

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

**APPROVED
July 9, 2015**

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

Board members present: Vice Chair Karen Kalmar, Mark Alesse, Robert Harris, David Lincoln, Deborah Lynch.

Members absent: Chair Ann Grinnell, Secretary Deborah Driscoll Davis.

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

Pledge of Allegiance

Minutes: June 25, 2015

Mr. Alesse moved to approve the minutes of June 25, 2015 as written.

Mr. Lincoln seconded.

Motion carried: 5-0-0

Minutes: June 30, 2015 Site Walk

Mr. Alesse noted that the minutes did not include the address of the site walk.

Mr. Alesse moved to approve the minutes of June 30, 2015 as amended.

Mr. Lincoln seconded.

Motion carried: 5-0-0

Public Comment: Ms. Kalmar provided an opportunity for public comment. No members of the public presented comment.

Item 1 – 42 State Road Mixed Use Development – Preliminary/Final Site Plan Review

Action: hold a public hearing; approve or deny plan. Owner/applicant Aaron Henderson, HGC, LLC requests consideration of plans for a mixed use development consisting of three (3) commercial office units and five (5) residential units at 42 State Road (Tax Map 3, Lots 5, 6, and 7) in the Business – Local 1 (B-L1) Zone. Agent is Jeff Clifford, Altus Engineering, Inc.

Agent Jeff Clifford provided an overview of the project, including the following points:

- The three existing lots will be combined and existing buildings will be demolished
- The proposed structure will be three stories, 15,660 square feet, and contain three commercial and five residential units
- Parking was a key consideration in the design and the required number of spaces have been provided
- There is an entrance on Love Lane and an entrance on State Road, but no exit will be permitted onto Love Lane
- Stormwater treatment is accomplished with pervious pavers in the upper lot and underground storage, all of which flows into the State-owned system and across State Road into the wetland
- The applicant requests three waivers: regarding parking islands, street trees, and erosion and sedimentation design review

Mr. Clifford also responded to comments made by staff and peer reviewer CMA Engineers to resolve remaining concerns.

Ms. Kalmar opened the public hearing.

Earldean Wells, Conservation Commission Chair, asked for clarification about the use of concrete or grass in front of the building. Mr. Di Matteo explained that the change from the plan presented is to use concrete around the seating area rather than grass.

Ms. Wells also asked whether snow will be stored on site or removed. Mr. Clifford said that they anticipate removing snow from the site and will add a note to that effect.

Ms. Kalmar closed the public hearing.

Mr. Alesse moved to grant conditional preliminary and final Site Plan approval for Aaron Henderson, HGC, LLC’s proposed mixed residential/commercial development at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone.

Mr. Harris seconded.

Ms. Kalmar asked the applicant to consider using a “Not an Exit” sign at Love Lane rather than “Do Not Enter” as proposed. Mr. Di Matteo added that the “no parking” sign should read “No Parking Here to Corner” and be placed at the Love Lane entrance.

Mr. Di Matteo also asked the Board to include conditions of approval that the Maine Department of Transportation approve the proposed improvements within the right-of-way and that design of the retaining wall, if needed, be submitted to the Town for peer review.

Motion carried: 5-0-0

Ms. Kalmar read the findings of fact.

**KITTERY PLANNING BOARD
FINDINGS OF FACT -
for
42 State Road
Mixed Use Development**

APPROVED

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: Aaron Henderson, HGC, LLC, owner and applicant requested approval for a mixed use site development consisting of three (3) commercial office units and five (5) single-family residential units at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone.

Hereinafter the “Development”.

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

Sketch Plan Review	Held, not complete	5/8/14
Site Visit	Held	5/22/14
Site Visit	Held	2/4/15
Sketch Plan Review	Held, approved	2/12/15
Preliminary Plan Review	Held, accepted	6/11/15

Public Hearing	Held	7/9/15
Preliminary/Final Plan Approval	Approved	7/9/15

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”).

1. Subdivision Review Application and Drainage Analysis, Altus Engineering, received May 21, 2015
2. Existing Conditions Plan, North Easterly Surveying, November 12, 2014.
3. Site Preparation Plan, Site Plan, Grading Plan, Utility Plan, Landscape Plan, Site Lighting Photometric Analysis, Erosion Control Notes, Detail Sheets, Architectural Drawings, Altus Engineering, received May 21, 2015, with a revision date of 7/2/2015
4. Lot Plan, Altus Engineering, November 11, 2014.
5. Site Plan, Altus Engineering, January 28, 2015.

NOW THEREFORE, based on the entire record before the Planning Board as presented 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 board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

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.

The site consists of three existing, nonconforming lots of record that will be combined to create one conforming lot of 26,220 square feet where a minimum of 20,000 square feet is required in the Business – Local 1 Zone. The proposed uses of offices and dwellings/apartments are permitted uses in the zone.

The proposed Development appears to conform to Title 16. The Board finds this standard has been met.

Vote of 5 in favor 0 against 0 abstaining

B. Freshwater Wetlands Identified.

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.

None have been identified. The Board finds this standard is not applicable.

Vote of 5 in favor 0 against 0 abstaining

C. River, Stream or Brook Identified.

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

<i>meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
None have been identified. The Board finds this standard is not applicable..
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient.
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
The proposed development will not cause an unreasonable burden on the municipal water supply currently servicing the property. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.
<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>
The Kittery Sewer Department Superintendent has provided a letter verifying capacity to accept 2400 gallons per day of wastewater. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
<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>
The proposed development accommodates a dumpster. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.
<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>
The development is not within 250 feet of any wetland. The Board finds this standard is not applicable.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.

<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>The site is serviced by public sewer. The Board finds this standard is not applicable.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>J. Flood Areas Identified and Development Conditioned.</p>
<p><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></p>
<p>The property is not located within a flood prone area. The Board finds this standard is not applicable.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>K. Stormwater Managed.</p>
<p><i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i></p>
<p>CMA: The applicant has prepared a stormwater design and associated analysis and report that is logical and complete, and meets the requirements of the LUDC. The design was prepared by Altus Engineering and reviewed by CMA Engineers.</p>
<p>The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. The Board finds this standard has been met.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>L. Erosion Controlled.</p>
<p><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></p>
<p>The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2).</p>
<p>The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. The Board finds this standard has been met.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>M. Traffic Managed.</p>
<p><i>The proposed development will:</i></p> <ol style="list-style-type: none"><i>1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use</i>

<i>of the highways or public roads existing or proposed; and</i>
2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
An analysis of the traffic generation and sight distances has been completed, supporting the proposed development
The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
N. Water and Air Pollution Minimized.
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>
<ol style="list-style-type: none">1. <i>Elevation of the land above sea level and its relation to the floodplains;</i>2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i>3. <i>Slope of the land and its effect on effluents;</i>4. <i>Availability of streams for disposal of effluents;</i>5. <i>Applicable state and local health and water resource rules and regulations; and</i>6. <i>Safe transportation, disposal and storage of hazardous materials.</i>
1. The development is located outside of a Flood Hazard Area. 2 thru 6. Not applicable to the proposed development.
It does not appear the proposed development will result in undue water or air pollution The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
O. Aesthetic, Cultural and Natural Values Protected.
<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>
There is no significant change proposed in the use of the property that would have an undue adverse impact on aesthetic, cultural or natural values.
The property does not include any significant aesthetic, cultural or natural values that require protection. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
P. Developer Financially and Technically Capable.
<i>Developer is financially and technically capable to meet the standards of this section.</i>
The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines 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: As submitted by the applicant on 7/9/15.

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. If it is evident that a retaining wall will need to be constructed, drawings and specifications prepared by a Maine-licensed Professional Engineer must be submitted to the Town's peer-review engineer for their review and approval prior to any related earthwork.
5. Approval by Maine DOT for improvements proposed with the Route 1/State Road right-of-way.
6. All Notices to Applicant contained in the Findings of Fact (dated: July 9, 2015).

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

7. 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.

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.

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 5 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON July 9, 2015

Ann Grinnell, Planning Board Chair

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 – 73 Tower Road – Shoreland Development Plan Review

Action: hold a public hearing; approve or deny plan. Owners/applicants Robert & Megan Ramos request consideration of a shoreland development plan to demolish an existing, non-conforming single-family dwelling and construct a new, more conforming single-family dwelling at 73 Tower Road (Tax Map 58, Lot 42) in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250’), and Resource Protection Overlay (OZ-RP) Zones. Agent is Robert MacDonald, Detail Design Builders, LLC.

Bob MacDonald presented the proposal and addressed a number of points, including:

- The proposed structure reduces area and volume within the 100-foot setback from the water
- It is possible to build the new house outside of all setbacks but factors such as slope, soils and septic disposal, ledge, vegetation, and floodplain make it impractical
- It is not possible to locate the new building within the conforming area and stay out of the proposed floodplain
- The proposal decreases devegetated area

Ms. Kalmar opened the public hearing.

Mary Thron of 71 Tower Road, former owner of 73 Tower Road, explained how trees were removed without a permit when she owned the property. She said that she does not believe 40 percent of the volume was removed. The trees were originally planted by a previous owner to obscure an abutter’s view and were damaged by storms and salt spray. She hopes the required planting schedule is sensible and does not further block the abutter’s view.

Earldean Wells, Conservation Commission Chair expressed concern about erosion on the site and the need for Shoreland Resource Officer Jessa Kellogg to inspect it. Mr. Di Matteo explained that his understanding from the Shoreland Resource Officer was that without evidence that the proposal would worsen the condition, it’s not a priority. However, Ms. Kellogg has been asked to approve a planting plan for the property and may be able to investigate at that time. Ms. Wells said that the standard in question is 16.10.10.2.D.2.

Ms. Kalmar closed the public hearing.

Mr. Alesse asked that the applicant only be required to plant trees that are appropriate to the site. Mr. Lincoln thinks replanting is an “impractical requirement.”

Ms. Kalmar asked the Board for consensus on whether the house is sited to meet the setback to the “greatest practical extent.” All present agreed that the proposed site is the most practical.

Mr. Linclon moved to approve with conditions the Shoreland Development Plan application dated May 21, 2015 from Robert and Megan Ramos for 73 Tower Road (Tax Map 58, Lot 42) in the Residential – Rural Conservation and Shoreland Overlay Zones.

Mr. Harris seconded.

Motion carried: 5-0-0

Ms. Kalmar read the findings of fact.

**FINDINGS OF FACT
For 73 Tower Road
Shoreland Development Plan Review**

WHEREAS: Robert and Megan Ramos request approval of their Shoreland Development Plan for reconstruction of an existing, nonconforming structure located at 73 Tower Road (Tax Map 58, Lot 42) in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250’) and Resource Protection Overlay (OZ-RP) Zones, hereinafter the “Development,” and

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

Shoreland Development Plan Review	6/11, 7/9
Site Walk	6/30
Public Hearing	7/9

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 Development Plan Application, May 21, 2015.
2. Shoreland Development Plan, Frank Emery, PLS, May 5, 2015 revised June 3 and June 11, 2015.
3. Architectural Plans, Detail Design Builders, May 27, 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
<i>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...</i>
<u>Findings:</u> Existing conditions on the 30,469-square-foot lot include 3,959 square feet (13%) of devegetated area. 3,836 square feet (12.6% of the lot) is proposed to be devegetated area.
<u>Conclusion:</u> This standard appears to be met.

Vote: 5 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: This is an existing, nonconforming lot with an existing single-family dwelling structure located entirely within 100 feet of a waterbody.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.5.6 Nonconforming Structure Reconstruction. (Effective 2/28/15)

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and Expansion and 16.7.3.6.1 Nonconforming Structure Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation must be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause by the owner by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage, destruction, or removal.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the

criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

Finding: The existing nonconforming structure will be destroyed by more than 50% of its market value. D is not applicable. The proposed structure does not expand in area or volume within the required setback from the water and does not increase nonconformity.

Conclusion: With the proposed conditions (#5), the standards of 16.7.3.5.6 appear to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.5.4 Nonconforming Structure Relocation

B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Finding:

1. Lot. The lot is 30,469 square feet, which is comparable to adjacent properties but nonconforming to the 80,000-square-foot minimum.
2. Slope. The lot slopes toward the ocean and toward the road. The existing house is built into the slope, with a portion of the basement level accessible from the outside.
3. Soil erosion. Increased soil disturbance increases the potential for soil erosion. Proposed development limits the total amount of necessary excavation and thus the increased potential for soil erosion.
4. Other Structures. There are no other structures on the property. Structures on abutting properties meet the side setbacks and are nonconforming to the 100-foot setback from the ocean.
5. Septic System. The applicant proposes an expansion of the existing septic system.
6. Vegetation. No removal of vegetation is proposed or permitted.

Conclusion: The structure relocation meets the setback to the greatest practical extent.

Vote: 5 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 proposed reconstruction *reduces* floor area and volume within the setback from the water.

Conclusion: The requirements of this section appear to be met.

Vote: 5 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: 5 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: The proposed development does not appear to have an adverse impact. With the suggested conditions #2, #3, this requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The applicant has submitted a HHE 200 septic system application for the proposed expansion to the existing septic system.

Conclusion: This requirement appears to be met.

Vote: 5 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.

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: 5 in favor 0 against 0 abstaining

5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

Finding: Shore cover is not affected by this development. Vegetation will be increased. There are no points of access.

Conclusion: The requirement appears to be met.

Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining
6. <i>Protect archaeological and historic resources;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> The requirement appears to be met.
Vote: <u> 5</u> in favor <u> 0</u> against <u> 0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u> 5</u> in favor <u> 0</u> against <u> 0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The existing development is within the floodplain. The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u> 5</u> in favor <u> 0</u> against <u> 0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i> <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u> 5</u> in favor <u> 0</u> against <u> 0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i> <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.
Vote: <u> 5</u> in favor <u> 0</u> against <u> 0</u> 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 for Robert and Megan Ramos, owners and applicants, for reconstruction of a nonconforming single-family dwelling located at 73 Tower Road (Tax Map 58, Lot 42) subject to any conditions or waivers, as follows:

Waivers: None

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

1. Minor plan revisions as described in staff review notes will be made prior to signing.

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 7/9/15).
5. A replanting plan to mitigate past unpermitted tree removal in the Shoreland Zone showing tree species, sizes, and planting locations will be submitted to and approved by the Town of Kittery Shoreland Resource Officer, who will also confirm conformance to 16.10.10.2.D.2.

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 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15

Ann Grinnell, Planning Board Chair

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 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 3 – 43 Tower Road – Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner/applicant Theodore H. Curtis Trust requests consideration of a shoreland development plan for a 360-square-foot garage and 48-square-foot breezeway addition to an existing, nonconforming single-family dwelling located at 43 Tower Road (Tax Map 58, Lot 34) in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250), and Resource Protection Overlay (OZ-RP) Zones. Agent is Ken Markley, North Easterly Surveying, Inc.

Ken Markley provided an overview of the project, including the following points:

- The applicant proposes adding a breezeway and garage to a single-family home
- Nonconforming front setbacks are common on Tower Road, as the road was never well-monumented
- The proposal takes advantage of the provision within the code to use 50% of the usual side setback for a small garage
- 7.2% of the lot is devegetated and 11.7% is proposed
- They will use a silt fence and removal of trees is minimal

Mr. Markley also noted that he is in possession of two letters of support from abutters that will be submitted to the Town.

Mr. Lincoln moved to accept the Shoreland Development Plan application dated May 21, 2015 from Theodore H. Curtis Trust for 43 Tower Road (Tax Map 58, Lot 34) in the Residential – Rural Conservation and Shoreland Overlay Zones.

Ms. Lynch seconded.

Motion carried: 5-0-0

Mr. Lincoln moved to grant conditional approval for the Shoreland Development Plan application dated May 21, 2015 from Theodore H. Curtis Trust for 43 Tower Road (Tax Map 58, Lot 34) in the Residential – Rural Conservation and Shoreland Overlay Zones.

Ms. Lynch seconded.

Motion carried: 5-0-0

Mr. Alesse read the findings of fact.

FINDINGS OF FACT

For 43 Tower Road

Shoreland Development Plan Review

WHEREAS: Theodore H. Curtis Trust requests approval of their Shoreland Development Plan for an attached garage expansion of an existing, nonconforming structure located at 43 Tower Road (Tax Map 58, Lot 34) in the Residential – Rural Conservation 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	7/9
Site Walk	N/A
Public Hearing	N/A

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 Development Plan Application, May 21, 2015.
2. Existing Conditions Plan and Shoreland Development Plan, Easterly Surveying, June 16, 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: Existing conditions on the 27,205-square-foot lot include 1,955 square feet of devegetated area (7.2%).

Conclusion: With the proposed condition #1, this standard appears to be met.

Vote: 5 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: This is an existing, nonconforming lot with an existing single-family dwelling structure located entirely within 100 feet of Chauncey Creek. It is nonconforming to the front setback.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 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 is no more nonconforming than the existing condition.

Conclusion: The requirement appears to be met

Vote: 5 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: A. This proposal is the only expansion of the structure since January 1, 1989. The proposed increase in floor area is 15.0%. The proposed increase in volume is 30.0%.

Conclusion: With the proposed condition #2, 16.7.3.6.1.A appears to be met. B is not applicable. C appears to be met.

Vote: 5 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: 5 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 to avoid impact on adjacent surface waters. The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

<p>3. Adequately provide for the disposal of all wastewater; <u>Finding:</u> There is no change requiring wastewater disposal. <u>Conclusion:</u> The requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; <u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters. <u>Conclusion:</u> The proposed development does not appear to have an adverse impact. This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; <u>Finding:</u> Shore cover does not appear to be affected by this development. There are no points of access. <u>Conclusion:</u> The requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>6. Protect archaeological and historic resources; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> The requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<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>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<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. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<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>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> 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 for Theodore H. Curtis Trust, owner/applicant, for an addition to an existing, nonconforming single-family dwelling located at 43 Tower Road (Tax Map 58, Lot 34) subject to any conditions or waivers, as follows:

Waivers: None

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

1. Minor plan revisions as described in staff review notes will be made prior to signing.
2. The plan will be revised so that expansion of volume totals less than 30%.

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

3. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
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 7/9/15).

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 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15

Ann Grinnell, Planning Board Chair

Notices to Applicant:

5. 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.
6. 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.
7. 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.

8. 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 – Hampton Inn and Suites – Preliminary Site Plan Completeness Review

Action: accept or deny plan application; schedule a public hearing. Owner Kittery Trading Post Shops, LLC and applicant 275 US Route 1, LLC request consideration of a site plan for redevelopment of 4.12 acres, 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.

Ms. Kalmar and Mr. Di Matteo reminded the Board that the purpose of completeness review is to determine that the application contains all required information, not to deliberate on whether the proposal meets standards.

Rolf Biggers, BMA Architectural Group, property owner Bob Adams of Kittery Trading Post, and Jacques Gagnon, PE of Oak Point Associates answered questions about the proposal and materials submitted, clarifying:

- The site is the former Dansk building at the former Old Wilson Road
- A traffic engineer determined that the hotel use is less intensive than the existing use and that is addressed in the narrative; the engineer’s memo will be included in the final plan application
- The proposed building height complies with the maximum in the zone; if the building is proposed with a sloped roof, even at three stories rather than four, it will not comply
- The applicant proposes standard Hampton Inn signage that will comply with the Town Code; they also propose signage facing Interstate 95 and will ensure it conforms to any MaineDOT standards

Mr. Di Matteo suggested that the applicant review signage-related standards to ensure there is nothing the Planning Board needs to approve prior to the sign permit application.

Mr. Alesse moved to accept the preliminary site plan application dated June 18, 2015 from owner Kittery Trading Post Shops, LLC and applicant Two International Group for redevelopment of 4.12 acres 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 and schedule a public hearing for August 20, 2015.

Mr. Harris seconded.

Motion carried: 5-0-0

Item 5 – Spruce Creek Ventures, II – Minor Subdivision Sketch Plan Review

Action: approve or deny sketch plan. Owner/applicant Spruce Creek Ventures II requests consideration of a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77-A) in the Residential – Urban (R-U) Zone. Agent is Chris Wilber, Chris Wilber Consulting.

Chris Wilber, PLS represented the applicant and provided an overview of the proposal, including:

- A 15-unit condominium project was proposed several years ago but the plan was shelved

- The lot has “quite a bit of constraints” to development: steep slopes and a 25-foot-wide access used by two other lots
- Public water and sewer are available nearby
- All of the proposed lots are larger than the minimum lot size
- The plan is to develop two single-family homes and save the third lot, potentially for a duplex

Mr. Di Matteo noted that density is the goal for the Urban Zone, and the Board should discuss whether a conventional or cluster subdivision is preferable on this lot, as only cluster developments are expressly permitted. Discussion ensued regarding factors affecting the feasibility and desirability of either a cluster subdivision or conventional subdivision.

Mr. Alesse moved to approve the sketch plan application dated June 18, 2015 from owner/applicant Spruce Creek Ventures II for a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77A) in the Residential – Urban (R-U) Zone.

Mr. Harris seconded.

Further discussion ensued regarding open space requirements and access constraints on Bridge Street. The Board came to a conclusion that they should see a sketch plan for a cluster subdivision as well as a conventional one and discussed holding a site walk.

Mr. Alesse withdrew the motion on the table.

Mr. Alesse moved to continue the sketch plan application dated June 18, 2015 from owner/applicant Spruce Creek Ventures II for a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77A) in the Residential – Urban (R-U) and schedule a site walk for August 6 at 9:00 a.m.

Mr. Harris seconded.

Motion carried: 4-0-1 (Lincoln abstaining)

Item 6 – 42 Pepperrell Road – Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owners/applicants Brian and Jan Rodonets request consideration of a shoreland development plan for replacing a porch and walkway with a mudroom, adding 80 square feet to the existing office and garage at 42 Pepperrell Road (Tax Map 18, Lot 27) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zone. Agent is Brian Rodonets, Coastal Architects.

Brian Rodonets represented himself and described the project:

- The existing office/garage was built in 1989, within the 40 foot front setback with approval from the Board of Appeals
- They propose adding a mudroom totaling 80 square feet in area
- The addition is not in the flood zone and is outside of the 100-foot setback from the ocean
- The existing building coverage is 6.8% and proposed is 7.0%, while 20% is allowed
- The addition is no more nonconforming to the front yard setback than the existing building
- He will add devegetated area calculations to the plan

Mr. Alesse moved to accept the Shoreland Development Plan application dated June 19, 2015 from Brian and Jan Rodonets for 42 Pepperrell Road (Tax Map 18, Lot 27) in the Kittery Point Village and Shoreland Overlay Zones.

Mr. Lincoln seconded.
Motion carried: 5-0-0

Mr. Alesse moved to grant conditional approval for the Shoreland Development Plan application dated June 19, 2015 from Brian and Jan Rodonets for 42 Pepperrell Road (Tax Map 18, Lot 27) in the Kittery Point Village and Shoreland Overlay Zones.

Mr. Lincoln seconded.
Motion carried: 5-0-0

Mr. Alesse read the findings of fact.

FINDINGS OF FACT
For 42 Pepperrell Road
Shoreland Development Plan Review

WHEREAS: Brian and Jan Rodonets request approval of their Shoreland Development Plan to replace a porch and walkway with a mudroom, adding 80 square feet to an existing, nonconforming office/garage structure located at 42 Pepperrell Road (Tax Map 18, Lot 27) 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	7/9
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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 Development Plan Application, received June 22, 2015.
2. Site Plan, Coastal Architects, June 19, 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
<i>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...</i>
<u>Findings:</u> The existing <i>building coverage</i> is 6.8% and the proposed condition is 7.0%.
<u>Conclusion:</u> With the proposed condition #1, this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> 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: 5 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 is no more nonconforming than the existing condition.

Conclusion: The requirement appears to be met.

Vote: 5 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 nonconformity 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 structure is not located within the 100 foot setback from the ocean.

Conclusion: Standards A-C are not applicable.

Vote: 5 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: 5 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 to avoid impact on adjacent surface waters. The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: There is no change requiring wastewater disposal.

Conclusion: The requirement is not applicable.

Vote: 5 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 to avoid impact on adjacent surface waters.

Conclusion: The proposed development does not appear to have an adverse impact. This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

Finding: Shore cover does not appear to be affected by this development. There are no points of access.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

6. Protect archaeological and historic resources;

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

Conclusion: The requirement appears to be met.

Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i> <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i> <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.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> 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 for Brian and Jan Rodonets, owners/applicants, for replacing a porch and walkway with a mudroom, adding 80 square feet to an existing, nonconforming office/garage structure located at 42 Pepperrell Road (Tax Map 28, Lot 17) subject to any conditions or waivers, as follows:

Waivers: None

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

6. Plan revisions as described in staff review notes will be made prior to signing.

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

7. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
8. 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.
9. All Notices to Applicant contained herein (Findings of Fact dated 7/9/15).

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 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15

Ann Grinnell, Planning Board Chair

Notices to Applicant:

9. 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.
10. 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.
11. 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.
12. 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 7 – Board Member Items / Discussion

A. Committee Updates

None

B. Other

Mr. Lincoln pointed out the need to keep pending applications organized and keep the Board informed as to what can be discarded.

Mr. Harris acknowledged the Board's receipt of a letter from Rick Sparkowich of Operation Blessing, LP regarding the pending subdivision application.

ITEM 8 – Town Planner Items:

None

Mr. Alesse moved to adjourn.

Mr. Harris seconded.

Motion carried: 5-0-0

The Kittery Planning Board meeting of July 9, 2015 adjourned at 8:37 p.m.

Submitted by Elena Piekut, Assistant Town Planner, July 14, 2015.