

ITEM 1 - ROLL CALL

Present: Steve Beckert – Chairman, Dennis Lentz, Larry Bouchard and Greg Whalen.

Absent: Jeff Duncan – Vice Chairman.

Steve Beckert noted that Greg Whalen had been appointed as a full voting member by the Board of Selectmen.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 - REVIEW AND APPROVE MINUTES AND INVOICES AS NEEDED

MOTION:

Dennis Lentz made the motion to approve the minutes of the December 20th, 2011 Planning Board meeting, as written.

Larry Bouchard seconded the motion.

Vote: 3-0, Chair concurs.

ITEM 5 - REVIEW OF "NOTICE OF DECISION" LETTERS, AS NEEDED

The Board reviewed the notice of decision letter for Medical Environments, LLC flea market. The letter was issued, as amended, by consensus of the Board.

ITEM 6 - PUBLIC APPLICATIONS OR PLANNING BOARD BUSINESS TO BE CONSIDERED

A. 10-minute public input session

Public input session opened.

No comments.

Public input session closed.

B. Public hearing – and continued review of an application Request for Planning Board action to amend a previously approved site plan by adding a 150' x 80' building, modifying an existing building, and adding pavement at 857 Main Street. Applicant is Kittery Point Yacht Yard (mailing address: 48 Bowen Rd., Kittery, ME 03904). Property owner is: MGX II, LLC (mailing address: 3 Bond Road, Kittery, ME 03905). Property can be identified as Map 10/Lot 2 and is located in the Village zoning district. (PB12-3)

Ken Markley of Northeastly Surveying represented the applicant, Tom Allen. He stated that he and the applicant had met with the Fire Chief, Jay Muzeroll, to discuss fire notifications procedures and State Fire Marshal review of the plans. He stated that the Board should have received a follow-up memo from the Chief dated May 1st, which he read as follows:

"I have been in contact with the manufacturer of the proposed project's membrane roof. This type of building is becoming more and more prevalent throughout New England. They are structurally sound and pose very little concern for the safety of the occupants of the property. The products has been previously reviewed and approved by the State Fire Marshal's Office. My questions about flammability have been fully answered. The material meets NFPA 701 requirements. That satisfies my concern with fire safety issues provided that all NFPA 101 are still met prior to occupancy. Those requirements would have to be met no matter the occupancy construction type."

Ken Markley continued stating that at the last meeting the Planning Board had asked that the location of the sewer line be added to the plan, which has now been done. Also, all exterior lighting, which is restricted to the exterior of the openings to the building, has been added to the plan. He stated that all exterior lighting will be down facing and won't extend over the property lines.

Tom Allen, applicant, stated that he owns the Kittery Yacht Yard under the name MGX II, LLC, which is the real estate holding company that owns marinas in both Kittery and Eliot. He stated that he started the company about 10 years ago by purchasing the Kittery boat yard at 48 Bowen Road and in 2007 he purchased the Eliot marina from George Patten, with whom he also operates Kittery Point Boat Builders. He stated that boat yards up and down the coast of Maine are lost every year due to the expense of insurance and compliance with strict environmental regulations and that he is committed to the preservation of waterfront resources and waterfront history. He explained that the Kittery Yacht Yard is a year-round operation that provides storage and service at the two facilities, however, a fire in 2008 on top of the limited amount of indoor space at both facilities means they are constantly moving boats in and out of the available bays. The redesigned building would provide about 6,000 sq. ft. of indoor space while also eliminating all wood structural components in favor of steel for a safer building. The new PVC building is eco-friendly with a translucent roof that will allow for solar gain and eliminate the need to heat or provide electricity to it. He stated that similar structures are used at Logan Airport and the Portland airport as well as the Town of York's indoor soccer field. He stated that the eastern side of the property has a limited vegetative buffer. He stated that he met with abutters along that property line to discuss their needs for additional screening. A 6' stockade fence is proposed along the Manero property line and additional vegetative buffering will be provided along the property lines of Mr. Valdez and Mr. Hyer.

Steve Beckert asked the Board if they had any questions for the applicant before opening the public hearing.

The Board had no questions for the applicant.

Public hearing opened.

Tony Manero, 32 Anthony's Landing, stated that during Tom Allen has always been attentive to the residential needs of the properties surrounding the marina. He stated that he felt Sec. 45-423 pertaining to fences resolved any concerns he had about screening. He stated that he endorses the expansion of the marina and that it's a valuable resource in the community. Mr. Allen's offer to construct a stockade fence along the shared property line at a height of 6' and a length of 550.97' is completely acceptable to him and requested that the Planning Board make that a condition of approval should the application be approved.

Ken Markley stated that the applicant is agreeable to that condition of approval.

Len Lamberti, 7 Gerry's Lane, stated that he has lived in his property for the last seven years and had always found Tom Allen to be a good neighbor. He stated that the new building, some of the exterior lighting, and an existing dumpster will be visible from several windows in his home. He asked Mr. Allen to consider installing a privacy barrier at the gable end of the building for a distance of 80' to provide additional screening and help preserve his property's value.

Tom Allen stated that he'd be agreeable to providing additional screening, however he'd like to talk to Mr. Lamberti about what his future plans for the marina are and to get a better idea of the exact location of the proposed screening before committing to anything specific.

Len Lamberti stated that he'd be more than happy to agree to that.

Steve Sanborn, 17 Clark Rd., stated that he lost a lot of trees during the last expansion of the marina. He stated that he doesn't necessarily have an issue with the proposed expansion, however, he's concerned primarily with the potential noise of power washers, sanders and other machinery used at the facility. He stated that he'd like to see some fast growing cedars planted along his property line and that they be maintained by Mr. Allen until they're mature. He submitted photographs to the Board depicting the view from his property.

Tom Allen stated that he'd be happy to discuss Mr. Sanborn's request with him, however, he'd like to walk the property line with him before he commits to anything.

Steve Sanborn stated that he would be agreeable to that.

Louis Valdez, 9 Eliot Shores Ln., stated that he has spoken with Tom Allen several times. He stated that he is primarily in favor of the proposed expansion and that the marina had always been a good neighbor, however, he'd like some additional screening from noise. He requested Mr. Allen install a fence along his property line that would connect to the one being installed along Mr. Manero's property line. He also stated that he believed his access to the waterway had been encroached on by the marina.

Tom Allen stated that he'd be agreeable to installing a fence, however, Mr. Valdez may want to consider using cedars or arborvitae instead.

Louis Valdez stated that he would prefer a fence over additional plantings.

Tom Allen stated that he believed Mr. Valdez's issue regarding the encroachment is due to one of his tenants who has two tugboats, a push boat and a barge, which when parked may encroach into Mr. Valdez's maritime rights. He stated that they are currently looking for another space to rent and that he believed that they would extend their lease in August for an additional year, however, the lease would not likely be renewed subsequent to that.

Frank Hyer, an abutter on Eliot Shores Ln., stated that he believed Tony Manero, who was in the audience tonight, wrote the riparian ordinance and could perhaps clarify whether or not Mr. Valdez's maritime rights were being infringed upon.

Kate Pelletier stated that the Shoreland ordinances have changed significantly since Tony Manero stepped down from the Planning Board.

Steve Beckert stated that Mr. Valdez should alert the Code Enforcement Officer of his complaint so that he may investigate whether or not a violation of the code exists.

Jim Pope, 9 Clark Rd., stated that he was in favor of the proposal.

Public hearing closed.

Steve Beckert asked if the Board had any additional comments or questions for the applicant.

Greg Whalen asked how long that yacht yard had been at its present location in Eliot.

Tom Allen stated that it's been in Eliot since the 1990's.

Greg Whalen asked for a brief history of the Eliot Shores subdivision and how it relates to the application before the Board.

Frank Hyer stated that there are three lots in the subdivision but that his lot was vacant due to the fact that the owners of the Eliot Shores subdivision are in the middle of a conflict with the Town and that there's a pending consent agreement.

Greg Whalen asked how the water frontage was divided up among the owners.

Frank Hyer stated that he and his wife owned the actual water frontage and that access to it via a pedestrian right of way is deeded to the other owners in the subdivision.

Jim Pope asked if the beach at the end of Eliot Shores Lane was public.

Frank Hyer stated that the beach was privately owned.

Greg Whalen asked if there was a dock.

Frank Hyer stated there was not, but there are provisions in the deeds that allow for construction of a dock.

Louis Valdez stated that a dock would have likely been constructed already had it not been for the conflict they have with the Town.

Steve Beckert stated that the Planning Board really can't factor in future development of an abutting lot or lots while deciding Mr. Allen's proposal. He stated that he'd like to keep discussions related to the application at hand.

Greg Whalen asked how long the yacht yard had been there.

Tom Allen stated that the yacht yard had been there since the early 1990's.

Greg Whalen asked when the Eliot Shores subdivision was approved.

Frank Hyer stated that the subdivision was approved in 2005.

Steve Beckert asked if the Board had any additional questions for the applicant.

The Board had no additional questions for the applicant.

MOTION:

Dennis Lentz made the motion to approve the application for MGX II, LLC., as presented and discussed subject to the following conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents and materials submitted and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board.
2. Copies of approved permits from the Maine DEP and the US Army Corps of Engineers (if applicable) shall be provided to the CEO before construction on this project may begin.
3. This permit is approved on the basis of information provided by the applicant in the record regarding his ownership of the property and boundary location. The applicant has the burden of ensuring that he has a legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well advised to resolve any such title problems before expending money in reliance on this permit.
4. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
5. Per Sec. 33-175 and 45-423, the applicant shall, at his own expense, install a 6' fence along the east side of the property. Per Sec. 33-175, the applicant shall also, at his own expense, install and maintain a continuous vegetative buffer along the west side of the property. The applicant shall consult with direct abutters to the west of the property to determine the size and type of vegetation that will comprise the buffer. All fencing and vegetative buffers shall be installed within 12 months of the date of approval (May 1st, 2013). During this period the

applicant is authorized to seek building permits and use the property in accordance with the plans, documents and materials submitted.
Larry Bouchard seconded the motion.

Vote: 3-0, Chair concurs.

Steve Beckert explained the 30-day appeal process.

C. Continued discussion on an ordinance proposed by the Code Enforcement Officer to regulate the keeping of domesticated chickens.

Kate Pelletier stated that she had reviewed the draft amendment proposed by the Code Enforcement Officer and had submitted her comments to the Board earlier. She stated that she believed the ordinance to be too radical and that it would likely not pass the town vote in its present state.

The Board requested that Kate Pelletier prepare a new draft amendment for the next meeting.

D. Continued discussion on various fee schedule amendments proposed by the Code Enforcement Officer.

Kate Pelletier stated that she had reviewed the draft amendment to the fee schedule also proposed by the Code Enforcement Officer and had submitted her comments to the Board at the April 3rd Planning Board meeting. At that time the Board requested she prepare a spreadsheet that identified which fees are new and included the current fee, the fee proposed by the Code Enforcement Officer, and her comments. She stated that she submitted that spreadsheet to the Board on April 26th.

The Board reviewed the spreadsheet and requested that Kate Pelletier redraft the amendment to incorporate their comments.

Kate Pelletier stated that she was still working on a more user-friendly format for the fee schedule and would have something new for the Board at the next meeting.

ITEM 7 - ACTION ITEM LIST

None.

ITEM 8 – CORRESPONDENCE, OTHER AS NEEDED

None.

ITEM 9 - SET AGENDA AND DATE FOR NEXT MEETING

The next regular Planning Board meeting was scheduled for May 15th, 2012.

ITEM 10 – ADJOURN

MOTION:

Greg Whalen made the motion to adjourn at 9:02 PM.
Larry Bouchard seconded the motion.

Vote: 3-0, Chair concurs.

Stephen Beckert, Chairman

Date approved: _____

Respectfully submitted,

Kate Pelletier, Recording Secretary