

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

**APPROVED
May 14, 2015**

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

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

Members absent: None

Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner

Pledge of Allegiance

Minutes: April 23, 2015

Mr. Alesse and Ms. Kalmar requested amendments.

Ms. Kalmar moved to approve the minutes of April 23, 2015 as amended.

Ms. Davis seconded.

Motion carried: 6-0-0

Ms. Kalmar moved to approve the minutes of May 6, 2015 site walks for 100 Pepperrell Road and Fernald Road.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Public Comment: Ms. Grinnell opened the public comment period and, hearing none, closed it.

ITEM 1 – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review

Action: hold a public hearing, grant or deny preliminary plan approval. Owner and applicant Peter J. Paul, Trustee of AMP Realty Holdings, LLC, requests approval of plans to develop a multi-family residential cluster subdivision. The approximately 18-acre parcel is located on portion of Tax Map 28, Lot 14 with frontage along Fernald Road and Route 236, in the Residential – Suburban (R-S) Zone with portions in the Commercial (C-2) Zone and Resource Protection Overlay (OZ-RP) Zone. Agent is Tom Harmon, Civil Consultants.

Mr. Harmon provided an overview of the project. They have added a stamped detail of the retaining wall as requested.

Mr. Alesse asked that he address staff recommendations.

Mr. Harmon said they still need to define reserve open space areas and a management plan, and will provide the septic design, maintenance plan, and homeowners' association documents at the final review stage.

Mr. Di Matteo added that the Fire Chief still wants to see a name other than Bartlett Hill to avoid confusion. He also reported that the Police Chief supports the waiver of sidewalks if the shoulders are wide enough for safe walking and to provide for sidewalks in the future if needed.

Mr. Harmon noted that the right-of-way is wide enough to accommodate sidewalks in the future.

Mr. Di Matteo addressed other outstanding items in the staff notes, including:

- That open space should be one lot and have a management plan
- Note five, asking for a 50-foot no-cut, no-disturb buffer to the Kittery Land Trust property
- Note six, regarding management for cottontail rabbit habitat
- Note eight, regarding plan notes
- How scantic soils are deducted in calculating land suitable for development
- The Board has also received more information from the soil scientist on classification

Ms. Davis asked why there is no longer a burden on the property next door for stormwater management and Mr. Harmon explained that the same Maine DEP criteria no longer apply now that the lots are divided and smaller.

Ms. Kalmar noted that the Kittery Land Trust asked at the first public hearing that the applicant ensure there is only one point of access from the development to the Remick Preserve next door. Mr. Harmon said that the owner wishes to have no access and that this concern will be handled through homeowners' documents.

Ms. Kalmar asked that the Board receive assurance of a solution.

Chair Grinnell opened the public hearing for comment and, hearing none, closed it.

Ms. Kalmar moved to grant conditional approval for the preliminary plan subdivision application for the Preliminary Plan Subdivision application, Bartlett Hill A Multifamily Residential Cluster Development, located at Fernald Road in the vicinity of Route 236 (Tax Map 28 Lot 14) in the Residential – Suburban Zone with portions of the site in the C-2 and Shoreland Overlay Zones, for owner/applicant AMP Realty Holdings, LLC. Conditions include: to revise the plan to reflect the staff and peer-review comments prior to preparing and submitting the final plan application.

Mr. Alesse seconded.

Ms. Davis reminded the applicant that the plan should be described as a subdivision plan.

Motion carried 6-0-0.

ITEM 2 – 100 Pepperrell Road – Shoreland Development Plan Review

Action: hold a public hearing, approve or deny development plan. Owners and applicants Jonathan King and James W. Stott are requesting approval of plans to remove the 20th-century additions to the John Bray house and connect new construction consisting of a main dwelling wing with attached garage, a guest wing, a summer house and a deck and pool. 100 Pepperrell Road is located at Tax Map 27, Lot 45 in the Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones. Agents are Simon Jacobsen and Mark Johnson, Jacobsen Architecture, LLC.

Mr. Jacobsen provided a brief overview of the project.

Chair Grinnell explained that the Planning Board held a site walk on May 6, and that while there were no stakes in the ground as expected, those stakes would have been for clarity for the Board. She read a letter from the Architects inviting neighbors to a site walk on May 13 which the Planning Board did not attend, where stakes had been put in place. Ms. Grinnell also provided a list of 16 people who had provided letters of support for the project in recent days:

1. MJ Blanchette and Brian Cox
2. Linda and Denis Forster
3. Nancy McNally
4. Lisa Wilcott
5. Hannah Leifheit-Smith
6. Mark Steffen and Randy Price
7. Cathy and Steve Barnhorst
8. Elisabeth Scholes and W. Garrett Scholes
9. Jeanne Pryll
10. Martha Petersen
11. Susan Cunningham
12. Edward Colleran
13. Kristin and Ken Fellows
14. Constance Lamprell and Katharine Lamprell Pounds

15. Ted and Sarah Brewer
16. Souci Upton Rollins

Chair Grinnell opened the public hearing.

Alan Haesche of 103 Pepperrell Road provided several comments, including:

- Thanking the applicant for the additional site walk
- His and his wife's experience with historic properties
- How setting and integrity influence listing on the National Register of Historic Places
- The proposal makes the Bray House look like a backdrop for a pool
- The view from the property is one of the vistas listed in the Comprehensive Plan but he understands that there are no ordinances behind it
- There is a standard for vistas in the Mixed Use Kittery Foreside Zone

The Board offered to accept a copy of Mr. Haesche's written comments as part of the record.

Jonathan Sobel of 12 Moores Island Lane commented that the Bray House is within his view and he and his wife think it is an excellent project which average individuals cannot accomplish.

Susan Emery of 5 School Lane offered several comments:

- Owners of historic homes are obligated to caretake them, not own them in the usual sense
- The existing additions don't detract but are integral to the Bray House character
- The Comprehensive Plan refers to Kittery Point's neighborhood conservation designation on page 124
- She thinks the plan is destructive to Kittery Point Village and does not favor it

Tom Hibschan, 188 Brave Boat Harbor Road offered several comments:

- Described his work and experience with architecture and restoration
- He is a member of the Comprehensive Plan Committee
- He sent comments via email to the Planning Board April 23
- He is concerned about views along this prime scenic roadway and views from the water
- Kittery Point Village is one of the most historic areas of the nation

Linda Briggs of York, owner of Anne Erwin Sotheby's who represented the seller of the Bray House, lent her support to the project and described how many people to whom they showed the house wanted to tear it down and rebuild.

Jacquelyn Nooney of 9 Island Avenue, offered several comments:

- She has worked with the owners on designing and building gardens at their current home and appreciates their creativity and sensitivity to the project
- As a designer the tension between the old and new in this plan "makes both of them more exciting"
- Its presence on the street adds to the streetscape and she is very supportive

Tom Emerson of 10 Ox Point Drive, offered several comments:

- He is an Architect and Planner and has been a professor of Architecture
- This firm understands how to add to the historic fabric of the area and the fact that this firm worked on this project will be significant in the future

- He discussed historic architecture along coastal Maine—their “methodology is right” and he is fully in support

Kathleen Thornton of York and Anne Erwin Sotheby’s offered several comments:

- She doesn’t equate the additions with the Bray House and they are in disrepair
- Those discussing the view are bringing it up out of personal interest

Chair Grinnell closed the public hearing.

Ms. Grinnell spoke about the Comprehensive Plan, saying that it is the will of the people, and then that will is put into the Code.

Mr. Di Matteo explained the revised Findings of Fact provided to the Board. Concerns about vegetation include the large lilac and the proximity of construction to the pine trees. Information from Shoreland Resource Officer Jessa Kellogg is provided. He spoke to the peer review engineer, CMA, regarding stormwater management and suggests a condition that the applicant provide a stormwater management plan to CMA prior to issuance of a building permit. He suggests a condition that a historic preservation consultant be hired to ensure the applicant conforms to the recommendations of Maine Historic Preservation Commission

Mark Johnson represented the applicant and a discussion regarding cutting of vegetation and preservation of trees ensued.

Ms. Davis noted that the letter from the arborist should be signed.

Mr. Lincoln asked about the Shoreland Resource Officer’s standing before the Board, and Mr. Di Matteo explained that her role is advisory.

Mr. Di Matteo also reiterated that the Shoreland Zoning Law prohibits removing any trees in this case, where the existing nonconforming clearing may not be expanded.

Certified and licensed arborist Mike Lee provided several comments:

- 25-30% of the roots can be removed
- The DEP recommended cutting no closer than 15 feet from the trunk. He has seen trees survive as close as five feet, although it is not ideal
- Proper root pruning will mitigate harm
- Cabling or bracing can stabilize the pine trees
- The State Forester consulted by the Shoreland Resource Officer provided an opinion that mitigation is the best option, and he agrees because at 60 years old the pine trees don’t support the environmental need on site
- They are considered “surface root trees” and can take a lot of root damage
- The lilac can be moved fairly easily

Ms. Davis pointed out that conserving shore cover and visual points of access are part of the codified purpose of the Shoreland Overlay Zone, and Mr. Alesse added that this is one of the findings of fact the Board must vote on.

Ms. Kalmar explained that the Shoreland Zoning Law prohibits cutting any more trees.

Earledean Wells of the Conservation Commission asked that the Commission have an opportunity to review the stormwater management plan when it is submitted.

Mr. Lincoln asked about the Shoreland Resource Officer’s comments regarding shoreline stabilization. Mr. Di Matteo suggested that this would be part of the stormwater management plan. Mr. Lincoln also asked about the archaeological study.

Mr. Johnson explained that test pits will be dug over the area of the disturbance, and Mr. Di Matteo said if a Phase II study is needed, construction would not begin.

Ms. Davis asked about the outdoor compressor proposed and Mr. Johnson explained that while the applicant still intends to use geothermal energy instead, it depends on the structural assessment of the house. If compressors are used, they will be the quietest possible and will not be located on the property line.

Mr. Alesse explained his opinion that the proposal does not meet standards for preserving the historic resource and conserving visual points of access to the water, and that he will vote no on findings five and six. He thinks the applicant has “given short shrift” to most MHPC recommendations and the design overwhelms the Bray House.

Ms. Kalmar explained that the Code only enables the Board to consider a structure a historic resource if it is eligible for or on the National Register of Historical Places, and that there is no standard such as a percentage to prevent the loss of a view.

Mr. Alesse noted that spatial relationships as described by the Secretary of the Interior’s Standards are being changed.

Mr. Harris explained that in driving by the property there is not much view of the water to be seen.

Mr. Lincoln moved to grant conditional approval for the Shoreland Development Plan application dated March 19, 2015 for 100 Pepperrell Road (Tax Map 27, Lot 45) in the Kittery Point Village and Shoreland Overlay Zones, for owners and applicants Jonathan King and James W. Stott.

Mr. Harris seconded.

Ms. Kalmar read the Findings of Fact.

**FINDINGS OF FACT
For 100 Pepperrell Road
Shoreland Development Plan Review**

WHEREAS: Jonathan King and James W. Stott request approval of their Shoreland Development Plan, a proposal which entails demolition of 3,139 square feet of existing structures and addition of 5,101 square feet of new buildings to an existing single family dwelling at 100 Pepperrell Road, Tax Map 27, Lot 45 in the Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250’) Zones, hereinafter the “Development;” and

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

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Overlay Zone Project Plan Review Application, March 19, 2015.
2. Existing Conditions Plan, North Easterly Surveying, Inc., October 2, 2014.
3. Site Plan, Elevations, and Site Photos, Jacobsen Architecture, March 19, 2015
4. Revised Site Plan and Elevations, Jacobsen Architecture, received May 4, 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

Findings: The proposed demolition and construction would result in a total of 12,054 square feet of devegetated area, or 19.94% of the 60,460-square-foot lot.

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.

Finding: The proposed changes are no more nonconforming than the existing condition.

Conclusion: The requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals 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.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

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]

Finding: The existing structure is nonconforming, but is located outside the required setback from the normal high water line. 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;

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;

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2, #3, and #9 this requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested condition #4, this requirement appears to be met.

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;
Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
Conclusion: With the proposed conditions #7 and #8, this requirement appears to be met.

Vote: 4 in favor 2 against (Alesse & Davis) 0 abstaining

6. Protect archaeological and historic resources;
Conclusion: The proposed development does not appear to have an adverse impact. With the proposed conditions #5 and #6, this requirement appears to be met.

Vote: 5 in favor 1 against (Alesse) 0 abstaining

7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

8. Avoid problems associated with floodplain development and use;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

9. Is in conformance with the provisions of this Code;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

10. Be recorded with the York County Registry of Deeds.
Conclusion: 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.

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 of Jonathan King and James W. Stott, owners and applicants, to remove additions and connect new construction to an existing single family dwelling at 100 Pepperrell Road (Tax Map 27, Lot 45) subject to any conditions or waivers, as follows:

Waivers: None

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

1. The plan will be revised to meet the recording requirements of the York County Registry of Deeds.
2. The plan will be revised to include a note stating that the development is a single dwelling unit per the definition of Title 16, Chapter 2 Definitions.
3. The plan will be revised to relocate the lilac.

Conditions of Approval (to be included 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.
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. A subsurface wastewater disposal permit application (HHE 200) will be submitted to the Code Enforcement Officer for review and approval prior to the issuance of a building permit.
5. A Phase I Archaeological Survey will be performed as well as all subsequent investigations recommended by the archaeologist and Maine Historic Preservation Commission, including Phase II and Phase III Surveys if necessary.
6. Applicant/Contractor will adhere to the recommendations made by the Maine Historic Preservation Commission specific to the rehabilitation of the Bray House as indicated in their letter dated April 7, 2015. Adherence will be confirmed by an independent historic preservation consultant meeting the minimum National Park Service professional qualification standards listed on the Maine Historic Preservation Commission website.
7. No existing trees will be removed, with the exception of two diseased flowering trees on the south side of the Bray House. The large lilac in the vicinity of the proposed summer house will be transplanted.
8. Per the recommendations of the consulting arborist in a letter dated April 29, 2015, if construction results in damaging more than one-quarter of the root system of an existing tree, in order to preserve the tree, “proper root pruning techniques” will be used and the applicant will “install a support system to mitigate the loss of the roots” in accordance with best practices and to the satisfaction of the certified arborist on site. In the event that trees do not survive construction damage, a mitigation plan shall be prepared in adherence to recommendations by the Shoreland Resource Officer and Maine DEP.
9. To ensure that the development will not result in water pollution, erosion, or sedimentation to surface water, prior to the issuance of a building permit, the applicant must submit a stormwater management plan reviewed and approved by the Town’s peer review engineer.
10. All Notices to Applicant contained herein (Findings of Fact dated 5/14/15).

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 of 5 in favor 0 against 1 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 3 – Old Armory Way Mixed Use Development – Preliminary Site Plan Review

Action: grant or deny continuance. Owner/applicant Ken McDavitt requests continuance of his plan seeking approval to construct two condominiums (total of three dwelling units) with eight commercial boat slips at 15 Old Armory Way, Tax Map 4, Lot 51 in the Mixed Use – Kittery Foreside (MU-KF) Zone, Shoreland Overlay (OZ-SL-250') Zone, and Commercial Fisheries/Maritime Uses Overlay (OZ-CFMU) Zone. Agent is Ken Wood, P.E., Attar Engineering, Inc.

Mr. McDavitt represented himself and provided an overview of progress since the Planning Board's last review, including:

- He submitted the Architect's drawings showing building height
- He received a response from the Maine Historic Preservation Commission, which deemed the building *not eligible* for the register of historic places
- He provided a letter from the surveyor explaining how the complexity of the site, snow cover, and coordinating with the tide have prevented him from finishing the survey

In light of this delay, Mr. McDavitt requested a 60-day continuance.

Ms. Kalmar suggested the Board deny the continuance and ask the applicant to return when the application is complete.

Ms. Kalmar moved to deny continuance of the site plan application of Ken McDavitt to construct two residential condominiums (total of three dwelling units) with eight commercial boat slips at 15 Old Armory Way, Tax Map 4, Lot 51.

Mr. Alesse seconded.

Motion carried: 6-0-0

ITEM 4 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review

Action: schedule a public hearing. Owner/applicant Real Property Trust Agreement requests consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home Park for the property located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential – Rural (R-RL) Zones. Agent is Thomas Harmon, P.E., Civil Consultants.

Mr. Harmon represented the applicant and was joined by Jay Stephens of Civil Consultants, Gary Beers representing the owner, and Brian Rayback of Pierce Atwood. Mr. Harmon explained that this review continues a process begun in 2012 and provided an overview of the project, including:

- 77 units are proposed and will be served by 5000 feet of road, public water and sewer
- They received Maine DEP approval in June 2013
- Four waivers are requested

Ms. Davis asked that the Board meet with the Town Attorney.

Ms. Kalmar said she would like to discuss the concept of “environmental suitability” at that meeting. Ms. Davis would like the Attorney to discuss the court’s decision and understand when State law supersedes the Town Code.

Ms. Kalmar moved to schedule a site walk for the Preliminary Subdivision Plan Application of owner/application Real Property Trust Agreement for a 78-lot expansion of the Yankee Commons Mobile Home Park located at Route 1, Tax Map 66, Lot 24 and 25 for Tuesday, June 2, 2015 at 10:30 and schedule a public hearing for June 11, 2015.

Ms. Davis seconded.

Motion carried: 6-0-0

ITEM 5 – 81 Tower Road – Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner/applicant The Frederick Nominee Trust requests consideration of a shoreland development plan for an addition to and second story expansion of an existing, nonconforming structure located at 81 Tower Road, Tax Map 58, Lot 46 in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250’)Zones. Agent is Jason Smith, Evergreen Builders.

Mr. Smith described the project, where an octagonal stairwell will be added for access to a new second story.

Mr. Di Matteo explained that paragraph two of the staff review is incorrect and reminded the Board that for a Shoreland Development Plan, the Board has discretion in whether to hold a site walk or public hearing.

Ms. Kalmar moved to accept the application and grant conditional approval for the Shoreland Development Plan dated April 23, 2015 from The Frederick Nominee Trust for 81 Tower Road (Tax Map 58, Lot 46) in the Residential – Rural Conservation and Shoreland Overlay Zones subject to the following conditions in the Findings of Fact.

Ms. Davis seconded.

Ms. Kalmar read the Findings of Fact.

FINDINGS OF FACT

For 81 Tower Road

Shoreland Development Plan Review

WHEREAS: The Frederick Nominee Trust requests approval of a shoreland development plan for an addition to and second story expansion of an existing, nonconforming structure located at 81 Tower Road, Tax Map 58, Lot 46 in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250’)Zones, hereinafter the “Development,” and

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

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Overlay Zone Project Plan Application, April 23, 2015.
2. Shoreland Development Plan, North Easterly Surveying, Inc., April 21, 2015.
3. Frederick Residence Addition, Randall Design, January 12, 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

Findings: The proposed construction would result in a total of 4,388 square feet, or 11.7% of the 37,530-square-foot lot.

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 increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

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.

Finding: The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

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.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay 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-C

Finding: A. Staff confirmed that there are no recorded expansions of the portion of the structure within the setback since 1989. The proposed expansion represents a 6.4% increase in area and a 7.4% increase in volume. B. Does not apply. C. The expanded foundation meets the setback requirement.

Conclusion: The requirement appears to be met.

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:

11. Maintain safe and healthful conditions;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

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

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

13. Adequately provide for the disposal of all wastewater;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

14. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

15. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16. Protect archaeological and historic resources;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

***17. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/
maritime activities district;***
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

18. Avoid problems associated with floodplain development and use;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

19. Is in conformance with the provisions of this Code;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

20. Be recorded with the York County Registry of Deeds.
Conclusion: 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.

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 of The Frederick Nominee Trust, owner and applicant, for an addition to and second story expansion of an existing, nonconforming structure located at 81 Tower Road, Tax Map 58, Lot 46 in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250') Zones subject to an conditions or waivers, as follow:

Waivers: None

Conditions of Approval (to be included 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.
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. All Notices to Applicant contained herein (Findings of Fact dated May 14, 2015).

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 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 6 – Hampton Inn, 275 US Route 1 – Sketch Plan Review

Action: approve or deny sketch plan. Owner Kittery Trading Post Shops, LLC and applicant 275 US Route 1, LLC request consideration of a sketch plan for a commercial development consisting of an 83-room hotel located at 275 US Route 1, Tax Map 30, Lot 41 in the Commercial 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ryan Plummer, Two International Group.

Rolf Biggers of BMA Architects represented the applicant. Mr. Biggers provided an overview of the proposal, including:

- It will be four stories and 83 rooms, which is relatively small for a Hampton Inn
- There will be limited meetings spaces and no restaurant
- There will be suites for longer stays
- Hampton Inn is a Hilton Brand
- The design is based on a prototype with adjusted materials and structure to meet the height requirement and meet design standards with clapboards, a brick “rusticated base,” and accentuated cornice
- Parapets hide equipment on the flat roof
- Hampton Inn has its own building codes that often exceed the local code
- There will be a porte-cochère entrance
- The first floor will contain primarily public and support spaces, including an indoor pool and fitness room

Ms. Davis asked about the plans for the other two buildings shown on the site.

Mr. Biggers explained that the site has been master planned for compatible uses, likely a small restaurant and a coffee shop, partly to provide services the hotel does not include.

Mr. Di Matteo explained that the applicant is only seeking approval for the hotel, although aspects of the plan such as stormwater will anticipate the full buildout of the site.

Mr. Biggers noted that Hilton's landscaping and parking lot requirements ensure that the site will be maintained in the meantime.

Mr. Lincoln asked about the site's entrance and exit.

Mr. Biggers said the Old Wilson Road will be used and there will be no new curb cuts.

Mr. Lincoln expressed concern about the design's compatibility with Kittery and the standards of the zone, particularly the flat roof and other appearance elements.

Mr. Biggers said the building would be 13 feet taller with a sloped roof and that Fire Departments prefer the flat roof over an enclosed attic space.

Ms. Davis asked whether there are any other prototypes the Board could consider.

Mr. Biggers said there are not and noted that the hotel's small size makes it difficult to compete with Portsmouth hotel prices.

Ms. Kalmar moved to approve the Sketch Plan dated April 8, 2015 from Owner Kittery Trading Post Shops LLC, and applicant Two International Group for a commercial development consisting of an 83-room hotel located at 275 Route 1, Tax Map 30, Lot 41 in the Commercial 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones.

Mr. Harris seconded.

Mr. Lincoln asked to see a rendering with the proposed materials.

Motion carried: 5-0-1 (Mr. Lincoln abstaining).

ITEM 7 – 9 Mill Pond Road – Shoreland Development Plan Review

Action: accept or deny plan application. Owner/applicant Eric Stites requests consideration of a shoreland development plan for an addition to and second story expansion of an existing, nonconforming structure located at 9 Mill Pond Road, Tax Map 23, Lot 6A in the Residential – Urban (R-U), Shoreland Overlay (OZ-SL-250'), and Resource Protection Overlay (OZ-RP) Zones. Agent is Tom Emerson, Studio B-E.

Tom Emerson represented the applicant. He described the project and its existing nonconformities. The existing condition is well over the permitted devegetated area, so an impervious walk will be replaced with a pervious one to reduce that condition. Mr. Emerson will make corrections to the plan as requested.

Ms. Kalmar moved to schedule a site walk for the Shoreland Development Plan application dated April 23, 2015 from Eris Stites & Katherine Peternell for 9 Mill Pond Road (Tax Map 23, Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones, for June 2, 2015 at 11:30 a.m. and schedule a public hearing for June 11, 2015.

Mr. Lincoln seconded.

Motion carried: 6-0-0

ITEM 8 – Lewis Farm Subdivision Phase II – Major Modification to an Approved Plan

Action: approve or deny plan modification. Owner/applicant Lewis Farm, LLC requests consideration of a major modification to an approved subdivision plan located off Haley Road and Lewis Road, Tax Map 61, Lots 25 and 29, in the Residential – Rural (R-RL) Zone. The modifications consist of revised lot lines and revised Maine Department of Environmental Protection wooded buffers. Agent is Jeffrey Clifford, P.E., Altus Engineering.

Mr. Clifford represented the applicant and described the proposed modification.

Mr. Di Matteo explained that although classified as major because it involves lot lines and easements, the modification is relatively minor.

Ms. Kalmar moved to accept the plan application of Lewis Farm, LLC for a major modification to a cluster subdivision plan approved March 14, 2013.

Mr. Lincoln seconded.

Motion carried: 6-0-0

Ms. Kalmar moved to approve the application of Lewis Farm, LLC for a major modification to a cluster subdivision plan approved March 14, 2013, consisting of revised lot lines and Maine DEP wooded buffer easements, located off Haley Road and Lewis Road, Tax Map 61, Lots 25 and 29, in the Residential – Rural Zone.

Ms. Davis seconded.

Motion carried: 6-0-0

ITEM 9 – Board Member Items / Discussion

A. Committee Updates

B. Other

Mr. Lincoln asked whether the Planning Board has any jurisdiction over the Wood Island Life Saving Station.

Chair Grinnell replied that it does because the island is in the Shoreland Zone.

ITEM 10 – Town Planner Items:

A. KACTS Kittery Foreside 2016-17 Infrastructure Funding Update

B. Other

Ms. Davis would like to know more about the work planned for “15 transient vessels at the Kittery Point Yacht Yard” described in the Maine DOT’s 2015-2017 work plan.

Ms. Grinnell would like to discuss that work plan at the next meeting.

Mr. Alesse moved to adjourn.

Ms. Davis seconded.

Motion carried: 6-0-0

The Kittery Planning Board meeting of May 15, 2015 adjourned at 9:30 p.m.

Submitted by Elena Piekut, Assistant Town Planner, May 21, 2015.