contacted and the Water District said that the project could tie in to their line. So these lots will be served by municipal water. They may require the project to put plates down to protect their pipe.

MS. KALMAR MADE MOTION TO ACCEPT SKETCH PLAN APPROVAL FOR THE PROPOSED SKETCH PLAN REVIEW APPLICATION SUBMITTED BY OWNER LANDMARK PROPERTIES, LTD., AND APPLICANT CHINBURG BUILDERS, INC., FOR A 20-LOT SINGLE FAMILY CLUSTER SUBDIVISION ON 86.5 +/- ACRES. THE SITE IS IDENTIFIED AS TAX MAP 66 LOTS 2A & 8 IN THE RESIDENTIAL RURAL (R-R) AND SHORELAND OVERLAY (OZ-SL-250') ZONES. MR. ALESSE SECONDED. VOICE VOTE 5/0/0 MOTION PASSES.

ITEM 6 – Board Member Items / Discussion

A. Election of Officers and Board Appointments

The Board will elect officers and appoint members to different committees in town. Mr. DiMatteo will provide a list of committees that the Board should have representation on.

According to the Planning Board Bylaws newly appointed members must attend a Planning Board training session with the MMA. It also includes appointed members every three years. Mr. Lincoln asked what kind of training would be required. DiMatteo answered that it has been intentionally generic but relates to municipal board activities.

Mr. Lincoln asked what the Town Council's role is in adopting Planning Board rules. Ms. Grinnell noted that the Council is not involved in the Bylaws for the Planning Board. How many things are we allowed to ask new members to do before checking with the Council. This will be discussed at the next meeting because it needs to be discussed twice. Mr. Lincoln distributed a letter that addresses new candidates.

Driscoll asked if the Foreside Design Review Committee is still active. DiMatteo recalls that a specific committee needs to be reinstated by the Council. The committee is formally defunct because it has run out of time and according to the ordinance must be reinstated by the Council. People interested in rejuvenating the Committee can speak to the Council, the Planning Board or the Town Manager. Mr. Lincoln suggested that residents put their comments and suggestions in writing.

The Committee decided to add the minutes and their findings from the Foreside Site Walk to the agenda for the meeting on November 19th. Mr. Lincoln suggested that since the Police and Fire Departments attended the Site Walk it would be beneficial to get their comments in writing for the Committee for discussion. Ms. Driscoll suggested that a connection should be made with the Foreside Forum to perhaps invite them to a workshop with Police Department, Fire Department and Public Works to discuss the information that was found in the site walk.

Mr. Lincoln mentioned that in the ordinance there is a section that addresses parking in the Town owned lot beside the library. He has spoken with the Police Chief who isn't sure that it's a Town owned lot any longer. The library receives \$3,000. in revenue for it. Mr. Lincoln suggested that the Town remunerate the library \$3000. and have public parking there. Mr. Lincoln added that the owners of Best Auto at the corner of Whipple and Rogers Roads have offered space.

Mr. Lincoln asked if there can be discussion about the Hampton Inn appeal. Mr. DiMatteo suggested that discussion be delayed as it would be not be productive at this point. He said that once the Attorney has worked it out then it can be addressed.

MR. ALESSE MOVED TO ADJOURN, SECONDED BY MS. DAVIS. A VOICE VOTE WAS TAKEN AND MOTION APPROVED 6/0/0. MEETING ADJOURNED AT 8:03 PM.