

**Town of Kittery  
Planning Board Meeting  
May 12, 2021**

**ITEM 4 – 32 Pocahontas 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 Edward and Carol Besade request approval to expand a legally non-conforming accessory structure on a legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 32 Pocahontas Road, Tax Map 51, Lot 3, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250’), and Resource Protection Overlay Zone (OZ-RP).

**PROJECT TRACKING**

<b>REQUIRED</b>	<b>ACTION</b>	<b>COMMENTS</b>	<b>STATUS</b>
No	Sketch Plan		N/A
No	Site Visit	TBD by Board	
Yes	Completeness / Acceptance	TBD; May 12, 2022	Pending
No	Public Hearing	TBD by Board	
Yes	Final Plan Approval	TBD; May 12, 2022	

**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**

32 Pocahontas Road (“Property”) is located along the bank of the Piscataqua River 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 27,029-sf (0.62-ac), whereas the R-RC district’s dimensional standard calls for 80,000-sf (1.83-ac) and the dwelling unit (1,916-sf footprint) is positioned within the base zone setback (100-ft.) of the Shoreland Overlay Zone. The site’s total devegetated area (including the dwelling, a 450-sf garage, and paved driveway) is 30.2%, above the zone’s requirement of 20% maximum devegetation.

The owner proposes to expand a portion of the deck that faces the water side of the property by approximately 43 square feet. The owner additionally proposes to remove a similarly sized portion of the paved driveway near the garage in order to not increase the devegetated area, staying at the existing 30.2%. The applicant contends that since there is no change in the devegetated percentage, his actions in expanding the deck are neutral for the non-conforming lot and structures.

## APPLICATION REVIEW

---

Staff reviewed the submitted application and plan from Easterly Surveying, Inc. dated April 1, 2022 and have the following comments:

1. The site plan prepared by Easterly Surveying, Inc. dated April 1, 2022 is stamped “PRELIMINARY,” does not carry a surveyor seal, and does not have the required Planning Board signature block nor York County Registry of Deeds block
2. 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.
3. Thus, 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.*

Planning staff reviewed the plan with Code Enforcement Staff, who reviewed the property file and determined that the footprint of the house (including all attached accessory structures) have existing since 1986. Thus, the footprint may be enlarged up to 30%. The existing structure’s footprint is 1,916 square feet. A 30% enlargement would equal 574 square feet. The proposed expansion of the accessory structure is 43 square feet. Code Staff indicated the 30% expansion figure is a cumulative number from that 1989 date, which means the property owner could further expand another 531 square feet in the future.

4. There is also the issue of expanding the deck in this location. Section 16.1.C.8.(4)(b)[3][a] state:  
*A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.2.12.F(2).*

Planning and Code staff discussed the above issue. The “no more nonconforming” clause has been consistently applied to mean that any expansion could not encroach further into the setback. Per the plans, the existing setback to the highest annual tide (HAT) is 39.2 feet. The proposed setback of the proposed expansion is 39.3 feet, which encroaches no further.

5. While the applicant does propose to remove existing pavement in order to not increase the amount of devegetated area, the Planning Board may want to weigh if the proposed removal is from an appropriate area, or if additional impervious surface removal might make the proposed expansion more acceptable.

## DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS

---

Planning Board should discuss this issue of the project and direct the applicant to make any changes that are necessary (conditions of approvals). The Planning Board should determine if they would like to schedule a site walk or a public hearing.

## RECOMMENDED MOTIONS

---

Below are motions for the Board's consideration:

### *Motion to continue application*

Move to continue the plan to the May 26, 2021 Planning Board meeting for a shoreland development application from owner/applicant Edward and Carol Besade's request to expand a legally non-conforming accessory structure on a legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 32 Pocahontas Road, Tax Map 51, Lot 3, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone (OZ-RP).

### *Motion to approve*

Move to approve the shoreland development application from owner/applicant Edward and Carol Besade's request to expand a legally non-conforming accessory structure on a legally non-conforming lot within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 32 Pocahontas Road, Tax Map 51, Lot 3, in the Residential-Rural Conservation Zone (R-RC), Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone (OZ-RP).

- 1.