

ITEM 3

**Town of Kittery
 Planning Board Meeting
 July 14, 2022**

ITEM 4 – 24 Goodwin Road – Shoreland Development Plan Review

Action: Accept or deny application as complete; if accepted: continue application to a subsequent meeting, set public hearing and/or site walk (discretionary), or approve or deny application:
 Pursuant to of §16.4 Land Use Regulations and §16.9.3 Shoreland Development Review of the Town of Kittery Land Use and Development Code, owner/applicant Gregory Smith and agent Tom Emerson request approval to expand 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 24 Goodwin Road, Tax Map 58, Lot 19, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250’), and Resource Protection Overlay Zone (OZ-RP).

PROJECT TRACKING

REQUIRED	ACTION	COMMENTS	STATUS
No	Sketch Plan		N/a
No	Site Visit	TBD by Board	
Yes	Completeness / Acceptance	TBD	Pending
No	Public Hearing	TBD	
Yes	Final Plan Approval	TBD	

PROJECT INTRODUCTION

24 Goodwin Road is located along the bank of Chauncey Creek on Gerrish Island within the Rural Residential Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250), and Resource Protection Zone (OZ-RP). The property is a legally non-conforming lot, containing a legally, non-conforming dwelling unit as the lot’s area is 20,180-sf (0.46-ac), less than the 80,000 square feet required by the R-RC zoning district. The dwelling unit (944 square feet) is positioned within the base zone setback (100 feet) of the Shoreland Overlay Zone. The site’s total de-vegetated area – 2,991 square feet (including the dwelling, an 80-square-foot shed, a deck, riprap, and driveway) – is 14.8%, below the zone’s requirement of 20% maximum de-vegetation.

The existing house was developed as part of a Planning Board approved Shoreland Development Plan dated December 8, 2016. The applicant has provided that plan for reference. Conditions of Approval #4 from the Findings of Fact, dated December 8, 2016, states: “At no point will the 8’x10’ shed be permitted to be greater than 8’ in height; receive utilities; or, expand in floor area or volume.” This condition appears to be inapplicable to the proposed plan, as the applicant proposes to remove the shed.

The owner proposes to expand the existing dwelling unit to the west to construct an approximately 257-square-foot garage. The owner also proposes to remove the existing 80-square-foot shed.

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APPLICATION & PLAN REVIEW

Staff reviewed the submitted application and plan from North Easterly Surveying, dated February 14, 2022 and have the following comments:

1. The site is a legal, nonconforming lot of record with a legal, non-conforming dwelling unit, which is within the 100-foot setback to the water required by the Shoreland Overlay Zone.
2. The applicant’s plan decreases the overall de-vegetated area even with the garage expansion by removing the existing 80-square-foot shed, slightly reducing the total de-vegetated area to 14.7%. The applicant contends that since there is a decrease in the de-vegetated percentage along with the removal of an accessory structure, that the proposal for adding the garage to the dwelling is neutral for the nonconforming lot and structures.
3. The zoning district requires a maximum building coverage of 6%, which is 1,210 square feet. The applicant provides calculations showing the existing building coverage at 1,024 square feet (or 5.07%), and the proposal increases building coverage to 1,201 square feet, or 6%, which is at the required threshold.
4. While most of the R-RC zoning district’s dimensional requirements appear to be met, the dwelling is nonconforming as to the required 40-foot front setback. The existing dwelling front setback is 21.8 feet. The garage expansion’s proposed front setback is 23.1 feet, which is more conforming than the existing front setback. This appears to satisfy § 16.1.8C(2)(a), which states:
 - (a) *Except as otherwise provided in this title, a nonconforming condition must not be permitted to become more nonconforming.*
5. Title 16 has additional regulations for the expansion of structures within the shoreland overlay base zone setback. This plan is subject to Section 16.1.C.8.(4)(b)[3](e)[v][A], which states:

[A] For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.

The above means that there is a limit to structure expansion based on what structures existing in 1989. That 30% expansion limit is applied cumulatively over the years and can

76 never be exceeded. The applicant has provided calculations of the existing structures in
77 place in 1989, which amount to 1,049 square feet. 30% of that figure is 314.7 square feet
78 for a total allowable expanded footprint of 1,363.7 square feet (inclusive of all structures).
79 The applicant also provides copies of historical plans and tax assessor documentation as
80 backup for the figures. The plan proposes a total structure footprint of 1,359.37 square feet,
81 which is under the allowable expansion threshold but leaving very little room for future
82 expansion.

83 6. Any shoreland development plan submitted for final approval shall carry the surveyor or
84 engineer's signature and seal, the Planning Board signature block, and the York County
85 Registry of Deeds block.
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87 **DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS**

88 Planning Board should discuss the plan and determine if it meets the requirements to accept the
89 plan, and/or direct the applicant to make any changes that are necessary. The Planning Board
90 should determine if they would like to schedule a site walk or a public hearing, which are
91 discretionary and not required as part of a shoreland development plan review. In case the Planning
92 Board finds the plan acceptable with no other changes necessary, a draft Findings of Fact has been
93 provided.

94 **RECOMMENDED MOTIONS**

95 Below are motions for the Board's consideration:

96 *Motion to accept the application*

97 Move to accept the plan for a shoreland development application from owner/applicant Gregory
98 Smith and agent Tom Emerson requesting to expand a legally non-conforming dwelling unit on a
99 legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located
100 on real property with the address of 24 Goodwin Road, Tax Map 58, Lot 19, in the Residential-
101 Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource
102 Protection Overlay Zone (OZ-RP).

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104 *Motion to schedule a site walk*

105 Move to schedule a site walk on _____, 2022, for a shoreland development plan from
106 owner/applicant Gregory Smith and agent Tom Emerson requesting to expand a legally non-
107 conforming dwelling unit on a legally non-conforming lot within the base zone setback of the
108 Shoreland Overlay Zone located on real property with the address of 24 Goodwin Road, Tax Map
109 58, Lot 19, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-
110 250'), and Resource Protection Overlay Zone (OZ-RP).

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112 *Motion to schedule public hearing*

113 Move to schedule a public hearing on the _____, 2022 Planning Board meeting for a
114 shoreland development plan from owner/applicant Gregory Smith and agent Tom Emerson

115 requesting to expand a legally non-conforming dwelling unit on a legally non-conforming lot
116 within the base zone setback of the Shoreland Overlay Zone located on real property with the
117 address of 24 Goodwin Road, Tax Map 58, Lot 19, in the Residential-Rural Conservation Zone
118 (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone (OZ-RP).

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120 *Motion to continue application*

121 Move to continue the plan to the May 26, 2021 Planning Board meeting for a shoreland
122 development plan from owner/applicant Gregory Smith and agent Tom Emerson request approval
123 to expand a legally non-conforming dwelling unit on a legally non-conforming lot within the base
124 zone setback of the Shoreland Overlay Zone located on real property with the address of 24
125 Goodwin Road, Tax Map 58, Lot 19, in the Residential-Rural Conservation Zone (R-RC),
126 Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone (OZ-RP).

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128 *Motion to approve*

129 Move to approve the shoreland development application from owner/applicant Gregory Smith and
130 agent Tom Emerson request approval to expand a legally non-conforming dwelling unit on a
131 legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located
132 on real property with the address of 24 Goodwin Road, Tax Map 58, Lot 19, in the Residential-
133 Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource
134 Protection Overlay Zone (OZ-RP).

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