

Findings of Fact, Conclusions of Law, & Decisions
Planning Board, Town of York, Maine
April 27, 2018
Brookside Landing Site Plan
Regarding an application prepared by
Colby Company Engineering, LLC & Kimball Design and Survey, Inc.
Tax Map 97/Lot 20C
1400 Route 1, York, ME

1. **Street address of the property or properties;**
Colby Company Engineering and Kimball Survey & Design are pleased to submit applicable materials for Findings of Fact for a three-building lot located at 1400 Route 1.
2. **Property ownership, as indicated on the application form and deed:**
The property is owned by 1400 Group LLC (c/o Gary Woods).
3. **Other parties to the application:**
Colby Company Engineering and Kimball Survey & Design are pleased to submit this application on behalf of 1400 Group LLC (c/o Gary Woods).
4. **Description of the existing use or uses of the property:**
The property is 5.43 acres in size and is primarily wooded with approximately 1.64 acres of wetland.
5. **Description of the proposed use or uses of the property, and the nature of the application:**
Three units are proposed on the property; one building is a 3-unit commercial building with 2 second floor apartments, the second building is a 1-unit commercial building with 2 second floor apartments, and the third building is a single-family home. The lot is bisected by Freeman Brook that runs from north to south across the property. All proposed construction is proposed to the east side of Freeman Brook. There are no significant vernal pools on the property as evaluated by *Kenneth Gardner Soil Testing and Septic Design*.
6. **Base zoning district in which the property is located** The property is in the Route One-5 Zone (RT 1-5), and is identified as Tax Map 97, Parcel 20C.
7. **Overlay zoning district(s) in which the property is wholly or partially located:** The property is partially located within the Shoreland Overlay District.
8. **Other relevant regulatory districts in which the property is wholly or partially located (relating to the Floodplain Management Ordinance, Wireless Communications Ordinance, Well Ordinance, etc.):**
FEMA Floodplain Map is provided in Section 6 of the application and Floodplain is shown on the plans. The Wireless Communications does not apply as there are no cell towers proposed. The Well ordinance does not apply to RT 1-5 Zone since there are no nearby wells and individual services will be provided from the existing watermain to buildings #1 and #2. The single-family home will require a meter pit. There are no other regulatory districts that apply to this project.
9. **Comprehensive list of materials submitted by the applicant as part of the application:**
CCE, LLC and KS&D submitted materials for Sketch Plan Review at the February 22nd, 2018 Planning Board Meeting. The Sketch Plan Applications consisted of an application, cover letter and conceptual multi use development plans. A full preliminary and final review package ~~of was~~ submitted for the March 22nd, 2018 Planning Board Meeting. The following materials were

submitted in response to planner comments, peer review engineering comments, and comments from planning board on April 4, 2018:

Application Package

- Cover
- Index
- Checklist for Site Approval
- Section 1 -Cover Letter
- Section 2- Application
- Section 3 – Right, Title or Interest
- Section 4 – Correspondence with MHPC/HDC
- Section 5 – Correspondence with IF&W
- Section 6 – FEMA Flood Insurance Map
- Section 7 – Stormwater Management Report
- Section 8 – Traffic Assessment
- Section 9 – Soils
- Section 10 – Municipal Correspondence
- Section 11 – Watershed Map
- Section 12 – Phased Construction
- Section 13 – Waiver Requests
- Section 14 – Financial Capacity Documentation
- Section 15 – Lighting Layout
- Section 16 – Wireless Communications Map
- Section 17 – Architectural Plans
- Section 18 – Findings of Fact, Conclusions of Law and Decisions

Plan Set

1. Cover/Index Locus Plan
2. Boundary Plan
3. Existing Conditions Plan
4. High Intensity Soils Map
5. Demolition Plan
6. Site Layout Plan
7. Grading and Drainage Plan
8. Utility Plan
9. Drainage Profile Plan
10. Erosion and Sedimentation Control Plans
11. Erosion and Sedimentation Control Notes and Details
12. Erosion and Sedimentation Control Details
13. Construction Details
14. Utility Details
15. Construction Details
16. Landscaping Plan

17. Architectural Plan

18. Lighting Plan

10. Date or dates on which the Board met to consider the application:

Planning Board Meeting on the following dates to consider this application:

Sketch Plan	February 22, 2018
Plan Review	March 22, 2018
Final Plan Review	April 26, 2018

11. Date or dates on which the Board conducted a public hearing on the application:

Public Hearings were conducted at each meeting;

Sketch Plan	February 22, 2018
Plan Review	March 22, 2018
Final Plan Review	April 26, 2018

12. A brief description of the substantive materials and testimony received at the public hearing:

One testimony was heard during Public Hearing at the Sketch Plan meeting on February 22, 2018.

Abutter Jean Carr said the area does not have sidewalks. U.S. Route. 1 and Shore Road are the only accesses to Ogunquit from the South, and every summer, traffic backs up to this area with cars trying to get into Ogunquit. There are accidents on Mountain Road. This is not an improvement to Cape Neddick Village, she said.

There were no testimonies during Public Hearing at the Preliminary/Final Plan meeting on March 22, 2018.

CONCLUSIONS OF LAW

Planning Board Approval Criteria

Pollution. The development will not result in undue water or air pollution. In making this determination, the Board shall at least consider the elevation of the land above sea level and its relation to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal, the slope of the land and its effect on effluents, the availability of streams for disposal of effluents, and applicable state and local health and water resource rules and regulations; Based upon Test Pit Logs (reviewed and Approved by Local Plumbing Inspector), Subsurface Septic System locations, Erosion and Sedimentation Control Plan and Details, and Stormwater Management Plan the project will not result in any undue water or air pollution.

Sufficient Water. The development has sufficient water available for the reasonably

foreseeable needs of the development; Each of the units are to be served by York Water District and based on the density of 1 unit per acre the development will have sufficient water for a 3-unit commercial building with 2 apartments, a 1-unit commercial building with 2 apartments, and one single family home.

Municipal Water Supply. The development will not cause an unreasonable burden of an existing water supply, if one is to be utilized; Ability to serve from York Water District.

Erosion. The development will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition results; The applicant has provided Erosion and Sedimentation Control Notes, Plans and Details that provide adequate information to protect against unreasonable soil erosion. Additionally, a detention pond has been proposed to protect against increased stormwater runoff and erosion. The Maine DEP reviewed and approved ESC Plan through Stormwater Permit by Rule.

Traffic. The development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed, and if the proposed development requires driveways or entrances onto a state or state-aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23 §754, the Maine Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23 §704 and any rules adopted under that section; The applicant has provided a Traffic Assessment that indicates the development will not create unreasonable highway or public road congestion. Maine DOT issued Entrance Permit for this project.

Sewage Disposal. The development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized; The applicant has provided test pits for septic systems and leach fields that provide for adequate sewage waste disposal.

Municipal Solid Waste Disposal. The development will not cause an unreasonable burden on the Town's ability to dispose of solid waste if municipal services are to be utilized; Not Applicable.

Aesthetic, Cultural and Natural Values. The 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 Fishers and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; The applicant has been in contact with IF&W, who prepared a 3-page letter addressing the aesthetics, historic sites and significant wildlife habitat located on the property. Pursuant to recommendations from IF&W the applicant has increased the buffer to Freeman Brook from 75 feet to 100 feet. Additionally, the applicant has instituted Open Space adjacent to the stream to ensure that the development will not have an undue adverse

effect on the scenic or natural beauty of the area, aesthetics, historic sites, and significant wildlife habitat.

Conformity with Local Ordinances and Plans. The development is in conformance with these Regulations, Zoning and other Town land use codes, and the Comprehensive Plan.

In making this determination, the Planning Board is authorized to interpret these Ordinances and Plans. The applicant through application, plans and reports has demonstrated compliance with Regulations, Zoning and other Town land use codes, as well as the Comprehensive Plan. Additionally, the applicant was required to obtain the following permits from the Maine Department of Environmental Protection (DEP) and MaineDOT.

- Stormwater Permit-By-Rule (more than 1 acre of disturbance but less than 1 acre of impervious area)
- MaineDOT Entrance Permit

Technical and Financial Capacity. The developer has adequate financial and technical capacity to meet the required standards; The applicant has provided the planning department with a Letter of Credit from Kennebunk Savings that proves adequate financial capacity to construct the project.

Surface Waters. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter 1, Article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. The applicant has provided adequate plans and stormwater reports to ensure that the proposed development will not adversely affect Freeman Brook.

Ground Water. The development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater. The applicant has proven through test pits and lot density calculation that the development will not adversely affect the quality or quantity of groundwater.

Flood Areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board will determine whether the development is in a flood-prone area. If the development, or any part of it, is in such an area, the developer shall determine the 100-year flood elevation and flood hazard boundaries within the development. The proposed plan must include a condition of approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least two feet above the 100-year flood elevation. The applicant has provided the FEMA map, stormwater management report, and grading plans to prove that the lowest point of the development is over two feet above the 100-year flood elevation.

Freshwater Wetlands. All freshwater wetlands within the proposed development have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. The applicant retained Ken Gardner to locate/ delineate the wetlands throughout the property and has shown the development impacts no wetlands.

River, Stream or Brook. Any river, stream or brook within or abutting the proposed development has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 §480-B.9. The applicant has identified Freeman Brook bisecting the parcel and has provided 75-foot minimum setbacks from the property to ensure its protection. Setbacks have been increased where possible to meet IF&W recommendations.

Stormwater. The proposed development will provide for adequate stormwater management. The applicant has submitted a Stormwater Management Report and Plan that indicates adequate Stormwater Management through a detention pond and closed drainage system for the 2-year and 100-year storm events.

Spaghetti Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38 §480-B, none of the lots created within the subdivision have a lot-depth-to-shore frontage ratio greater than 5 to 1. Not applicable.

Lake Phosphorous Concentration. The long-term cumulative effects of the propose development will not unreasonably increase a great pond's phosphorous concentration during the construction phase and life of the proposed development. Not applicable.

Impact on Adjoining Municipality. For any proposed development that crosses municipal boundaries, the proposed development will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the development is located. Not applicable.

Planning Board Decisions:

1. The date on which the application was reviewed and found by a vote of the Board to be substantively complete and was accepted for review.
February 22, 2018 the Planning Board accepted the Sketch Plan Planning Board Application for review. On March 22, 2018 the Planning Board accepted Preliminary/ Final Application for review.
2. A list of each waiver granted, specifying the exact section waived, the date of each decision, and the rationale for each waiver.
Three waivers were requested and voted on as a part of this project; Section 5.3.1 Waive to Two-Step Process, Section 6.4.17 Hydrogeologic Assessment, and 6.3.13.4 Building

Exterior. The Planning Board granted approval to all three (3) waivers at the March 22, 2018 meeting (5-0).

3. A list of each decision on which the Board voted during the review process which relates to interpretation or application of the codes.
All items discussed are included in Cover Letter.
4. The date on which the application received sketch plan approval, if required, along with a description of direction provided to the applicant for changes required at final submittal.
The Planning Board Voted on February 22, 2018 to grant sketch plan approval (5-0). See Cover Letter for all comments discussed.
5. The date on which the application received final approval, along with a listing of all conditions precedent or subsequent imposed by the Board.
The Planning Board granted Preliminary/ Final plan approval at the April 26, 2018 meeting (5-0).
The Board requested a note be added to the plans to address concerns from the Planning Director and Public Works Director regarding construction of sidewalk along the front of the property. The note reads: "A sidewalk is to be installed along the front of the property by the owner if further development on either side of the property provide the need for connectivity between sites."
6. The date on which a conditional final approval will expire if the conditions precedent is not satisfied. Final approval received on April 26, 2018 will expire in 90 days on July 25, 2018.

Chair of the Planning Board: Amy Phalon

Signature: _____



Date: _____

May 10, 2018

