Town of Kittery Planning Board Meeting October 12, 2023

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ITEM 3 – 24 Bayview Lane– Shoreland Development Plan Review

Action: Accept or deny application. Approve or deny plan: Pursuant to §16.9.3 Shoreland Development Review of the Town of Kittery Land Use and Development Code, Robert Ouellet, on behalf of owner/applicants Stephen and Catherine Balazs, requests approval for a vertical expansion of an existing non-conforming house within the base zone setback of the Shoreland Overlay Zone located on the property of 24 Bayview Lane, Tax Map 2. Lot 79, in the Residential-Suburban, Shoreland Overlay, and Resource Protection Zones.

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PROCESS SUMMARY

REQUIRED	ACTION	COMMENTS	STATUS
Yes	Staff Review	10/5/23	Completed
No	Site Visit	Optional	Optional
No	Public Hearing	Optional	Optional
Yes	Final Plan Review	Scheduled for 10/12/23	TBD

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PROJECT INTRODUCTION

- 24 Bayview Lane is located along the eastern shore of Spinney Creek in the R-S Zone and Shoreland
- Overlay Zone, with the western portion (and part of the house) covered by the Resource Protection Overlay.
- 18 The property contains a legally non-conforming single-family dwelling and barn attached by a breezeway,
- totaling approximately 2,289 sq ft. The house maintains a structure height of 21.3 feet, and the attached
- barn maintains a height of 28.1 feet.
- 21 The plan proposes a vertical expansion of part of the existing house to 19.7 feet to build a 2nd floor bedroom,
- 22 replacing a bedroom on the first floor which will be converted into a living room. The current structure
- 23 footprint, lot devegetation, and setbacks to the HAT line of Spinney Creek would remain unchanged.
- 24 Per §16.7.3.A.(1), planning board review of the proposal is required due to the lot's proximity within the
- 25 Shoreland and Resource Protection Overlay zones. Any development must not increase a structure's non-
- 26 conformance to water-body setbacks, and nonconforming structures must not exceed allowable height
- standards. Additionally, per §16.1.8.C.(4).(b).[3].[e].[iii], all proposed development of a non-conforming
- structure must be located at least 25 feet from the HAT line, even if said proposal would not increase
- 29 structure non-conformance.

APPLICATION & PLAN REVIEW

- Staff reviewed the submitted application and plan and have the following comments:
 - 1. Per §16.1.8.C.4.(b).[3].[v].[a]. structures located within a high-water line setback must maintain a height of 20 feet, or the height of an existing structure. The house currently maintains a structure height of 21.3 feet. The plan proposes a vertical expansion of part of the house to 19.7 feet, below the existing height.
 - 2. General provision §16.1.8.C.4.(b). requires expansion of structures within the base zone setback in the shoreland overlay zone not exceed 30% of the total footprint of structures existing on the

- property on January 1, 1989. This does not apply to vertical expansions, meaning the footprint will not change. Nonconformance will not be increased.
 - 3. The Shoreland Overlay Zone Ordinance §16.4.28.E.(3).(a). requires new principal and accessory structures to be set back at least 100 feet, horizontal distance, from the HAT line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Additionally, §16.1.8.C.(4).(b).[3].[e].[iii]. prohibits development of any portion of a structure within 25 feet of the HAT line. The vertical expansion is limited to the portion of the house located outside of the 25-foot setback, which is allowed. The development is a vertical expansion which will not increase the nonconformance of the existing structure.
 - 4. §16.4.28.E.(2). allows 20% of total lot area in the shoreland zoning overlay to be comprised of non-vegetated surfaces or structures. As the entire proposed development is a vertical expansion of an existing structure, devegetation will not be impacted, and nonconformance will not increase.

DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS

- 51 The proposed development will maintain current structure heights, and all setbacks, structure footprints,
- and devegetated area will remain unchanged. Staff suggest acceptance of the plan and allowing the
- 53 application to move to final plan approval and meet all other permitting requirements. The Planning Board
- should discuss the plan and determine if it meets the requirements to accept the plan, and/or direct the
- applicant to make any changes that are necessary.

RECOMMENDED MOTIONS

- 57 Below are motions for the Planning Board's consideration:
- 58 *Motion to accept the application*
- 59 Move to accept the plan for a shoreland development application from Robert Ouellet, on behalf of
- 60 owner/applicants Stephen and Catherine Balazs, requesting approval for a vertical expansion of an existing
- 61 non-conforming house within the base zone setback of the Shoreland Overlay Zone located on the property
- of 24 Bayview Lane, Tax Map 2. Lot 79, in the Residential-Suburban, Shoreland Overlay, and Resource
- 63 Protection Zones.

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64 Motion to approve the application

- Move to approve the plan for a shoreland development application from Robert Ouellet, on behalf of
- owner/applicants Stephen and Catherine Balazs, requesting approval for a vertical expansion of an existing
- 67 non-conforming house within the base zone setback of the Shoreland Overlay Zone located on the property
- 68 of 24 Bayview Lane, Tax Map 2. Lot 79, in the Residential-Suburban, Shoreland Overlay, and Resource
- 69 Protection Zones.

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Kittery Planning Board

Findings of Fact

For 24 Bayview Lane

Shoreland Development Plan Review



WHEREAS: Agent Robert Ouellet, on behalf of owner/applicants Stephen and Catherine Balazs, requests approval for a vertical expansion of an existing non-conforming house within the base zone setback of the Shoreland Overlay Zone located on the property of 24 Bayview Lane, Tax Map 2. Lot 79, in the Residential-Suburban, Shoreland Overlay, and Resource Protection Zones.

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the plan review notes prepared for 10/12/2023.

Shoreland Development Plan Staff Review	10/5/23
Site Walk	None
Public Hearing	None
Approval	10/12/23

Pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"):

- 1. Shoreland development plan application received 9/20/2023 from Robert Ouelett.
- 2. Existing site conditions and proposed site plan dated 9/15/23 prepared by Easterly Surveying.

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.4 LAND USE ZONE REGULATIONS
16.4.28.E. Shoreland Overlay Zone
(2) The total footprints of the 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:
<u>Finding</u> : A vertical expansion is proposed. Devegetation of the lot will not occur as a part of this development
Conclusion: The requirement appears to be met.
Vote: in favor against abstaining

Chapter 9 MARITIME AND SHORELAND RELATED DEEVELOPMENT **Article III Planning Board Shoreland Development Review**

16.9.3.F. Findings of Fact

(2) 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:	
(a). Maintain safe and healthful conditions:	
<u>Finding:</u> The proposed vertical expansion will not have an adverse impact on safe and healthful conditions to the property.	
Conclusion: This requirement appears to be met.	
Vote: in favor against abstainin	g
(b) Not result in water pollution, erosion or sedimentation to surface waters:	
<u>Finding</u> : The proposed development as represented in the plans and application will not have an adverse impact on water pollution, and best practices for erosion and sedimentation will be observed in development.	1
Conclusion: This requirement appears to be met.	
Vote: in favor against abstainin	g
(c) Adequately provide for the disposal of all wastewater:	
<u>Finding</u> : The property is serviced by Town sewer; current wastewater disposal appears adequate for the proposed development.	e
Conclusion: This requirement appears to have been met.	
Vote: in favor against abstainin	g
(d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat:	
<u>Finding</u> : The proposed development does not appear to have an adverse impact to nearby habitats. All development will be located out of the 25-foot base zone setback.	
Conclusion: The requirement appears to be met.	
Vote: in favor against abstainin	g
(e) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters:	
<u>Finding</u> : The proposed expansion will not exceed the current height of the structures on the property. Shore cover is conserved in accordance with the Code. There are no adverse impacts to visual or actual points of access to waters.	1
Conclusion: This requirement appears to be met.	
Vote: in favor against abstainin	g
(f) Protect archaeological and historic resources:	
<u>Finding</u> : There appear to be neither archaeological nor historic resources impacted.	
Conclusion: This requirement does not appear applicable.	
Vote: in favor against abstainin	g

	ot adversely affect existing commercial fishing or maritime activities in a commercial ies/maritime activities district:	
	ng: The property is not located in the Commercial Fisheries / Maritime Use Zone and will have no se effect on commercial fishing nor maritime activities.	
Concl	lusion: This requirement is not applicable. Vote: in favor against abstaining	
(h) Av	void problems associated with floodplain development and use:	
Findin	ng: The proposed expansion is not located in a floodplain.	
Concl	lusion: This requirement appears to be met. Vote: in favor against abstaining	
(i) Is t	in conformance with the provisions of this code:	
	ng: The proposed project is an existing non-conforming system, and proposed improvements will crease the property's nonconformance to the provisions of Title 16.	
Concl	lusion: This requirement appears to be met. Vote: in favor against abstaining	
(j) Be	recorded with the York County Registry of Deeds:	
<u>Finding</u> : A plan suitable for recording once the Surveyor's stamp is added has been prepared by Easterly Surveying.		
Conclusion: As stated in the Notices to Applicant contained herein, a Shoreland Development Plan must be recorded with the York County Registry of Deeds prior to the issuance of a building permit. Vote: in favor against abstaining		
standar	on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review rds for approval and, therefore, the Planning Board approves the Shoreland Development Plan ation subject to any conditions or waivers, as follows:	
Waiver	s: None	
Condit	tions of Approval (to be depicted on final plan to be recorded):	
1.	No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan per Title 16.9.3.I.	
2.	Applicant/contractor will follow Maine DEP <i>Best Management Practices</i> for all work associated with site and construction to ensure adequate erosion control and slope stabilization.	
3.	All Notices to Applicant contained herein (Findings of Fact dated 10/12/2023).	

51 52	 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 on final plan.
53 54 55	2. Surveyor's stamp must be on the final plan.
56 57	Notices to Applicant:
58 59	1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final plan.
60 61 62	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.
63 64 65 66 67	3. One (1) 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. <u>Date of Planning Board approval shall be included on the final plan in the Signature Block</u> . After the signed plan is recorded with the York County Registry of Deeds, a copy of the signed and recorded original must be submitted to the Town Planning Department.
68 69 70	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.
71 72	5. Prior to construction, applicant shall obtain any and all permits required by the code enforcement office to complete proposed work.
73 74 75 76	The Planning Board authorizes the Planning Board Chair or Vice chair to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.
77	Vote: in favor against abstaining
78 79	APPROVED BY THE KITTERY PLANNING BOARD ON
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83 84	Dutch Dunkelberger, Planning Board Chair
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88	Per Title 16.2.12 An aggrieved party with legal standing may appeal a final decision of the Planning
89 90	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.
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