

## MEMORANDUM

**TO:** Town of Kittery, Planning Board  
**FROM:** R. Timothy Phoenix, Esquire  
Monica F. Kieser, Esquire  
**DATE:** September 13, 2022  
**RE:** The David Hurd Moulton Revocable Trust  
David H. Moulton & Frances Lee de Peyser, Trustees  
8 Hoyt's Island Lane (Map 36, Lot 73)  
Residential-Kittery Point Village District  
Shoreland Overlay Zone (OZ-SL-250)  
Resource Protection Overlay Zone (OZ-RP)  
FEMA Flood Zone V2 El. 13

Dear Chair Dunkelberger and Planning Board Members:

On behalf of The David Hurd Moulton Revocable Trust ("Moulton"), we are pleased to submit this supplemental memorandum and exhibits in support of a Shoreland Development Permit Application to be considered by the Planning Board ("PB") at its September 22, 2022 meeting.

### I. EXHIBITS

- A. Existing Conditions Plan by North Easterly Survey, Inc.
- B. 7/21/2022 Plan Set –by Sebago Technics (previously submitted).
  - Cover Sheet
  - Notes & Legend
  - Shoreland Development Plan
  - Grading & Utilities Plan
  - Landscape Plan
  - Erosion Control Notes
  - Details
- C. 7/14/2022 Conceptual Drawings – by William Ross (previously submitted).
  - Main House First Floor Plan
  - Main House Second Floor Plan
  - Main House Elevations
  - Guest Cottage First Floor Plan
  - Guest Cottage Elevations
- D. Plan of Lots for John H. Winterbottom, 1955 (previously submitted).
- E. Kittery Water District Records (previously submitted).
- F. Deed into Moulton (previously submitted).
- G. Abutter letters of support (submitted directly).

### II. PROPERTY/PROJECT

8 Hoyt's Island Lane is a 1.06 acre (46,173.6 s.f.) lot located in Pepperrell Cove on

Chauncy Creek, which contains three structures: a main home (1,132 s.f. + 182 s.f.), a guest cottage (383 s.f. + 13 s.f.) each served by a holding tank, and a garage (240 s.f.) served by a gravel driveway (the "Property"). **(Exhibit A)**. Portion of the main home, guest cottage and the septic holding tanks are located within the floodplain and/or within 25 ft. of the Highest Annual Tideline ("HAT"). The garage is entirely within the front setback to Hoyt's Island Lane and more than half of it is within 75 ft. of the HAT. **(Exhibit A)**. The northern half of the lot is heavily wooded. The lot then narrows to a pinch point, before opening up to a developed area containing the main home and guest cottage among mature trees and vegetation at the southerly tip. The developed area of the lot (and the house at neighboring lot 74) are accessed by a long gravel driveway which also contains the water line serving the main home and guest cottage.

All structures on the lot are nonconforming, pre-dating January 1, 1989, as shown on a 1955 Plan of Lots for John H. Winterbottom **(Exhibit D)**. In addition, the main home and guest cottage (no kitchen) have been billed for town water since at least 1966. **(Exhibit E)**. Moulton's family has enjoyed the Property seasonally since 1969, but the main home and cottage are quite rustic, uninsulated, and their foundations are in poor condition. Moulton intends to relocate, reconstruct, and expand the main home and guest cottage with renovations that will enable their use beyond the months of July and August (the "Project"). The relocated and reconstructed main home and guest cottage will be outside the floodplain and the 25 ft. setback to the HAT. The Project includes a new septic system in the westerly corner of the lot outside the 100 ft. buffer, and an expansion of the gravel driveway to connect to the guest cottage and accommodate a parking space. The footprints of the reconstructed main home and guest cottage will each be expanded 30% and the proposed height of each will not exceed 20 ft. in accordance with KZO §16.1.8C.4(b). The Project retains the wooded area on the northerly portion of the lot as well as other mature trees on the developed portion of the lot. Smaller caliper trees will be replaced pursuant to a landscaping plan. **(Exhibit B)**.

Planning Board review is required because the entire lot is within the 250 ft. Shoreland Protection and Resource Protection Overlay Zones and all but the westerly corner is within the 100 ft. setback required by Kittery Zoning Ordinance ("KZO") §16.4.12.E(1) and §16.4.28.E.3. See also KZO §16.1.8C(4)(a) and(c). The Project prioritized a fully compliant septic system which can fit outside the 100 ft. buffer in the westerly corner of the lot near where the gravel driveway connects with Hoyt's Island Lane. Constraints of the lot do not permit location of the

main home and guest cottage outside the 100 ft. buffer because the only portion of the lot outside the 100 ft. setback is inside the front yard setback and/or partially burdened by an access easement benefitting Map 36, Lot 74. The undeveloped wooded area is similarly unsuitable because it is inside the 100 ft. buffer, contains steep slopes and mature trees. Clearing the undeveloped lot required would be more detrimental than relocating the main home and guest cottage within the confines of the previously developed area.

**III. RELIEF REQUIRED**

<u>KZO Requirements</u>	<u>Existing</u>	<u>Proposed</u>	<u>Comment</u>
<p><u>KZO §16.4.12.E.(1)/§16.4.28.E.3 §16.1.8C(4)(a) and (c)</u> <u>Shoreland Protection &amp; Resource Protection Overlay Districts</u> <u>100 ft.</u></p>	<p>60' garage 19.3' main home deck 22.5' main home 14' guest cottage &lt;25' holding tanks</p>	<p>60' garage 34' main home/deck 29' guest cottage 100+ septic tanks and leach field</p>	<ul style="list-style-type: none"> <li>• increase to HAT</li> <li>• out of floodplain</li> <li>• compliant septic</li> <li>• preserves woods</li> <li>• minimizes development footprint to protect resource</li> </ul>
<p><u>KZO §16.1.8C(4)(b)</u> <u>30% footprint expansion</u>  <u>20' max height</u></p>	<p>1,132 s.f. main home 182 s.f. deck/stairs  383 s.f. guest cottage 13 s.f. stairs  17.2' main home 13.7' guest cottage</p>	<p>1,472 s.f. main home 236 s.f. deck/stairs  493 s.f. guest cottage 17 s.f. stairs  19.83' main home 14.33' guest cottage</p>	<p>compliant  compliant  compliant</p>

**IV. ANALYSIS**

**KZO §16.1.8C(4)(c)[1]:**

**Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause....may be reconstructed or replaced provided that that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in §16.1.8C(4)(a), Nonconforming structure relocation, the physical condition and type of foundation present, if any.**

**Response:** The existing main home and guest cottage predate 1955 as both were shown on the 1955 Plan of John H. Winterbottom. Each structure is built on cement piers which are undersized and in poor condition. The Project will construct a cement foundation for the main home and a new pier foundation for the guest cottage. The Project complies with the Ordinance to the greatest practical extent because it places a new septic system entirely out of the 100 ft. buffer, relocates the structures outside the 25 ft. buffer to the HAT, restores the disturbed land, and preserves a forested undeveloped area in the 100 ft. buffer.

**KZO §16.1.8.C(4)(a)[2]:**

In determining whether the structures meet the setback to the greatest practical extent, the Planning Board or Board of Appeals must consider the following conditions:

**(a) The size of the lot;**

**Response:** The existing lot is 46,173.6 s.f. and is located entirely within the 250 Shoreland Protection Zone; all but the westerly corner is within the 100 ft. buffer. The 40 ft. yard setback and access easement benefitting Lot 74 results in a tiny buildable area outside the 100 ft. buffer just large enough to accommodate a new, compliant septic system. The undeveloped area between the 25 ft. buffer and 100 ft. setback on the northerly portion of the lot is a sloping, forested area intended to be left undisturbed in order to preserve its protective benefits to the creek and inlet.

**(b) The slope of the land;**

**Response:** The developed portion of the lot containing the main home and guest cottage are located in a relatively flat area where the grade ranges between elevation 15 and 16 and then slopes toward the water. The undeveloped portion of the lot contains is heavily wooded with portions of steep slopes. The Project minimizes disturbance during expansion by rebuilding on flat land in the same general location as the existing structures while aiding protection of water resources by relocating structures outside the 25 ft. buffer. The Project preserves the undeveloped wooded area which slopes toward the water resource.

**(c) The potential for soil erosion;**

**Response:** As noted above, the Project intent is to reuse the previously developed area, not expand into undeveloped areas in the 100 ft. buffer. The location of the existing main home and cottage is relatively flat with several mature trees along the perimeter of the developed area. These trees play an important role in stabilizing the soil and will be retained. Only a few smaller caliper trees on the flat developed area need be removed to allow the main home and guest cottage to be shifted further from the HAT and will be replaced as indicated in the landscape plan. Rebuilding further away from this already-disturbed flat area into areas that are undisturbed, natural, and sloped would increase the potential for soil erosion and should be avoided.

**(d) The location of other structures on the property and on adjacent properties;**

**Response:** The existing 240-s.f. detached garage is located in the front setback to Hoyt's Lane and will remain. The relocation of the main home and guest cottage will comply with yard setbacks. Surrounding lots are residentially developed including the immediate abutting lot 74 and 76. Both neighbors have expressed written support for the Project as long as it is restricted to the existing developed area and does not disturb the undeveloped natural area.

**(e) The location of the septic system and other on-site soils suitable for septic systems;**

**Response:** In contrast to the holding tanks within the floodplain and/or 25 ft. of the HAT, the proposed brand new septic system is located in the only area of the lot outside the 100-ft. wetland buffer from the Highest Annual Tide Line. Soils in that location were found to support the proposed septic system.

**(f) The type and amount of vegetation to be removed to accomplish the relocation. (see also KZO §16.1.8.C(4)(a)(3) for replanting requirements).**

**Response:** Relocating the expanded structures outside the 25 ft. buffer but within the previously cleared developed area of the lot preserves the forested area of the lot and only slightly increases the devegetated area. The total existing devegetated area is 5,017 s.f. or 10.9%. The total proposed devegetated area is 6,726 s.f. or 14.6%, well below the 20% maximum. In order to shift the location of the guest cottage out of the floodplain and further from the HAT, approximately four trees will be removed. The landscape plan includes replanting four trees 8-10 ft. in height, ten hydrangea and 1,400 s.f. of hay scented fern surrounding the guest cottage. The area surrounding the main home is primarily lawn and area where the existing home is removed will be reseeded. Important features of the Project are its effort to retain a very large 72" diameter oak tree sited between the structures, and its effort to contain the expansion footprint to existing developed areas rather than natural undeveloped areas.

**KZO §16.1.8.C(4)(a)(4 - relocation) and (c)(5 - reconstruction).**

**If the total footprint of the structures can be relocated/reconstructed beyond the required setback area, no portion of the relocated/reconstructed structures may be relocated/reconstructed at less than the setback requirement for new structures. 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 in KZO §16.1.8C(4)(b), Nonconforming structure repair and expansion.**

**Response:** This lot has several features that constrain the practicality of locations outside of the setback areas. Its size conforms, but its configuration, topography, and existing vegetation present challenges and important considerations.

The lot is burdened by a 40 ft. front yard setback, an access easement in favor of Lot 74 and an existing water line. The front yard setback, access easement and the need for a compliant septic system, leave no buildable area outside the 100 ft. setback.

Reconstruction of the main home and guest cottage on the northerly undeveloped portion of the lot would unnecessarily require removal of dozens of trees as well as construction on sloped areas that would increase the risk of erosion and stormwater runoff entering the water resource. In addition, abutting lot owners enjoy the privacy of the woods and have expressed concerns about any use of this area to relocate the main home and guest house.

In contrast, the area where the existing main home and guest cottage now exist is largely flat and cleared providing sufficient space to shift the main home and guest cottage to more conforming locations outside the floodplain. Only a handful of trees must be removed and can easily be replanted in accordance with the landscape plan. The Project sites the main home and guest cottage in more conforming locations within a previously disturbed area of the lot while preserving a significantly wooded portion of the lot containing slopes that, if developed, would increase the potential for erosion. Thus, the Project is proposed in accordance with KZO §16.1.8C(4)(b) which provides for reconstruction or replacement structures which meet the required setback to the greatest practical extent. The Project also meets additional purposes of the Shoreland Protection and Resource Protection Overlay Zones to prevent water pollution, protect wildlife habitat, and conserve shore cover and natural beauty.

V. **CONCLUSION**

For all the reasons stated herein, Moulton respectfully requests that the Planning Board approve the Shoreland Development Plan.

Respectfully submitted,  
**The David Hurd Moulton Revocable Trust**  
David H. Moulton &  
Frances Lee de Peyser, Trustees



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