

**TOWN OF KITTEERY, MAINE
PLANNING BOARD MEETING
Council Chambers**

**APPROVED
March 26, 2015**

Meeting called to order: at 6:00 p.m.

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

Members absent: None

Staff present: Chris DiMatteo, Town Planner; Elena Piekut, Assistant Town Planner

Pledge of Allegiance

Minutes: March 12, 2015

Mr. Lincoln and Ms. Davis requested amendments.

Ms. Kalmar moved to approve the minutes of March 12, 2015 as amended with gratitude to Jan Fisk, who served as Recorder since 2008.

Mr. Alesse seconded.

Motion carried: 6-0-0

Public Comment: There was no public comment period, as there was no public present.

ITEM 1 – Town Code Amendment – Title 16.4.4.1 Inspection of Required Improvements; 16.10.3.7 Independent Review/Inspection Consultant Review; 16.10.3.8 Independent Review Applicant Funding; 16.10.8.2.2 Performance Guaranty Conditions; and 16.10.9.1 Post Approval Actions Required.

Action: review amendment and make recommendation to Town Council. Proposed amendment: codifies the need to hold a pre-construction meeting; updates provisions associated with inspections; and provides clarity through minor changes where needed.

Public Hearing: No members of the public were present.

Mr. Lincoln asked whether the proposed change is to put into code the need to hold a pre-construction meeting.

Mr. DiMatteo responded that it does, although the amendments do more than codify current practice only. They also include work on related provisions in the code.

Mr. Alesse suggested edits to lines 29-31, 171-173, and 174-175.

Ms. Davis questioned the meaning of “nuisances” on line 57.

Mr. DiMatteo referred to Item 1 Staff Review Notes and its mention of M.R.S.A Title 17, §2802, also referenced by Town Code Title 1.2.2.2 Definitions, where examples of nuisances are defined.

Ms. Davis noted that on line 138, “development that requires inspections” creates some confusion and questioned what projects do and don’t require inspections.

Discussion ensued regarding clarity. Ms. Davis and Ms. Kalmar suggested removing the sentence in question as the requirement is covered by 16.4.4.1. Mr. Lincoln suggested a change in format to that section for greater clarity.

Ms. Grinnell asked whether comments submitted by Mr. Harris at the previous meeting had been resolved.

Mr. Harris reported that a discussion with Mr. DiMatteo, then submitted additional comments before the meeting.

Mr. DiMatteo explained that Mr. Harris' comments are geared toward staff's focus on trying to develop procedures to execute the code, clarifying business days vs. calendar days, and whether there are penalties involved in not meeting deadlines.

Ms. Kalmar questioned the description of a "professional engineer or accomplished and qualified contractor" in line 37.

Discussion ensued regarding wording and use of the title "Professional Engineer" and the Board settled on "Professional Engineer or qualified contractor."

Ms. Kalmar suggested line 89 indicate the text was "moved and modified" rather than deleted.

Mr. Lincoln suggested moving lines 9-12 to the beginning, thus leading with the purpose of the code.

Ms. Kalmar moved to recommend to Town Council the adoption of Town Code Amendment to Title 16.4.4.1 Inspection of Required Improvements, 16.10.3.7 Independent Review/Inspection Consultant Review, 16.10.3.8 Independent Review Applicant Funding, 16.10.8.2.2 Performance Guaranty Conditions, and 16.10.9.1 Post Approval Actions Required as presented in the March 26, 2015 staff notes and as amended.

Ms. Davis seconded.

Motion carried: 5-1-0 with Mr. Harris opposed.

Ms. Grinnell asked the Board to entertain Item 4 out of order.

ITEM 4 – Thron and Arris – Request for Adjustment of Common Boundary Line of Nonconforming Lots.

Action: review request and grant or deny approval. Owners and applicants Mary Thron and Raymond J. Arris are requesting consideration of their application for a Miscellaneous Variation regarding the adjustment of the common boundary line between 71 Tower Road (Map 58, Lot 42-A and 73 Tower Road (Map 58, Lot 42), both in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250'), and Resource Protection Overlay (OZ-RP) Zones.

Ms. Thron, applicant, explained that one of the proposed lots no longer meets the road frontage requirement because the State requires that it meet the 20,000-square-foot shoreland minimum lot size.

Ms. Davis asked about the three lots shown on the plan.

Ms. Thron explained that 73 Tower Road was originally two lots, before it was purchased by the applicant in 1972, shown as 31 and 32 on the plan.

Ms. Kalmar moved to grant conditional approval for the request for adjustment of common boundary lines of nonconforming lots 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42), application dated February 11, 2015, for owner/applicants Mary Thron and Raymond J. Arris.

Mr. Alesse seconded.

Ms. Grinnell reminded the Board to discuss any concerns with the findings of fact before each finding is voted on. Each finding requires four votes in the affirmative, or the main motion will fail.

Ms. Kalmar thanked Ms. Thron and Mr. Arris for their persistence and perseverance in getting an ordinance amendment passed which will benefit the townspeople and the town. Their particular plan demonstrates how that will work by decreasing nonconformity.

Mr. Harris explained his choices to abstain from voting on findings of fact at the previous meeting because those findings were “not applicable.”

Mr. DiMatteo explained that “not applicable” is a staff suggestion and the Board is asked to make its own determination on each finding by a vote.

Motion carried: 6-0-0

Ms. Kalmar read the Findings of Fact:

**KITTERY PLANNING BOARD
FINDINGS OF FACT**

For

Thron & Arris, 71 & 73 Tower Road

Adjustment of Common Boundary Line of Nonconforming Lots

Mary Thron and Raymond J. Arris, owners and applicants (for The Mary Thron Revocable Trust and The Raymond Arris Revocable Trust), requested approval to adjust a common boundary line of nonconforming lots at 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42) in the Residential – Rural Conservation, Shoreland Overlay, and Resource Protection Overlay Zones.

1. The subject land is located at 71 Tower Road (Map 58, Lot 42-A) and 73 Tower Road (Map 58, Lot 42).
2. Lots 42 and 42-A share a common boundary line.
3. Both lots are co-owned by Mary Thron and Raymond J. Arris, and the principal use of each lot is a legally created single family residential unit.
4. Both lots are located in the Residential – Rural Conservation Zone (R-RLC), as well as the Shoreland Overlay (OZ-SL-250') and Resource Protection Overlay (OZ-RP) Zones.
5. Per 16.3.2 Zone Definitions, Uses, and Standards, dimensional standards for lots in the Residential – Rural Conservation and Shoreland Overlay Zone include:
 - a. Minimum Lot Size: 80,000 square feet
 - b. Minimum Road Frontage: 200 feet
 - c. Minimum Shore Frontage: 250 feet
 - d. Maximum Building Coverage: six percent
6. Both lots are nonconforming with the required dimensional standards.
7. Ms. Thron and Mr. Arris submitted an application to the Town of Kittery Planning and Development Department on February 11, 2015.
8. Per the requirements of 16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots, the Planning Board reviewed the plan for a proposed reconfiguration of lots on March 26, 2015.
9. The proposed dimensions for Lot 42 are:
 - a. Lot Size: 30,469 square feet
 - b. Road Frontage: 196.14 feet
 - c. Shore Frontage: 151 feet
 - d. Building Coverage: 7.6 percent
10. The proposed dimensions for Lot 42-A are:
 - a. Lot Size: 20,100 square feet
 - b. Road Frontage: 123.07
 - c. Shore Frontage: 151 feet

- d. Building Coverage: 7.3 percent
11. The Code Enforcement Officer determined that the proposed lot line adjustment makes Lot 42 *more nonconforming* with the dimensional standards in the R-RLC zone.
 12. The proposed lot line adjustment makes Lot 42-A *less nonconforming* with the dimensional standards in the R-RLC zone.
 13. Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage, and therefore each adheres to State Minimum Lot Size Law (12 M.R.S. sections 4807-A through 4807-D).
 14. Each resulting lot is conforming to the Maine DEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses and will remain conforming to those requirements.

Conclusion

The Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection Mandatory Shoreland Zoning minimum lot standards for principal structures and uses as well as the requirements of the Town of Kittery Land Use Development Code, section 16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.

The Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Plan will have no significant detrimental impact, and the Kittery Planning Board hereby grants approval for the Plan and Request at the above reference properties, including any waivers granted or conditions as noted.

Waivers: None

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. All Notices to Applicant contained in the Findings of Fact (dated: March 26, 2015).

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.

Vote of: 6 in favor 0 against 0 abstaining

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 – Board Member Items/Discussion

A. Committee Updates

Ms. Davis shared that the Comprehensive Plan Committee is on hold for now. The Kittery Community Market has a new manager and will now be open on Sunday from 10 a.m. to 2 p.m.

Mr. Lincoln requested direction on the process for proposing new codes.

Ms. Grinnell and Ms. Kalmar suggested that it be brought up to the Board at the next meeting and added to the action list.

Mr. Harris suggested 16.6.2 should be amended so that Planning Board decisions are appealed to the Board of Appeals prior to going to the Superior Court in the interest of time and expense.

Ms. Grinnell said this would duplicate volunteer board efforts.

Mr. DiMatteo noted that decisions of all three boards in the Town are appealed to the court and the process has been structured that way for decades.

Ms. Kalmar noted that sending Planning Board appeals to the Board of Appeals before Superior Court would result in two “non-professional legal interpretations” before reaching the legal authority for a final decision, resulting in more expense and time lost.

Ms. Grinnell reported on the Kittery Port Authority and said that no new moorings will be issued until after December 31, 2015 as the Harbormaster is inventorying existing moorings.

B. Action List [Note: The action list is available in the meeting materials posted at kittery.org.]

Ms. Kalmar asked that item one be changed to priority two.

Mr. DiMatteo said that item five will be discussed at the May 28, 2015 meeting.

Mr. DiMatteo will provide a draft on item 11 for the April 23, 2015 meeting.

Mr. Lincoln questioned maintaining delayed items as priority one.

Mr. DiMatteo explained that item 14 has been recommended to Town Council and is pending.

Ms. Grinnell asked Ms. Davis about item 21, regarding parking credits in the Kittery Foreside area.

Ms. Davis explained that the Board was waiting for the results of the Foreside Forums, and Mr. DiMatteo explained that he and the Town Manager are working on preparing a request for proposals for a study of parking in the area.

Discussion ensued concerning the relationship of item 21 to item 23, how to move forward with a possible Foreside Review Committee.

Ms. Kalmar suggested that, to address item 21 and item 23, the Board should discuss the Foreside Forums report at the April 23 meeting.

ITEM 3 – Town Planner Items

Mr. DiMatteo reported that the Kittery Area Comprehensive Transportation System (KACTS) will report on its bicycle/pedestrian planning efforts at the April 23 meeting as well. The presentation is intended as a stakeholder meeting and staff will advertise and invite businesses abutting the Route 1 Bypass.

Mr. DiMatteo reported that Memorial Circle Improvement planning is still underway, including dealing with budget overages.

Mr. DiMatteo provided copies of the work plan for the sewer expansion project.

Mr. DiMatteo addressed ongoing code amendments, particularly the four that have been in progress over the winter. After the May 5 joint workshop with the Town Council, he will provide a final draft for recommendation to the Council.

Mr. DiMatteo asked the Board to consider the draft agenda for April 9. Public hearings will be scheduled for that date for two shoreland development plan reviews.

Mr. Alesse moved to adjourn.

Ms. Kalmar seconded.

Motion carried 6-0-0.

The Kittery Planning Board meeting of March 26, 2015 adjourned at 7:30 p.m.

Submitted by Elena Piekut, Assistant Town Planner, March 30, 2015