

**Town of Kittery
 Planning Board Meeting
 February 24 , 2022**

ITEM 2—20 Folcutt Road—Shoreland Development Plan Review

Action: Continue application to a subsequent meeting, or vote on application: Pursuant to 16.3 *Land Use Regulations*, §16.10.3.2 *Shoreland Development Review* and Article III *Nonconformance* of §16.7 *General Development Requirements* of the Town of Kittery Land Use and Development Code, owner/applicant Wladislaw Realty Trust and agent Walsh Engineering Associates requests approval to replace and expand legally non-conforming structures on a legally conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 20 Folcutt Road, Tax Map 25, Lot 18, in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250), Resource Protection (OZ-RP) Overlay Zones.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	TBD	TBD
YES	Completeness/Acceptance	January 13, 2022	PENDING
NO	Public Hearing	TBD	NOT PURSUED
YES	Final Plan Approval	TBD; may occur on January 13, 2022	PENDING

Applicant: Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Project Introduction

20 Folcutt Road (“Property”) is located along the bank of the Spruce Creek within the Residential- Kittery Point Village (R-KPV) zoning district and Shoreland (OZ-SL-250). Resource Protection (OZ-RP) Overlay Zones. The property is a conforming lot, containing a legally non-conforming dwelling unit, as a portion thereof is located within the base zone setback of the Shoreland Overlay Zone. The lot also has a legally nonconforming boathouse and retaining walls located in different sections of the property. Further, the property is burdened by a view easement.

The purpose of the plan multi-facet. The primary objective is to demolish, relocate, reconstruct and expand the footprint of the dwelling unit outside the 100’ setback of the highest annual tide. The expansion the will take place within the 100-ft setback consist of patios and retaining walls. The secondary objective is to bolster the shoreline with riprap and restorative vegetation as well as to expand retaining walls. The last objective is to make repairs and improvements to the existing boat house. There appears to be no prior structure expansion that occur after January 1, 1989, which allows for a maximum expansion rate of 30% or 1,000-sf., whichever is greater to be utilized.

At the February 1, 2022, site walk, the Planning Board and applicant reviewed and discussed the project in more detail and on February 10, 2022, the applicant presented a revised plan that sought to revolve all outstanding issues previously identified. The Planning Board did not have enough time to review the plan and continued the application to the February 24, 2022, meeting.

Application Review

Code Ref.	§16.3 Article II Zone Definitions, Uses and Standards	
	Standard	Comment
§16.3.2.3D(2)(b)	Minimum lot size: 40,000-sf.	It appears the standard is satisfied.
§16.3.2.3D(2)(c)	Minimum street frontage: 150-ft.	It appears the standard is satisfied.
§16.3.2.3D(2)(d)	Minimum front setback: 40-ft.	It appears the standard is satisfied.
§16.3.2.3D(2)(e)	Minimum rear and side setbacks: 15-ft.	It appears the standard is satisfied.
§16.3.2.3D(2)(f)	Maximum building height: 35-ft. (outside base zone setback of (OZ-SL-250’)	It appears the standard is satisfied.
§16.3.2.3D(2)(g)	Maximum building coverage: 20%	It appears the standard is satisfied.
§16.3.2.17D(1)(d)	The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:	It appears the standard is satisfied.

	<p>[1] 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-B1) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.</p> <p>[2] Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.</p> <p>[3] Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum devegetated area is 50%.</p>	
§16.3.2.17D(2)(b)	Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.	It appears the standard is satisfied.

Code Ref.	§16.7 Article III Nonconformance	
	Standard	Comment
§16.7.3.3.B(3)[e][5[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 proposed development seeks to reduce its structural footprint from 1,705-sf to 1,631-sf within the 100-ft setback. From an expansion rate perspective, this plan appears to satisfy the provision, as some of the structures (main house) are becoming more conforming and others (retaining walls, patios and boat house) and not becoming more nonconforming.
§16.7.3.3.C(1)	In the Shoreland or Resource Protection Overlay Zone(s), 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, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided 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 § 16.7.3.3A(2), Nonconforming structure relocation, the physical condition and type of foundation present, if any.	It appears the standard is satisfied given the construction schedule of the boathouse. The applicant stated that the boathouse will continue to be used to store boats and other equipment. The plan to repair the boathouse will still require Kittery Port Authority approval before a building permit is filed for any work. Moreover, when the building permit is submitted for review, the Code Enforcement Officer will confirm the value of the boathouse and compare that figure to the value of any repairs to ensure compliance with this standard.
§16.7.3.3.C(5)	In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. 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 § 16.7.3.3.B, Nonconforming structure repair and expansion.	It appears the standard is satisfied.

Code Ref.	§16.10 Article V Preliminary Plan Application Review and Approval Process Phase	
	Standard	Comment
§16.10.5.2.B(2)	With scale of the drawings no greater than one-inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;	It appears the standard is satisfied.
§16.10.5.2.B(3)	Code block in the lower right-hand corner. The block must contain: (a) Name(s) and address(es) of the applicant and owner; (b) Name of the project; (c) Name and address of the preparer of the plan, with professional seal, if applicable; (d) Date of plan preparation/revision, and a unique ID number for the plan and any revisions;	It appears the standard is satisfied.
§16.10.5.2.B(4)	Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;	It appears the standard is satisfied.
§16.10.5.2.B(5)	An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;	It appears the standard is satisfied.
§16.10.5.2.B(6)	Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;	It appears the standard is satisfied.
§16.10.5.2.B(7)	Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;	It appears the standard is satisfied.
§16.10.5.2.B(8)	Names and addresses of all owners of record of property abutting the development, including those across a street;	It appears the standard is satisfied.
§16.10.5.2.B(9)	Locations of essential physical features such as watercourses, forest cover, and outcroppings;	It appears the standard is satisfied.
§16.10.5.2.B(10)	Proposed development area conditions including, but not limited to: (a) Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line; (b) Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways; (c) Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown; (d) Domestic water source; (e) Parks, open space, or conservation easement locations; (f) Lot lines, interior and exterior, right-of-way, and street alignments; (g) Road and other paved ways plans, profiles and typical sections including all relevant data; (h) Setbacks existing and proposed; (i) Machinery permanently installed locations likely to cause appreciable noise at the lot lines; (j) Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature; (k) Topographic contours of existing contours and finished grade elevations within the development; (l) Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed; (m) Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development; (n) Land proposed to be dedicated to public use and the conditions of such dedication; (o) Natural features or site elements to be preserved.	It appears these standards are satisfied

Code Ref.	§16.9.2.2 Clearing or removal of Vegetation for uses other than timber harvesting in the Resource Protection or Shoreland Overlay Zone.	
	Standard	Comment
§16.9.2.2.A	In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.	This standard appears to be satisfied as a comprehensive replating plan for the shoreline has been provided.

Discussion, Next Steps, and Recommendations

Overall, the updated plan set appears to have clarified the remaining as identified at the January 13, 2022, meeting and February 1, 2022, site walk and now conforms with the applicable standards outlined in §16.3, §16.7, and §16.10. If the Planning Board have no further issues with the plan, staff recommends voting for approval.

Recommended motions

Below are recommended motions for the Board’s use and consideration:

Motion to continue application

Move to continue the agenda item to the March 10, 2022 Planning Board meeting for a shoreland development plan application from owner/applicant Wladislaw Realty Trust and agent Walsh Engineering Associates requesting approval to replace and expand legally non-conforming structures on a legally conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 20 Folcutt Road, Tax Map 25, Lot 18, in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250), Resource Protection (OZ-RP) Overlay Zones.

Motion to approve application

Move to approve a shoreland development plan application from owner/applicant Wladislaw Realty Trust and agent Walsh Engineering Associates requesting approval to replace and expand legally non-conforming structures on a legally conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 20 Folcutt Road, Tax Map 25, Lot 18, in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250), Resource Protection (OZ-RP) Overlay Zones.

Kittery Planning Board
Findings of Fact
For 20 Folcutt Road
Shoreland Development Plan Review

WHEREAS: owner/applicant Wladislaw Realty Trust and agent Walsh Engineering Associates requests approval to replace and expand legally non-conforming structures on a legally conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 20 Folcutt Road, Tax Map 25, Lot 18, in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250), Resource Protection (OZ-RP) Overlay Zones.

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	February 1, 2022	HELD
YES	Completeness/Acceptance	January 13, 2022	HELD
NO	Public Hearing	February 10, 2022	HELD
YES	Final Plan Approval	May occur on February 24, 2022	PENDING

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, dated
2. Shoreland Development Plan, ___ Engineering, Inc., dated , last revised
3. Architectural Elevations, __, Residential Architecture, dated &

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 16.3 LAND USE ZONE REGULATIONS

<p>16.3.2.17.D(1)(D)</p> <p>Standard: <i>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...</i></p> <p>Finding: 20 Folcutt Road proposes to have a 17.5% devegetation after all construction is completed.</p> <p>Conclusion: The standard appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p>16.3.2.17.D(2)(b)</p> <p>Standard: <i>Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.</i></p> <p>Finding: The proposed patio outside the 75-ft setback and will have a gross footprint of 331-sf along with a separate crushed stone paving area also outside the 75-ft. setback with a gross footprint of 443-sf .</p> <p>Conclusion: The standard appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>

**Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS
FOR NATURAL ENVIRONMENT**

§16.9.1.4.B

Standard: *All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction.*

Finding: The proposed development appears to be adequately supported by the existing and proposed soils and will adversely impact the surrounding natural features.

Conclusion: The requirement appears to be met.

Vote: in favor against abstaining

**Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS
Article III Nonconformance**

16.7.3.1 Prohibitions and Allowances

Standard: *A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming*

Finding: The proposed dwelling unit is not becoming more nonconforming, as the distance from the highest annual tide is no closer than previously existed (16.7.3.3.C), the proposed height (35-ft.) is under preexisting (16.7.3.3.B(3)(e)[5][a]) measurement and outside the base zone setback.

Conclusion: The requirement appears to be met.

Vote: in favor against abstaining

**Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review**

16.10.10.2 Procedure for Administering Permits

D. 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:

Standard: *1. Maintain safe and healthful conditions;*

Finding: The proposed development as represented in the plans and application does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: in favor against abstaining

Standard: *2. Not result in water pollution, erosion or sedimentation to surface waters;*

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters. An existing eroded slope will be revegetated.

Conclusion: This requirement appears to be met

Vote: in favor against abstaining

Standard: *3. Adequately provide for the disposal of all wastewater;*

<p>Finding: The proposed development will construct a subsurface wastewater system that will adequately service the property.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i></p> <p>Finding: The proposed development does not appear to have an adverse impact on those resources.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p>Finding: The proposed development incorporates a replanting plan that will revegetate the area that is closer the protected resource.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 6. <i>Protect archaeological and historic resources;</i></p> <p>Finding: There appears to be no archaeological and historical resources on the lot.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p>Finding: The proposed development does not appear to include any activities that would adversely impact existing commercial fishing or maritime activities.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 8. <i>Avoid problems associated with floodplain development and use;</i></p> <p>Finding: The property does appear to have a designated FEMA flood zone area (AE-100). The structures affected by this zone are the existing and proposed retaining wall and boathouse. The applicant has indicated that the boathouse is planned to be elevated to the most practicable extent, given the regulations on boathouse repairs and structure height within the base zone setback of the shoreland overlay zone.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 9. <i>Is in conformance with the provisions of this code;</i></p> <p>Finding: The proposed development complies with the applicable standards of Title 16.</p> <p>Conclusion: This requirement appears to be met.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>Standard: 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p>Finding: A plan suitable for recording will be prepared.</p> <p>Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds within 90 days of approval prior to the issuance of a building permit.</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>

NOW THEREFORE, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

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. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization
3. With the exception of the vegetation identified on the plan for removal, no vegetation will be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing vegetation must be in place prior to grading or construction. The rock fill shall not replace existing vegetation.
4. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all onsite work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 2/24/2022).

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

1. 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 endorsement by the Planning Board Chair.

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.

Vote: in favor against abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____

Dutch Dunkelberger, Planning Board Chair

Notices to Applicant:

1. 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.
2. Three (3) paper copies 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. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a paper copy of the signed original must be submitted to the Town Planning Department.
3. 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.

Appeal of Decision:

1. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning 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.