

TOWN OF KITTERY ZONING BOARD OF APPEALS

June 10, 2008

Council Chambers

CALL TO ORDER:

Chairman Gardner called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT:

Vern Gardner, Chairman, Thomas Battcock-Emerson, Bob Kaszynski, Herb Kingsbury, Niles Pinkham and Craig Wilson

MEMBERS ABSENT: Mr. Costa was not present.

ALSO PRESENT:

CEO Heather Ross and Recorder Lisa Goms

Chairman Gardner introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance.

APPROVAL OF MINUTES: No minutes were reviewed.

The Chair then read the Notice of Hearings.

PUBLIC HEARINGS:

1. B&F Land Development requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 110(C)(1) (Page 253) of the Kittery Land Use and Development Code Zoning Ordinance in order to propose 4,397.14 manufacturing proposed at Building 1, propose 3657.79 warehouse proposed at Building 1, and propose 1,050 manufacturing at Building 2. Located at 240 U.S. Route #1, Kittery, Map 22, Lot 13 located in the Commercial (C) Zone.

Mr. Wilson made the Board aware that when he was not reappointed to the Board in November that the Town Manager asked him to look at the project and see if he had any suggestions for the applicant. Mr. Wilson spoke to Mr. Baudo and made recommendations.

Chairman Gardner asked the other Board members if there was a problem with Mr. Wilson sitting on the Board for this application. The members had no issue with this. VOTE: 5/0 in favor of Mr. Wilson sitting in.

Chairman Gardner recognized Christopher Baudo.

Mr. Baudo approached the lectern and gave a history of what B&F Land Development is and does. Mr. Baudo gave an in-depth overview of the proposed project and explained the revisions were made based on recommendations.

Chairman Gardner asked if there was anyone present who would like to speak in favor of, opposed to, or about the application in anyway.

Chairman Gardner recognized Richard Rossiter.

Mr. Rossiter, an abutter who shares the road with Dave Durling another abutter of the property. **Mr. Rossiter** pointed out on the map where his and Mr. Durling's property sits in relationship with the project property. I had a chance to review the application and it appears to me to be an over intensification of use, yes it is a 56,000 square foot lot. Building #1 has five levels to it. In order to reach this maximization of use, they have used extraordinary measures...construction type measures so that they could maximize the property. One of the problems in maximizing the use that they have run into apparently is running into wetlands and setbacks so they had to take out 6,000 square feet for wetland and 10,000 square feet for setbacks, where 40' setback is required. Mr. Rossiter also mentioned the proposed retaining wall...it is 12' feet high. To me that is a large retaining wall. Also there is a parking lot that abuts the residential area. The site plan lists that about 65 parking spaces are required, they show 70. They are putting intensive use into this area and trying to maximize every square foot they can without consideration to their neighbors. There is a 6' fence, but the plan does not show any landscaping. I would like to see the parking spaces illuminated and give us at least a 50' buffer area away from the Commercial (C) Zone. Mr. Rossiter made some recommendations on how the parking spaces could be altered to benefit the neighbors.

David Durling approached the lectern and stated that he agreed with Mr. Rossiter in that the applicant is trying to do too much with this property. This structure would dominate the abutting house. I don't have any objections specifically to the actual usage of the property in terms of the warehousing, retail and manufacturing, but as the ZBA, I would like to see you guys, if you grant the special exception, attach some other requirements to go in excess of the minimal requirements. It would prevent me from enjoying the property that I own.

Chairman Gardner asked if there was anyone else who would like about the application in any way. No further public comment was heard.

Mr. Baudo approached and addressed the abutters' concerns and assured them that he had no problem in alleviating them of these concerns.

CEO Ross Reported: This is a conforming lot with nonconforming structures located within the Commercial 1 (C-1) zone. B&F Land Development is proposing to demolish the existing buildings on the property and to construct two new buildings. The two new buildings would meet property line setbacks and wetland setbacks. All proposed parking would meet the wetland setbacks. This project is currently set to go before the Planning Board on Thursday, June 12, for a determination of complete application. From there, if the application is considered complete, the application would move on to a scheduling meeting, and then a public hearing. The project will be before the Planning Board for a full review.

CEO Ross continued: The proposal before the Board this evening is a Special Exception Appeal for the proposed uses within the proposed buildings. B&F Land Development has proposed to conduct manufacturing within 4,397 square feet of Building 1, and within 1,050 square feet of Building 2. B&F Land Development has also proposed 3,657 square feet of warehousing space within Building 1.

Board Discussion

Mr. Kingsbury said: Looking over the permitted uses, there are kind of light uses; schools, parks. This is in my opinion a much heavier use. It is unfortunate that it is adjacent to the residential areas. We certainly have a setback issue...we can do something about setbacks. Sheer bulk is mostly part of the problem...12' retaining walls, a 4-story building next to private homes; these are my big concerns. I can appreciate how this needs to be taken care of.

Mr. Wilson said: I want to be clear on what our powers are. I think we are here to see whether the uses; the manufacturing and warehousing do not cause a nuisance. I am not sure that both the building, retaining walls are not Planning Board issues. If we were to find that the uses require a larger setback, I have no problem with that. I am not sure that the special exception talks to necessarily the bulk issue, the intensity issue.

Mr. Pinkham said: I would think we were here to decide the use. My opinion is that the Planning Board is going to go over it with a fine tooth comb as to the size of the parking lot, the buffer, retaining wall, etc. I believe all the applicant is asking for is use. I don't see a problem with the warehousing...it's working right off Route #1 and if the manufacturing is in the basement and sound bidden, I don't have a problem with it.

Mr. Kaszynski asked if the residents knew they were within Commercial zone. As far as usage 16.12.110 (B)(R) in the Definitions talks about building materials and garden supplies. It says: Building Materials – it means a retail establishment engaged in selling lumber and other building materials, paint, glass, floor covering, etc. It would seem to apply to what the applicant's objective is and the use of the facility. It would seem to fit what the ordinance lays out.

Mr. Emerson said: The manufacturing, I think some of the requirements on the site and the intensity of the use is being brought about by the fact that the manufacturing where some of the other permitted uses will automatically include an intense site usage. We are specifically talking about manufacturing and warehousing as a special exception but what those things bring with them defacto other issues.

Much deliberation continued regarding the parking, buffering and lighting issues. The applicant was agreeable on\to making sure that the abutters concerns were taken into consideration.

Chairman Gardner suggested the Board go through the 16 items for the Special Exception Criteria with discussion before voting on each item. In order to be successful in total, there must be four (4) consents; anything less than four (4) on any item will deny the application.

16.24.060 Basis for decision

(A) Conditions

1. 6/0 All in favor.
2. 6/0 All in favor.
3. 6/0 All in favor.
4. 6/0 All in favor.

VOTE:

(B) Factors for Consideration

1. 6/0 All in favor.
2. 6/0 All in favor.
3. 6/0 All in favor.
4. 6/0 Dumpsters located at the southeast corner of the property be emptied M-F, 8 a.m.-5:000 p.m. only. All in favor.
5. 6/0 All in favor.
6. 6/0 External use of equipment is limited to hours of operation. All in favor.
7. 6/0 All in favor.
8. 6/0 All in favor.
9. 6/0 All in favor.
10. 6/0 All in favor.
11. 6/0 All in favor.
12. 6/0 With modifications. Recommendation to Planning Board. All in favor.
13. 6/0 Recommendation to Planning Board. All in favor.
14. 6/0 All in favor.
15. 6/0 All in favor.
16. 6/0 Planning Board will determine. All in favor.

The Special Exceptions were agreed upon. All in favor.

Secretary Wilson read a proposed motion to approve the appeal of B&F Land Development requesting a Special Exception Appeal to the terms of Title 16, Section 12, Subsection 110(C)(1) (Page 253) of the Kittery Land Use and Development Code Zoning Ordinance in order to build 4,397.14 manufacturing proposed at Building 1, propose 3657.79 warehouse proposed at Building 1, and propose 1,050 manufacturing at Building 2. Located at 240 U.S. Route #1, Kittery, Map 22, Lot 13 located in the Commercial (C) Zone. With the following conditions:

1. There be a 50' buffer in the southeast boundary of the lot;
2. Dumpsters on property shall be emptied only 8:00am–5:00pm M-F;
3. No outside vehicle noise from equipment other than between 8:00am-5:00pm, M-F in conjunction with either the warehouse or manufacturing operations;
4. All lighting on the southeast corner be on low stanchions and not spillover the property line.
5. Recommendation to the Planning Board that the retaining wall to contain some vegetation.

Mr. Kingsbury made the motion to approve.

Mr. Emerson seconded the motion. All in favor.

VOTE: Unanimous 6/0. Motion was granted. Application was approved.

Chairman Gardner informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

FINDINGS OF FACT

- 1. The applicant, B&F Land Development, is seeking a Special Exception Appeal in order to propose 4,397.14 manufacturing proposed at Building 1, propose 3657.79 warehouse proposed at Building 1, and propose 1,050 manufacturing at Building 2; located at 240 U.S. Route #1, Kittery, Map 22, Lot 13 located in the Commercial (C) Zone.*
- 2. This is a conforming lot with nonconforming structures.*
- 3. The new building will meet all applicable setback standards. This project will receive full Planning Board review.*
- 4. There are two proposed Special Exception uses of manufacturing, of which in Building #1 there are 4,397square feet in Building #2 there are 1,050 square eet. The second Special Exception use is warehousing for Building #1 consisting of 3,657 square feet.*

CONCLUSIONS

- 1. The Zoning Board went through each item of 16.24.060(A)(1-4)&(B)(1-16) Basis of Decision and found that the application with modifications; there being three (3) modifications and two (2) Planning Board recommendations, met all the Special Exception criteria.*
- 2. The Board voted unanimously 6/0 in favor and the application was approved.*

A motion to approve the Findings of Fact was made by **Mr. Kaszynski**. **Mr. Emerson** seconded the motion. All in favor.

ADJOURNMENT

A motion to adjourn was made and All in favor. The Zoning Board of Appeals meeting for June 10, 2008, was adjourned at 9:00 p.m.

Next meeting June 24th