

**Town of Kittery  
Planning Board Meeting  
October 12, 2023**

**ITEM 1 – 90 Goodwin Road– Shoreland Development Plan Review**

Action: Extend application deadline: Pursuant to §16.9.3 Shoreland Development Review of the Town of Kittery Land Use and Development Code, Emlyn Chase, on behalf of owner/applicants Yang Living Trust request a plan extension for an approved reconstruction of a legally non-conforming dwelling within a base-zone water body setback located on the property of 90 Goodwin Road, Tax Map 58, Lot 63, in the Residential Rural-Conservation, Shoreland Overlay, and Resource Protection Overlay Zones.

**PROCESS SUMMARY**

<b>REQUIRED</b>	<b>ACTION</b>	<b>COMMENTS</b>	<b>STATUS</b>
Yes	Staff Review	8/11/22	Completed
No	Site Visit	9/15/22	Held
No	Public Hearing	Optional	Optional
Yes	Final Plan Review	10/13/22	Approved
Yes	Deadline extension	Scheduled for 10/12/23	TBD

**PROJECT INTRODUCTION**

90 Goodwin Road is located on Gerrish Island along the shore of the Atlantic Ocean. The entire parcel is within the shoreland overlay zone, with a portion of the lot and the existing dwelling within the resource protection overlay zone. The property is legally nonconforming due to failure to meet the minimum lot size of 80,000 square feet, containing a single-family house and garage which appear to have a total building coverage of 2,262 sq ft. The structures on the lot are legally nonconforming due to their failure to meet wetland setbacks and proximity to a flood hazard zone.

On October 13<sup>th</sup>, 2022, the planning board approved a shoreland development plan to demolish and reconstruct the house under the same footprint. All new proposed structures either maintained or increased existing setbacks to the abutting wetland of special significance, and a delineation of the property showed that the isolated wetland pockets were all under 501 sq ft. and did not require the same 100’ setback, per §16.5. The plan appeared to conform to maximum devegetated areas and total footprint expansion maximums. The proposed plan originally included abandoning the existing septic tank and pump station to install a Fuji Clean Alternative Treatment Unit and a 1000-gallon septic tank further from the HAT line, but staff incorrectly advised the applicant that this was not necessary.

Per §16.7.12.A.(1), an approved plan will expire if work has not been commenced within one year of approval. Staff consider the issuance of a building permit to represent commencement of work; however, due to a planning staff error, the applicant was not aware that an approved septic system application was required by Code Enforcement prior to the issuance of a building permit. Because the applicant cannot reasonably submit and receive a fully completed septic application before the 10/13/23 deadline, they are requesting the planning board extend their deadline by 6 months, to allow them adequate time to finish all required permitting through Code Enforcement.

**APPLICATION & PLAN REVIEW**

Staff reviewed the submitted application and plan and have the following comments:

- 38 1. The request to the planning board is strictly for a deadline extension to an already approved plan.  
39 A finding of fact has been signed and a final plan has been recorded at York County Registry of  
40 Deeds. No additions or revisions are being considered for this application. Review of the subsurface  
41 wastewater disposal system application is the jurisdiction of Code Enforcement.  
42 2. A full building permit application has been submitted to Code Enforcement. It is the opinion of the  
43 planning department that the omission of the required septic permit is not intentional but an error  
44 due to a lack of communication by Town staff.

45 **DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS**

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46 The deadline issue appears to have been created by planning department error rather than any actions by  
47 the applicant. Staff suggest the planning board grant an extension to the deadline of approximately 6 months  
48 (from 10/13/23, the second Friday of October, to 4/12/24, the second Friday of April), to provide the  
49 applicant adequate time to fully submit the required septic application, receive issuance of a building permit  
50 from code enforcement, and commence the construction phase of the plan.

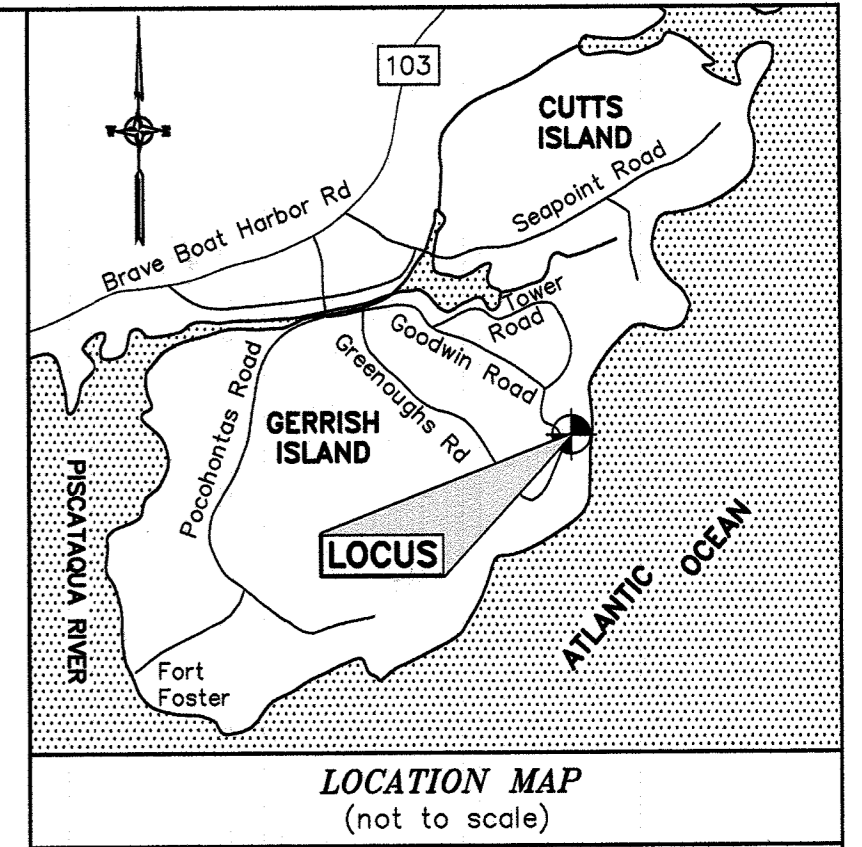
51 **RECOMMENDED MOTIONS**

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52 Below are motions for the Planning Board's consideration:

53 ***Motion to extend the deadline of the application***

54 Move to grant a 6-month extension for the plan, approved for owner/applicant Yang Family Trust, for the  
55 reconstruction of a legally non-conforming dwelling within a base-zone water body setback located on the  
56 property of 90 Goodwin Road, Tax Map 58, Lot 63, in the Residential Rural-Conservation, Shoreland  
57 Overlay, and Resource Protection Overlay Zones.



- PLAN REFERENCES:**
- "PLAN OF ROCKY SHORE FRONT OF ISLAND ACRES INC. GERRISH ISLAND, KITTELY, ME." BY JOHN W. DURGIN, DATED MARCH 1950 AND RECORDED AT Y.C.R.D. PLAN BOOK 22 PAGE 64.
  - "PLAN OF MAP 58 - LOT 62, KITTELY, MAINE FOR CLAY P. BEDFORD" PREPARED BY ANDERSON LIVINGSTON ENGINEERS, INC. DATED MAY 1991.
  - "EXISTING CONDITIONS PLAN FOR PROPERTY LOCATED AT 82 GOODWIN ROAD, KITTELY POINT, YORK COUNTY MAINE, OWNED BY MARILYN W. FENELL REVOC. LIVING TRUST, PREPARED FOR FREDERICK & KRISTEN NOHMER", PREPARED BY NORTH EASTERLY SURVEYING, INC., DATED NOVEMBER 7, 2017, AND ON FILE AS PROJECT No. 17726.
  - "SUBDIVISION PLAN NELS W. PALM AND STELLA J. PALM, GERRISH ISLAND, KITTELY POINT, ME." PREPARED BY THOMAS F. MORAN, INC., DATED AUG. 26, 1981 AND RECORDED AT THE Y.C.R.D. AS PLAN BOOK 117 PAGE 39.

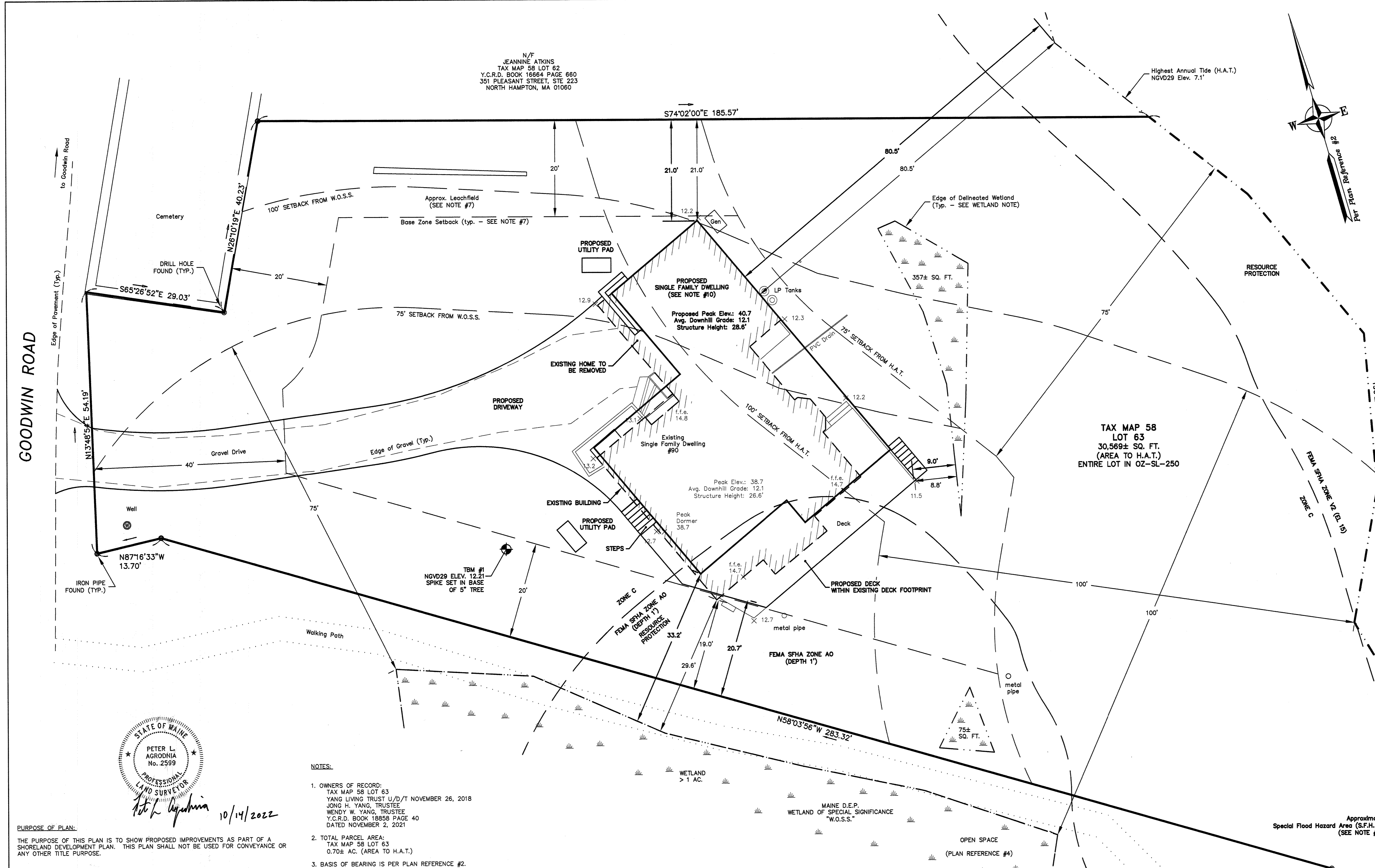
**ZONING DATA PER KITTELY TOWN CODE "TITLE 16 LAND USE AND DEVELOPMENT CODE" (LAST AMENDMENT 7/24/17) (SEE NOTE #6):**

BASE ZONE: RESIDENTIAL - RURAL CONSERVATION (R-RC)  
 OVERLAY ZONE: WATER BODY/WETLAND PROTECTION AREA - 250' (OZ-SL-250)

**R-RURAL CONSERVATION BASE ZONE REQUIREMENTS (SEE 16.3.2.6):**  
 MINIMUM LAND AREA PER DWELLING UNIT: 80,000 SQ. FT.  
 MINIMUM LOT SIZE: 80,000 SQ. FT.  
 MINIMUM STREET FRONTAGE: 200 FT.  
 MINIMUM FRONT YARD: 40 FT.  
 MINIMUM REAR AND SIDE YARDS: 20 FT.  
 MAXIMUM BUILDING COVERAGE: 6%  
 MAXIMUM BUILDING HEIGHT: 35 FT.  
 MINIMUM SETBACK FROM WATER BODY AND WETLAND DEPENDENT USES: 0 FT.

**OZ-SL-250' REQUIREMENTS (SEE 16.3.1.7):**  
 MINIMUM SHORE FRONTAGE: 250 FT.  
 MINIMUM SHORE FRONTAGE PER DWELLING UNIT: 250 FT.  
 MAXIMUM DEVEGETATED COVERAGE: 20%

YORK,ss REGISTRY OF DEEDS  
 Received Dec 7 2022  
 at 11 h 19 m A.M., and  
 Filed in Plan Book 428 Page 23  
 ATTEST:  
*Nancy E. Hammond*  
 Register



**SHORELAND DEVELOPMENT PLAN**  
 FOR PROPERTY AT  
**90 Goodwin Road**  
 Kitterly Point, York County, Maine  
 OWNED BY  
**Yang Living Trust u/d/t/ November 26, 2018**  
**Jong H. Yang & Wendy W. Yang, Trustees**  
 3813 Whiterose Lane, Santa Barbara, CA 93110

North  
**EASTERLY SURVEYING, Inc.**  
 SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
 (207) 439-6333 KITTELY, MAINE 03904

SCALE: 1" = 10'	PROJECT NO. 21802	DATE: 7/21/2022	SHEET: 1 OF 1	DRAWN BY: A.M.P.	CHECKED BY: P.L.A.
DRAWING No: 21802_SITE			Tax Map 58 Lot 63		
FIELD BOOK No: "Kitterly Point #15"					

- NOTES:**
- OWNERS OF RECORD: TAX MAP 58 LOT 63, YANG LIVING TRUST U/D/T NOVEMBER 26, 2018, JONG H. YANG, TRUSTEE, WENDY W. YANG, TRUSTEE, Y.C.R.D. BOOK 18858 PAGE 40, DATED NOVEMBER 2, 2021.
  - TOTAL PARCEL AREA: TAX MAP 58 LOT 63, 0.70± AC. (AREA TO H.A.T.)
  - BASIS OF BEARING IS PER PLAN REFERENCE #2.
  - GOODWIN ROAD IS ASSUMED TO BE A VARIABLE WIDTH RIGHT OF WAY BASED ON RECORD PLANS AND MONUMENTS FOUND.
  - APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
  - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
  - THE LEACHFIELD LOCATION SHOWN HEREON IS APPROXIMATE. REFERENCE IS MADE TO SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION (HHE-200) DATED 6/14/84.
  - THE ENTIRE LOT FALLS WITHIN THE OZ-SL-250 SHORELAND ZONE WITH PORTIONS BEING IN THE RESOURCE PROTECTION ZONE. ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF KITTELY PRIOR TO DESIGN OR CONSTRUCTION.
  - SPECIAL FLOOD HAZARD AREAS (SFHA) SHOWN ARE APPROXIMATE. REFERENCE IS MADE TO FEMA FIRM 230171 0003 C, EFFECTIVE DATE JULY 5, 1984.
  - REFER TO ARCHITECTURAL PLANS SUBMITTED BY THE APPLICANT FOR BUILDING DIMENSIONS, ELEVATIONS AND SPECIFICATIONS.

**WETLAND NOTE:**  
 THE WETLAND BOUNDARY AS DEPICTED ON THIS PLAN WAS DELINEATED/FLAGGED BY JOSEPH W. NOEL, MAINE LICENSED SOIL SCIENTIST #209, ON JANUARY 27, 2022. THE FLAGS WERE LOCATED BY NORTH EASTERLY SURVEYING, INC. THE DELINEATION WAS CONDUCTED IN ACCORDANCE WITH THE U.S. ARMY CORPS OF ENGINEERS DOCUMENT "CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL", (1987) ALONG WITH THE REQUIRED "REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTH-CENTRAL AND NORTHEAST REGION", (VERSION 2, JANUARY 2012).

**BUILDING COVERAGE:**

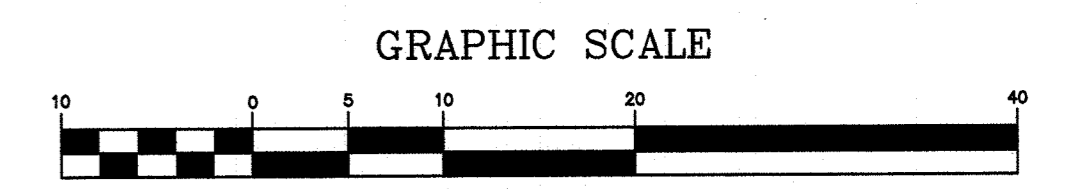
LOT AREA	30,569± SQ. FT.	EXISTING	2,262± SQ. FT.	PROPOSED	2,260± SQ. FT.
BUILDING					
TOTAL	2,262± SQ. FT. (7.4%)				2,260± SQ. FT. (7.4%)

**DEVEGETATED COVERAGE CALCULATION:**

LOT AREA:	30,569± SQ. FT.	EXISTING	2,262± SQ. FT.	PROPOSED	2,260± SQ. FT.
BUILDINGS					
REAR DECK/STEPS					
STEPS/WALK					
GRAVEL DRIVEWAY					
GEN./OTHER					
TOTAL	4,035± SQ. FT. (13.2%)				4,893± SQ. FT. (16.0%)

Kitterly, Maine - Planning Board Approval  
 13 Oct 2022  
 Date of Approval  
*[Signature]*  
 Chair Date

- CONDITIONS OF APPROVAL:**
- NO CHANGES, ERASURES, MODIFICATIONS OR REVISIONS MAY BE MADE TO ANY PLANNING BOARD APPROVED FINAL PLAN PER TITLE 16.9.3.1.
  - APPLICANT/CONTRACTOR WILL FOLLOW MAINE DEP BEST MANAGEMENT PRACTICES FOR ALL WORK ASSOCIATED WITH SITE AND CONSTRUCTION TO ENSURE ADEQUATE EROSION CONTROL AND SLOPE STABILIZATION.
  - ALL NOTICES TO APPLICANT CONTAINED HEREIN (FINDINGS OF FACT DATED 10/13/2022).



REV.	DATE	STATUS	BY	CHKD	APPD.
B	10/14/22	ADD CONDITIONS OF APPROVAL		A.M.P.	A.M.P.
A	9/28/22	REVISE ELEVATION AND STAIRS		A.M.P.	A.M.P.

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**Kittery Planning Board**  
**Findings of Fact**  
**For 90 Goodwin Road**  
**Shoreland Development Plan Review**

**APPROVED**  
**M 58 L 63**

**WHEREAS:** Owner Yang Living Trust requests approval to reconstruct a legally non-conforming dwelling unit on a legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 90 Goodwin Road, Tax Map 58, Lot 63, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone (OZ-RP)/FEMA Flood Zone.

Hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the plan review notes prepared for 10/13/2022

Shoreland Development Plan Review	8/11/2022 & 10/13/2022
Site Walk	9/15/2022
Public Hearing	none
Approval	10/13/2022

And 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 7/27/2022
2. Shoreland Development Site Plan dated September 28, 2022 from North Easterly Surveying, Inc.

**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:*

*(a) Mixed-use. Badgers Island (MU-BI) and Mixed-Use - Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use - Badgers Island (MU-BI) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.*

**Finding:** The proposed development's devegetated area is 16.0%, which is under the allowed threshold.

<u>Conclusion:</u> The requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining

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

<b>16.9.3.F. Findings of Fact</b> <i>(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:</i>
<i>(a). Maintain safe and healthful conditions;</i>
<u>Finding:</u> The proposed development as represented in the plans and application does not appear to have an adverse impact on public health and safety.
<u>Conclusion:</u> This requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>(b) Not result in water pollution, erosion or sedimentation to surface waters;</i>
<u>Finding:</u> The proposed development as represented in the plans and application will not result in water pollution and best practices for erosion and sedimentation will be observed.
<u>Conclusion:</u> This requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>(c) Adequately provide for the disposal of all wastewater;</i>
<u>Finding:</u> The applicant has an operational septic, but will pursue a new system for the new structure. JK
<u>Conclusion:</u> This requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>(d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
<u>Finding:</u> The proposed development as represented in the plans and application does not appear to have an adverse impact.
<u>Conclusion:</u> The requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>(e) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
<u>Finding:</u> Shore cover is conserved in accordance with the Code. There are no adverse impacts to visual or actual points of access to waters.
<u>Conclusion:</u> This requirement appears to be met.
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining
<i>(f) Protect archaeological and historic resources;</i>

<p><u>Finding:</u> There does not appear to be any archaeological nor historic resources impacted.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p><i>(g) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p><u>Finding:</u> The property is not located in the Commercial Fisheries / Maritime Use Zone and will have no adverse effect on commercial fishing nor maritime activities.</p> <p><u>Conclusion:</u> This requirement is not applicable.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p><i>(h) Avoid problems associated with floodplain development and use;</i></p> <p><u>Finding:</u> The proposed new residence will be built on piers with adequate freeboard to protect the building from flooding.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p><i>(i) Is in conformance with the provisions of this code;</i></p> <p><u>Finding:</u> The proposed project is in conformance with the provisions of Title 16.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p><i>(j) Be recorded with the York County Registry of Deeds.</i></p> <p><u>Finding:</u> A plan suitable for recording once the Surveyor's stamp is added has been prepared by North Easterly Surveying, Inc.</p> <p><u>Conclusion:</u> 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.</p>
<p style="text-align: right;">Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstaining</p>

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Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application subject to any conditions or waivers, as follows:

**Waivers:** None

**Conditions 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 *Best Management Practices* for all work associated with site and construction to ensure adequate erosion control and slope stabilization.

50 3. All Notices to Applicant contained herein (Findings of Fact dated 10/13/2022).

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52 **Conditions of Approval** (not to be depicted on final plan):

53 1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer  
54 Review Engineer, and submit for Staff review prior to presentation on final plan.

55 2. Surveyor's stamp must be on the final plan.

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57 **Notices to Applicant:**

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59 1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for  
60 Staff review prior to presentation of final plan.

61 2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with  
62 the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper  
63 advertisements and abutter notification.

64 3. One (1) copy of the final plan and any and all related state/federal permits or legal documents that  
65 may be required, must be submitted to the Town Planning Department for signing. Date of Planning  
66 Board approval shall be included on the final plan in the Signature Block. After the signed plan is  
67 recorded with the York County Registry of Deeds, a copy of the signed and recorded original must be  
68 submitted to the Town Planning Department.

69 4. This approval by the Town Planning Board constitutes an agreement between the Town and the  
70 Developer, incorporating as elements the Development Plan and supporting documentation, the  
71 Findings of Fact, and any Conditions of Approval.

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73 The Planning Board authorizes the Planning Board Chair or Vice chair to sign the Final Plan and the  
74 Findings of Fact upon confirmation of required plan changes.

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76 Vote: 6 in favor 0 against 0 abstaining

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78 APPROVED BY THE KITTERY PLANNING BOARD ON October 13, 2022

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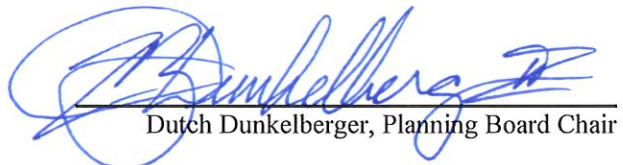
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Dutch Dunkelberger, Planning Board Chair

85 Per Title 16.2.12. - An aggrieved party with legal standing may appeal a final decision of the Planning  
86 Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section  
87 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

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