

**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

BOA Meeting Date: March 12, 2019

Item #: SEU2019-01

STAFF REPORT – 4 COLONIAL ROAD – SPECIAL EXCEPTION USE

Project Name: 4 Colonial Road

Applicant: Deane Rykerson

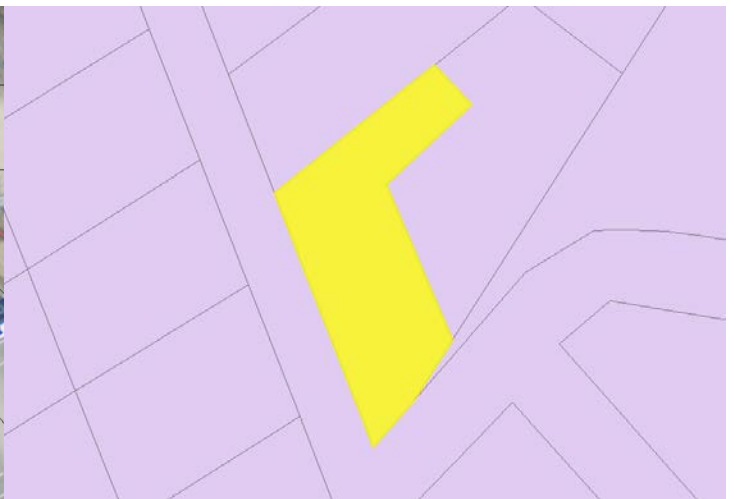
Owner: Donald and Nicole Kerr

Proposed Development: Request for a temporary intrafamily dwelling unit

Requests: Request for a Temporary Intrafamily Dwelling Unit per LUDC 16.8.21, seeking approval for the Special Exception Use of a Temporary Intrafamily Dwelling Unit to care for the owner's mother.

Site Addresses: 4 Colonial Road

Map & Lot Numbers: M 22 L 37



Current Zoning:

Residential – Urban (R-U) - This zoning district is intended to preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title.

The following uses are permitted in the R-U Zone: (1) Dwellings and manufactured housing;

Staff Recommendation: **APPROVAL WITH CONDITIONS** of the Special Exception Use request.

District Standards:

Residential – Urban R-U Zoning District Standards			
Land Area per Dwelling (min.)	20,000 sf	Front Yard Setback (min.)	30 feet
Impervious Surface (max.)	20%	Rear Yard Setback (min.)	15 feet
Lot Size (min.)	20,000 sf	Side Yard Setback (min.)	15 feet

Current Use: One single-family dwelling

Surrounding Land Uses:

West: Residential – Urban (R-U), single-family dwelling

East: Residential – Urban (R-U), single-family dwelling

North: Residential – Urban (R-U), single-family dwelling

South: Residential – Urban (R-U), Town-owned property with Kittery Community Center

Future Land Use:

The subject property is located within a Growth Area in the Future Land Use Map. A Growth Area is defined in the Comprehensive Plan as, “areas where the Town would like to encourage future development to occur.”

Site Description:

The subject property consists of approximately 17,424 square feet (.40 acres), located at the intersection of Colonial Road and Goodsoe Road. The lot is legally non-conforming. The property is zoned Residential – Urban (R-U). The lot contains one single-family dwelling fronting Colonial Road. The dwelling appears to conform to existing R-U setbacks except for the front setback for Colonial Road. Upon review of adjacent properties of the same use on the same street, the existing front building setback appears in line with the average building setbacks of neighboring properties (per 16.7.2.6).

History of the Property:

The property contains a single-family dwelling unit constructed in approximately 1942. Tax records show the dwelling consists of approximately 1,576 square feet of living space with an attached garage, and a wooden deck attached to the rear of the building. Total building coverage is currently 1,977 square feet, or 11%.

Description of the Issue:

The current owner wishes to construct a temporary intrafamily dwelling unit consisting of 505 square feet of new interior space – including a two-car garage – and a 120-square-foot covered porch. The proposed additions increase the building coverage to 2,602 square feet, or 15%. Town code allows for a temporary dwelling unit subject to specific standards and conditions in 16.8.21. The Board of Appeals can approve such a unit outside of Shoreland as a Special Exception Use in

the R-U zone. The Board of Appeals has granted such temporary dwelling units as part of an addition to a single-family dwelling in the past, as recently as 2016.

Applicant’s Special Exception Use Request:

Section 16.6.6 requires the Board of Appeals to use the following process when hearing requests:

§ 16.6.6 Basis for decision.

A. Conditions.

- (1) *In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.*

LUDC Section 16.6.4.D.(1) grants the following:

D. Special exception use request.

(1) The Board of Appeals will hear, decide and may grant an applicant's special exception use request where authorized in Chapter 16.3 for any application excluded from Planning Board review as stated in § 16.10.3.2, if the proposed use meets the criteria set forth in § 16.6.6, Basis for decision.

LUDC Section 16.3.2.4.C.(8) lists the special exception uses allowed in the R-U zone, and specifically refers to “temporary, intrafamily dwelling unit”.

- (2) *In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:*

- (a) *The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*

Staff believes the use will not prevent the orderly and reasonable use of adjacent properties since all adjacent properties are either zoned Residential – Urban and contain the same single-family dwelling use as the subject property, or are public uses.

- (b) *The use will 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;*

Staff believes the use will not prevent the orderly and reasonable use of legally established uses in the zone since the use is the same as adjoining properties and there are no use restrictions among adjacent single-family dwellings.

- (c) *The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and*

Staff believes the use will not adversely affect the health and welfare of the Town.

- (d) *The use will be in harmony with and promote the general purposes and intent of this title.*

Staff believes the use is in harmony with Title 16 and promotes its general purposes.

Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:

- (1) *The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;*

The single-family dwelling use is allowed in the zone by right. The temporary intrafamily dwelling unit is allowed as a Special Exception, subject to the standards and conditions in Title 16.

- (2) *The conservation of property values and the encouragement of the most appropriate uses of land;*

Single-family dwelling is an appropriate and compatible use of the land.

- (3) *The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;*

A single new temporary dwelling unit should have no appreciable effect on congestion.

- (4) *The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;*

The property contains adequate septic systems.

- (5) *Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;*

The use produces no obnoxious gases, odors, smoke or soot.

- (6) *Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;*

The use causes no disturbing emission of electrical discharges, dust, light,

vibration or noise.

- (7) *Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;*

No undue interference should result from this use.

- (8) *The necessity for paved off-street parking;*

The land has suitable existing space for paved off-street parking.

- (9) *Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;*

No hazards should result from this use.

- (10) *Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;*

No overcrowded should result from this use.

- (11) *Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;*

The existing lot is a legal, non-conforming lot of record.

- (12) *Whether the proposed use will be adequately screened and buffered from contiguous properties;*

Adequate existing vegetation exists.

- (13) *The assurance of adequate landscaping, grading and provision for natural drainage;*

No changes in the existing landscaping, grading, or drainage result from this use.

- (14) *Whether the proposed use will provide for adequate pedestrian circulation;*

Existing pedestrian facilities existing along this road and are adequate.

(15) *Whether the proposed use anticipates and eliminates potential nuisances created by its location; and*

No new nuisances are expected from the continuation of the single-family dwelling use.

(16) *The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.*

Other than the request of relief from side setbacks, the property conforms to Title 16.8 and 16.9 in its existing legal, non-conforming state.

Temporary Intrafamily Dwelling Unit:

Section 16.8.21.2 requires the following standards be met when hearing such request:

A. The temporary intrafamily dwelling unit must be an accessory use to a residential structure.

The unit is proposed to be constructed within an addition to an existing residential structure.

B. The owner of the property must reside on the premises unless the BOA finds that other ownership or tenancy characteristics are consistent with the intent of this section.

The owner will reside on the premises.

C. No more than one temporary intrafamily dwelling unit per dwelling unit is allowed.

Only one temporary unit is proposed for the residence.

D. Additional off-street parking must be provided if the BOA finds that the proposed use will generate more parking demand than is currently available. Such additional parking must not be located within the required front yard unless the BOA finds that the proposed design and location of such a parking area would not detract from the character of the residential neighborhood.

The proposed plan includes the construction of a new two-car garage. Adequate off-street parking will be available.

E. Floor plans must be submitted, showing:

(1) The floor plan of the existing dwelling;

(2) The proposed floor plan to create the temporary intrafamily dwelling unit; and

(3) A plan to convert the use of the property to its original dwelling status or another conforming permanent use.

(4) The above submission requirements may be waived or modified by the BOA, provided the intent of this section is satisfied.

Floor plans have been submitted to show the existing dwelling, the proposed new temporary unit, and a statement that the proposed kitchen be removed once the temporary dwelling unit is no longer needed.

F. To assure that a proposed temporary intrafamily dwelling unit does not become an apartment yielding a financial gain, at least one internal accessible connection between the two units must be shown in the floor plan for creation of the temporary intrafamily dwelling unit unless the BOA determines such a connection is not practicable.

The connection shown by the applicant does not meet building code, as one cannot pass through a garage space to access living space and be considered part of the original space. For the temporary dwelling unit to be considered part of the house, a hallway would be needed through the first garage or the garage would need to be changed to living space.

G. The architectural treatment of constructing the temporary intrafamily dwelling unit must be such as to portray and retain the character of the principal dwelling so as to preserve the land values in the neighborhood. Factors to consider include, but are not limited to, the number and location of entrances, exterior facade materials, pitch of the roof, and the number of driveways.

The proposed expansion represents a significant addition to the existing structure. The addition will bring the height of the existing garage to the level of the home's existing second story. The roof pitch of the proposed structure matches the existing attached structure where the expansion will be constructed. Architectural plans appear to show the new structure with siding similar to the existing. The plans are unclear if the addition includes a new driveway to Colonial Drive or if it will expand the existing driveway. Staff has concerns regarding the impact of the addition to any existing trees along Goodsoe Road.

H. The temporary intrafamily dwelling unit must share common utility metering with the dwelling for water and electric services unless preexisting separate metering legally exists.

The applicant has been made aware of this provision. No separate services currently exist from the principal dwelling.

I. Buildings currently nonconforming as per lot coverage may be utilized for a temporary intrafamily dwelling unit as long as the proposed dwelling unit would not increase nonconformity with regard to lot coverage.

Not applicable. The existing and proposed building coverage will be under the 20% maximum allowed.

J. The "minimum land area per dwelling unit" requirement of each zoning district does not apply to a temporary intrafamily dwelling unit.

Not applicable.

K. The applicant must demonstrate that there is adequate wastewater disposal capacity for the temporary intrafamily dwelling unit.

Prior to permit issuance, the applicant must obtain certification of adequate wastewater disposal from the Town Sewer Department.

L. The temporary intrafamily dwelling unit must not be used for transient lodging nor may the availability of such dwelling unit be advertised.

The applicant is aware of this restriction.

M. The temporary intrafamily dwelling unit must not be used to yield a financial gain.

The applicant is aware of this restriction.

Using the standards and criteria found in 16.6.6 and 16.8.21 of the LUDC, Staff recommends **APPROVAL WITH CONDITIONS** of the Special Exception Use for a Temporary Intrafamily Dwelling Unit, with the following conditions (per 16.8.21.3):

1. Applicant shall amend plans to show a hallway connection through the existing garage to the proposed addition staircase, or to change the existing garage to living space, per building code.
2. The applicant must annually submit a signed and dated certification by January 15 of each year to both the Code Enforcement Officer and the Board of Appeals that the temporary intrafamily dwelling unit is occupied by either a: Person(s) related by blood or marriage within the sixth degree to an occupant of the property; Personal care provider(s) to an occupant of the property; Personal care receiver(s) from an occupant of the property; or Person(s) with a demonstrably familial type relationship to an occupant of the property. Failure to submit such an annual certification constitutes the expiration of any approval of the temporary intrafamily dwelling unit. Within 45 days of an expiration of the approval, the use of property must be converted to its original dwelling status or another conforming permanent use.
3. Upon a permanent vacancy of the temporary intrafamily dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.
4. Reapplication to the BOA for the temporary intrafamily dwelling unit upon a change in ownership of the property.

5. Joint signature of submitted floor plans by the applicant and a representative of the BOA signifying the approved design of the temporary intrafamily dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.

6. Prior to the issuance of a certificate of occupancy, the property owner must submit a recorded copy of deed restrictions specifying Conditions 1, 2, and 3 above to the Code Enforcement Officer.