

**Town of Kittery Maine
 Town Planning Board Meeting
 April 22, 2021**

80 Wilson Road—Resource Protection Plan Review

Action: Accept or deny application as complete; continue application to a subsequent meeting, schedule site walk and/or public hearing; approve or deny plan. Pursuant to §16.3.2.19 *Resource Protection Overlay Zone*, §16.7.3.3.C *Nonconforming structure reconstruction*, §16.10.3.4 *Shoreland Development Review and Table §16.9 Minimal Setback from Wetland and Waterbodies* of the Town of Kittery Land Use and Development Code, owner/applicant Dan Remick is requesting approval for a special exception permit to reconstruct a legally nonconforming single-family dwelling unit within its existing footprint and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued	No filing on record
No	Site Visit	At the Board's discretion	To be determined—PB discretion
Yes	Completeness/Acceptance	Scheduled for the 4/22/21	Ongoing
No	Public Hearing	At the Board's discretion	To be determined—PB discretion
Yes	Plan Approval	May be consider at the 4/22/21 meeting	Pending

Applicant: Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. 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

80 Wilson Road (“Project”) is located within the Residential—Rural (R-RL) zone and overlaid by the Resource Protection (RP-OZ) zone. Abutting the south and east side of the lot is a wetland greater than an acre and to the north a single-family dwelling unit. The Project’s current conditions comprise a (762-sf) single-family dwelling unit (mobile home) with a detached garage, and an accessory shed on a legally nonconforming lot of record. All structures appeared to have existed prior to January 1, 1989, making them legally nonconforming as well.

According to section §16.3.2.19.B(1)(b)[1], a single-family dwelling unit is permitted by special exception by the Planning Board, permitting the applicant to move forward with Planning Board review. Prior to submitting a resource protection plan application, on January 26, 2021, the applicant was issued a demolition permit to remove all the existing structures in preparation for the new construction after obtain all the necessary approvals. Pursuant to §16.7.3.3.C(1), the applicant has 18 months to obtain a permit in order to maintain the structures’ legally nonconforming status. In short, the applicant is seeking a special exception permit to reconstruct and expand a legally nonconforming dwelling unit within the Resource Protection Overlay Zone.

Analysis and Staff Commentary

The primary areas of focus for this application are on the reconstruction and expansion of a nonconforming structure that is partly within the Resource Protection Overlay Zone. Under Article III *Nonconformance of*

16.7 *General Development Requirements*, the Planning Board has jurisdiction over applications proposing a reconstruction and expansion of a nonconforming structure within the Resource Protection Overlay Zone. This authority development is codified under §16.7.3.3.C(5) via §16.7.3.3.B *Nonconforming Structure repair and/or expansion*.

The Board has two tasks: determining if the proposed development meets the reconstruction standards of §16.7.3.3.C and likewise identifying if the proposed expansion satisfy the criteria under §16.7.3.3.B, which governs both repair and expansion of a legally nonconforming structure. Pursuant to §16.7.3.3.C(5), a structure cannot be reconstructed in a location that is closer to a water body or wetland than previously existed prior to its demolition nor is it permitted to expand closer to a water body or wetland. The current dwelling unit structure—there are three preexisting structures on the lot—at its closest is approximately 23-ft. from a wetland located due south of the dwelling unit. Due to zoning, geographic, and natural system constrictions, the proposed dwelling unit has limited opportunities to be relocated in an area outside the Resource Protection Overlay Zone outright. For this reason, the applicant proposes to utilize a majority of the existing footprint and only expand into those areas that will not make the structure more nonconforming and further away from the protected resource. There are also criteria under §16.7.3.3A(2) used to determine the extent to which a legally nonconforming structure can be relocated. The Planning Board should review those elements of the provision and consider them when forming a conclusion on the suitability of the proposed relocation area of the dwelling unit. To wit, it appears that no portion of the proposed structure will further encroach upon the setback of the existing wetlands, or become more nonconforming besides in those areas that is permitted un Article III *Nonconformance*.

Moreover, the applicant is reducing the building coverage by eliminating the detached garage (300-sf) and storage shed (153-sf) and consolidating the building footprint into one building (1,016-sf) of which 824-sf is proposed to located within the Resources Protection Overlay Zone, whereas 1,122-sf of footprint currently exists within said zone. As regards the expansion, the total allowed area permitted for structural expansion outside the 25-ft. but within the 100-ft setback of the edge of a wetland within the Resource Protection Overlay Zone is 1000-sf or 30% of the total footprint structures, whichever is greater, that existed prior to January 1, 1989. The total footprint of all structures in the proposed plan is being reduced from 1,215-sf to 1,016-sf, of which 824-sf will be located within the Resource Protection Overlay Zone and proposed not to move any closer to the existing wetlands.

In sum, it appears that the applicant has proposed development plan that is in compliance with the relevant code provisions. The only element that the Planning Board should clarify with the applicant is on the proposed height of the structure within the 25-ft setback. The Planning Board will want to make sure that the height of the new building within that 25-ft setback from the wetland setback is 15-ft or less, unless the preexisting height was higher, to which cannot be exceeded but only maintained. Planning Board may want to see if the house can be moved slightly (2-ft) so as to give the applicant more flexibility with the height. If found impossible, the Planning Board may want to condition any approval with a provision stating that prior to the issuance of a building permit, the applicant shall submit architectural elevations to the Code Enforcement Officer demonstrating that the height of the new single-family dwelling unit is in compliance with relevant sections of the Land Use and Development Code of the Town of Kittery.

Application Completeness

The application as presented appears to be complete and may be accepted by the Board if they so choose.

Planning Board Procedural Steps

After the Board has been presented with the application and deliberation has exhausted, the following procedural sequence must take place:

1. Plan acceptance: Before the Board can move on the application, a vote must occur to accept the plan.
2. Thereafter, the Board needs to determine if a site visit, public hearing, or both need to occur. If a site walk is necessary, the Board should agree on a date and time and set the date. As regards the public hearing, if desirable, it should be scheduled for the next Planning Board meeting, May 27, 2021.
3. If a public hearing is not elected to take place, the Board should consider the following:
 - a. to move to continue the application to a subsequent meeting if more time for consideration is required by the Board,
 - b. approve with or without conditions; or
 - c. deny the application

Recommended Motions

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

Motion to continue application

Move to continue the resource protection development plan application to the May 13, 2021 Planning Board meeting from owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit within its existing footprint and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone

Motion to schedule a site walk

Move to schedule a site walk on _____, 2021, for a resource protection development plan application from owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone

Motion to schedule public hearing

Move to schedule a public hearing on the May 27, 2021 Planning Board meeting for a resource protection development plan application from owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone

Motion to approve with conditions

Move to approve the resource protection development plan application from owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone.

1. Prior to the issuance of a building permit, the applicant shall submit architectural elevations to the Code Enforcement Officer demonstrating that the height of the new single-family dwelling unit complies with relevant sections of the Land Use and Development Code of the Town of Kittery.

Motion to deny (should be in the affirmative as stated below.)

Move to deny the shoreland development plan application from owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone.

**Kittery Planning Board
 Findings of Fact
 For 80 Wilson Road
 Resource Protection Development Plan Review**

**UNAPPROVED
 M4 L81**

WHEREAS: owner/applicant Dan Remick requesting approval for a special exception permit to reconstruct and expand a legally nonconforming single-family dwelling unit and to demolish an existing detached garage and shed within the Resource Protection Overlay Zone on a legally nonconforming lot within the base zone setback of a wetland greater than an acre on real property with an address of 80 Wilson Road, (Tax Map 59, Lot 5) located in the Residential-Rural (R-RL) Zone and the Resource Protection (OZ-RP) Overlay Zone.

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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 3/31/2021
2. Resource Protection Development Site Plan, Civil Consultants., dated 3/31/21

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

16.3.2.1.D(e)
Standard: <i>Maximum building coverage: 15%</i>
Findings: The proposed shoreland development plan illustrates a building coverage rate of 6.3%
Conclusion: The standard 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: <i>A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i>
Finding: The applicant is proposing a reconstruction and expansion to a legally nonconforming structure that complies with the standards within the Article.
Conclusion The requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining
16.7.3.3.A(2)
Standard: <i>In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board or Board of Appeals must consider the following conditions:</i>
<i>(a) The size of the lot;</i>
<i>(b) The slope of the land;</i>
<i>(c) The potential for soil erosion;</i>
<i>(d) The location of other structures on the property and on adjacent properties;</i>
<i>(e) The location of the septic system and other on-site soils suitable for septic systems;</i>
<i>(f) The type and amount of vegetation to be removed to accomplish the relocation.</i>
Finding: It appears the proposed reconstruction and expansion of a single family dwelling unit has to the greatest practical extent identified the most suitable area for the new dwelling unit to be place and demonstrated that no other viable alternative exists on the lot.
Conclusion The requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining
16.7.3.3.B(3)(e)[3]
Standard: <i>If a legally nonconforming principal structure is located partially within 25 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, expansion of the footprint and/or height of any portion of the structure that is located within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or coastal or freshwater wetland setback requirement</i>
Finding: The applicant has demonstrated that no expansion will take place within the 25-ft setback of the edge of a wetland
Conclusion The requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining

<p>16.7.3.3.B(3)(e)[5][a]</p> <p>Standard: <i>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 in the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.</i></p> <p>Finding: The applicant is proposing a physical expansion of the legally nonconforming dwelling unit by 254-sf, but reducing the overall footprint of all structures of the lot by removing the detached garage and shed, from 1,215-sf to 1,016-sf, falling well under the permitted expansion rate.</p> <p>Conclusion The requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article VIII Final Plan Review

<p>§16.10.8.3.D.20 Special Exception Use Permit</p> <p>Standard: <i>Not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;</i></p> <p>Finding: The applicant is proposing a physical expansion of the legally nonconforming dwelling unit by 254-sf, and appears its presence will not affect or prevent the reasonable use of adjacent properties.</p> <p>Conclusion The requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p>Standard: <i>Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;</i></p> <p>Finding: The applicant is proposing a physical expansion of the legally nonconforming dwelling unit by 254-sf, and appears its presence will not affect or prevent the orderly and reasonable use of permitted or legally establish uses in the zone.</p> <p>Conclusion The requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p>Standard: <i>Not adversely affect the safety, the health, and the welfare of the Town</i></p> <p>Finding: The applicant is proposing a physical expansion of the legally nonconforming dwelling unit by 254-sf, and it appears its presence will not adversely affect or the safety, the health, and the welfare of the Town</p> <p>Conclusion The requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p>Standard: <i>Be in harmony with and promote the general purposes and intent of this title.</i></p> <p>Finding: The applicant is proposing a physical expansion of the legally nonconforming dwelling unit by 254-sf, and it appears its presence will be in harmony with and promote the general purposes and intent of this title.</p> <p>Conclusion The requirement appears to be met.</p>

Vote: ___ in favor ___ against ___ abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article X 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: The proposed development appears to be designed in a manner that does not result in an increase of water pollution, erosion, or sedimentation to surface waters

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

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

Finding: The proposed development will install an adequate subsurface disposal system the complies with all local and state regulations

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

Standard: 4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: The proposed development does not appear it will have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

Standard: 5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;

Finding: The application proposes development not located near the shore.

Conclusion: This requirement appears is not applicable

Vote: ___ in favor ___ against ___ abstaining

Standard: 6. Protect archaeological and historic resources;

Finding: There appears to be no archaeological and historical resources located on the lot.

Conclusion: This requirement appears to be met.

Vote: __ in favor __ against __ abstaining
Standard: 7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i>
Finding: The application does not boarder commercial fishing or maritime activity areas
Conclusion: This requirement is not applicable.
Vote: __ in favor __ against __ abstaining
Standard: 8. <i>Avoid problems associated with floodplain development and use;</i>
Finding: The proposed development appears it will avoid problems with any flood event given its flood zone classification (Zone C) ‘Areas of minimal flooding’.
Conclusion: This requirement appears to be met.
Vote: __ in favor __ against __ abstaining
Standard: 9. <i>Is in conformance with the provisions of this code;</i>
Finding: The proposed development complies with the applicable standards of Title 16.
Conclusion: This requirement appears to be met.
Vote: __ in favor __ against __ abstaining
Standard: 10. <i>Be recorded with the York county Registry of Deeds.</i>
Finding: The proposed shoreland development plan shall be recorded at the York County Registry of Deeds.
Conclusion: This standard appears to be met.
Vote: __ in favor __ against __ abstaining

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:

1. 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 unless conforming with the provision under §16.10.9.2 and §16.10.9.3.
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. 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.
4. All Notices to Applicant contained herein (Findings of Fact dated 4/22/2021).

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

1. Prior to the issuance of a building permit, the applicant shall submit architectural elevations to the Code Enforcement Officer demonstrating that the height of the new single-family dwelling unit complies with relevant sections of the Land Use and Development Code of the Town of Kittery.

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. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final plan
2. 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.
3. One (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.
4. 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.