

Town of Kittery Maine Planning Board Meeting March 14, 2019

ITEM 1 - 50 Chauncey Creek Road – Shoreland Development Plan Review.

Action: Accept or deny application. Approve or deny plan. Owners and applicants, Thomas and Michele Jordan request consideration to reconstruct and expand a nonconforming single family dwelling on a 7,800 +/- square foot parcel located at 50 Chauncey Creek Road (Tax Map 44 Lot 59) in the Residential Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250') and Resource Protection (OZ-RP) zones. Agent Tom Emerson, studioB-E.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
YES	Determination of Completeness	Possible for 2/14/19; 3/14/19	PENDING
NO	Public Hearing	3/14/19	SCHEDULED
NO	Site Walk	2/28/19	HELD
Yes	Final Plan Review and Decision	3/14/19	PENDING

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 recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN %: HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.L – 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.

NOTE: The Shoreland Development Plan(s) have not changed from the previous submittal so no plans are included in your packets.

Background

Planning Board review of this project is required by 16.10.3.4 Shoreland Development Review, because the proposed development is located within the required 250-foot setback in the Shoreland Overlay Zone. The parcel includes a nonconforming single-family dwelling unit, a boathouse and dock on a lot with a non-conforming area (40,000 sf is minimum), street frontage (150 feet required) or front yard setback (40 feet required) for the R-KPV zone.

The applicants propose to remove the building frame of the dwelling and rebuild on the same foundation, remove the enclosed front porch and rebuild on a new foundation and expand the deck (noted as Deck #1 Expansion on the plan) by approximately 67 sf. In addition, a storage shed 80 sf in size is proposed within the 100 foot shoreland setback.

While the property is currently non-conforming with 26.5% devegetated area (20% is the requirement), the applicant proposes to remove some impervious surfaces and revegetate to lower the overall devegetated area to 25.3%. These improvements include: 1) remove an existing brick walkway and an asphalt paved walkway and replace with two grass/stone walkways, and 2) Removing miscellaneous wood ramps, retaining wall, concrete pad and an area of brick. Reductions are also proposed to two gravel areas and a portion of wood ramp #2. In their place are proposed two sets of stone stairs and a retaining wall (Retaining Wall #4). See the Existing and Proposed Devegetated Coverage Calculations on the plan for details.

Staff Review

1. The proposed expansion does not meet the requirements of the Shoreland Zone (OZ-SL-250'). However, the provisions of Article III. Nonconformance apply to the property and existing structures.

- a. Per Section 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.* A portion of the existing house is located closer than 25 feet to Highest Annual Tide (HAT) line. The rebuilt house will not increase that non-conformity. The applicant has submitted revised plans that indicate the height of the existing structure height with the 25 setback will not be increased with new structure. **Maine DEP has been consulted on the question regarding height expansion relative to the roof deck railings within the 25 foot setback. Please refer to Jessa Kellogg's memo, dated March 7, 2019, which is attached.**
- b. Relative to the proposed Deck #1 Expansion, per Section 16.7.3.3.B. (3) (e) [4] *[truncated]... All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered as follows:*
[a] For structures located less than 100 feet 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.
[truncated] Because the deck is considered a structure and is attached to the principal structure, the proposed expansion of Deck #1 would need to meet this section of the code. The footprint of the existing dwelling is 1,115 sf and 30% would increase this by 334.5 sf. The proposed deck expansion is 67 sf, so it appears to conform with this section of the code.
- a. Per Section 16.3.2.17.D (2) (e) *On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed 80 square feet in area nor eight feet in height and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.* **Colin Clark Maine DEP Shoreland Zoning has been consulted on this issue. He in turn consulted with the AG's Office and the interpretative is that as long as the existing boathouse is completely under the Highest Annual Tide (HAT) and not regulated as upland development the proposed storage shed can be treated as the allowed accessory structure. Please refer to Jessa Kellogg's memo, dated March 7, 2019, which is attached.**
- b. Per Section 6.3.2.17.D (Shoreland Overlay Zone, Standards) the total footprint of the devegetated area cannot exceed 20%. The property is currently non-conforming with about 26.5% devegetated. The proposal calls for removal of a paved path, brick path, wood ramp and a concrete pad along with a reduction in size of two gravel areas. The paved path and a portion of the brick path will be removed and replaced by stones set into grass. It appears that

all devegetated areas have been noted on the plans. See the Existing and Proposed Devegetated Coverage Calculations on the plan for details.

2. Per Section 16.3.2.17.D (2) (g) Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils, provided the:
 - a. Structure is limited to a maximum of four feet in width;
 - b. Structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C); and
 - c. Applicant demonstrates that no reasonable access alternative exists on the property.

The proposed Stairs #1 and #2 are depicted at 3 feet in width and appear to conform with the code, replacing existing walkways and stairs and reducing the overall devegetated area.

3. Are any improvements proposed for access to the storage shed?

Recommendation / Action

A site walk was conducted on February 28, 2019 to inspect the property. The Board has scheduled a Public Hearing on the application for the March 14, 2019 meeting. After the Board hears from abutters and interested public, staff feels that it can take action to approve the development plan.

Accept as complete and approve the Shoreland Development Plan application dated November 20, 2018, as revised from owners/applicants, Thomas and Michele Jordan, to reconstruct a nonconforming single family dwelling on a 7,800 +/- square foot parcel located at 50 Chauncey Creek Road (Tax Map 44 Lot 59) in the Residential Kittery Point Village (R-KPV), Shoreland Overlay (OZ-SL-250') and Resource Protection (OZ-RP) zones.

MEMORANDUM

TO: JAMIE STEFFEN, TOWN PLANNER

FROM: JESSA KELLOGG, SHORELAND RESOURCE OFFICER

SUBJECT: 50 CHAUNCEY CREEK ROAD, TAX MAP 44 LOT 59

DATE: MARCH 7, 2019

CC:

I wanted to inform the Planning Board that we have received comment back from Colin Clark of Maine DEP regarding the classification of the existing boathouse relative to the lot. After consulting with the Attorney General's office, DEP has taken the position that the boathouse would be considered an accessory structure to the lot only if the municipality permits piers, wharves and docks under Shoreland zoning. As Kittery does not rely on Shoreland zoning for these marine-related structures, the boathouse on this dock would not be considered accessory to the upland portion of the lot. Therefore, the proposed 80sf accessory shed would conform to Title 16.3.2.17.D.(2)(e) and could be permitted by the Planning Board.

At the Planning Board site walk on 2/28/19 a question was raised if I would consider handrails on a rooftop deck as counting toward structure height. I believe the handrail would be considered an appurtenance as it has no floor area and therefore would not count toward the height of the structure. I have asked DEP for confirmation of this interpretation as requested, however have not yet received a response to this question.