

**Town of Kittery Maine
 Town Planning Board Meeting
 April 14, 2016**

43 Thaxter Lane – Shoreland Development Plan Review

Action: Accept or deny application; Approve or deny plan. Owner/Applicant William Kules requests consideration for plans to construct a single family dwelling on a vacant parcel located at 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) Shoreland Overlay (OZ-SH-250’) and Resource Protection (OZ-RP) Zones. Agent is Thomas Harmon, Civil Consultants.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
NO	Sketch Plan		NA
YES	Determination of Completeness		4/14/2016
NO	Site Walk	At the Board's discretion	
NO	Public Hearing	At the Board's discretion	
Yes	Final Plan Review and Decision		Feasible for 4/14/2016

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 ¼: 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.

Background

Planning Board review of this project is required by 16.10.3.2 Other Development Review because it is located in the Shoreland Overlay and Resource Protection Zones. The parcel is a nonconforming vacant lot and does not meet minimum lot size for the Residential – Rural Conservation (R-RLC) zone.

The proposed development is a single-family dwelling located outside of the 100-foot buffer from the upland edge of a coastal wetland. The development previously received approval from the Zoning Board of Appeals on May 22, 2007, however construction did not commence within the allotted period and the approval expired 12/31/2008.

Staff Review

1. The property shares co-ownership with the applicant, William Kules and Julia Washburn, holding 10% interest, and Anne Marsh, holding 90% interest. Staff will seek guidance from the Town attorney as to the need and scope of Anne Marsh in the application process.
2. Single-family dwelling units are special exemption uses in the SH-OZ and OZ-RP zones. The Board will need to consider granting a special exemption request for the use. The

proposed dwelling unit does not encroach on any front or side yard setbacks, and is outside of the 100-foot required waterbody and wetland setback.

3. The parcel does not meet the minimum land area per dwelling unit standard for the R-RLC zone. However, the lot was recorded with the York County Registry of Deeds prior to July 13, 1977 and is therefore permitted to be built upon, consistent with the zone's permitted uses, provided all yard dimensions and other requirements are met per Title 16.7.3.5.9 *Nonconforming Lots of Record*.
4. The proposed development requires 8,560 square feet of tree clearing, 26.9% of the total lot area. Title 16.9.2.2.D permits tree clearing in the Shoreland Overlay Zone, not to exceed 25% of the lot area or 10,000 square feet, whichever is greater, including land previously cleared. The existing parcel is entirely vegetated, with no previous clearing. The proposed clearing conforms to zone standards.
5. The maximum building coverage for the R-RLC zone is 6%. The proposed development has a building coverage of 5.2%.
6. The maximum devegetated area for the Shoreland Overlay Zone is 20%. The proposed development results in a devegetated area of 9.95%.
7. Plan note 12 illustrates non-vegetated area (gravel driveway) but does not clearly state the lot's total proposed devegetated area. Staff estimated the above percentile by adding the proposed building coverage and non-vegetated area square footage. The applicant's agent should certify there is no additional proposed impervious surfaces, to ensure accuracy.
8. Included with the shoreland development application is a subsurface wastewater disposal system application dated 2/12/2008. This information should be recertified and resubmitted prior to approval.
9. The flood hazard zone is located on the northern edge of the property. The proposed development is outside of this zone. The flood hazard zone should be indicated on the final plan.
10. The wetland delineation was prepared in 2004. Applicant has not submitted any updates to verify no changes to the wetland boundaries have occurred. Wetland delineation should be recertified prior to approval.
11. Included in the 2007 approval was a request to avoid heavy work between April 1st and August 1st to protect the nesting habitat of birds. Staff is seeking input from Natural Resources Conservation Service as to whether this recommendation remains relevant and if there are any additional recommendations for this approval.
12. Plan note 8 states "Thaxter Lane is a gravel road approximately 10 feet in width and appears to be a private way". Thaxter Lane is not a public street.

Staff recommends the following revisions to the final plan:

1. Include Shoreland Overlay and Resource Protection Zone standards with plan note 4
2. Remove “appears” from plan note 8, indicate Thaxter Lane is not a public street.
3. Indicate total proposed devegetated area percentile to plan note 12
4. Depict the flood hazard zone on plan
5. Resubmit HHE-200 application with any applicable updates

Recommendations

With the recommended revisions, the application appears to be complete and meets the standards of Title 16. Staff recommends the Board accept the application (suggested motion below)

Move to accept the Shoreland Development Plan application dated March 24, 2016 from William Kules for 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential Rural Conservation, Shoreland Overlay and Resource Protection Zones...

The Board should determine whether a public hearing or site walk is warranted (suggested motion A provided below). Considering the proximity to the Rachel Carson public land and that the property is in the Resource Protection Zone, and requires a special exemption, a public hearing is probably warranted.

If the Board finds a public hearing or site walk is not warranted, the Board may move to approve with conditions (suggested motion B provided below) and proceed to reading and voting on the Findings of Fact.

A.) Move to schedule a site walk and public hearing for the Shoreland Development Plan application dated March 24, 2016 from William Kules for 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential Rural Conservation, Shoreland Overlay and Resource Protection Zones.

B.) Move to approve with conditions the Shoreland Development Plan application dated March 24, 2016 from William Kules for 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential Rural Conservation, Shoreland Overlay and Resource Protection Zones, upon the review and voting, in the affirmative, on the Findings of Fact.

<After an affirmative vote, proceed to reading and voting on Findings of Fact>

Kittery Planning Board

UNAPPROVED

**Findings of Fact
 For 43 Thaxter Lane
 Shoreland Development Plan Review**

WHEREAS: William Kules requests consideration for plans to construct a single family dwelling on a vacant parcel located at 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) Shoreland Overlay (OZ-SH-250’) and Resource Protections (OZ-RP) Zones, hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 4/14/2016}

Shoreland Development Plan Review	4/14/2016
Approval	4/14/2016

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”): {as noted in the plan review notes prepared for 4/14/2016}

1. Shoreland Development Plan Application, received 3/24/2016
2. Shoreland Development Plan, Civil Consultants dated 3/23/2016
3. Subsurface Wastewater Disposal System Application, dated 2/12/2008
4. Warranty Deed, received 3/24/2016
5. Zoning Board of Appeals Minutes, dated 5/22/2007
6. Roofline Drip Edge Filter Detail, Civil Consultants, dated 3/23/2016
7. Floor and Building plans, Anne Whitney Architect, dated 3/17/2016
8. Aerial Photo, Civil Consultants, dated 3/23/2016

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

16.3.2.17.D Shoreland Overlay Zone
<i>1.d 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>
<u>Findings:</u> The proposed development includes a devegetated area of 9.95% of the lot.
<u>Conclusion:</u> 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

A. Except as otherwise provided in this Article, a nonconforming conditions must not be permitted to become more nonconforming

Finding: The lot does not meet the minimum lot size, or minimum land area per dwelling unit for the Residential – Rural Conservation zone. The lot is a legal nonconforming lot of record, and is therefore permits a dwelling unit provided all other space and dimensional standards are met for the property. The development does not create or increase any nonconformity on the lot.

Conclusion: The requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. 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 Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more conforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2. See 16.6.6.1 and its reference to 16.6.6.2 below.

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above] must use the following criteria as the basis of a decision:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. 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;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

The Board must also give consideration to the factors listed in 16.6.6.2.

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:

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

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 (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: This requirement appears to be met

Vote: ___ in favor ___ against ___ abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The development includes the 1,000 gallon low profile tank and leach field. A septic application has been submitted with the application.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

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

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.

Vote: ___ in favor ___ against ___ abstaining

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

Finding: Shore cover is not adversely impacted

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

6. Protect archaeological and historic resources;

Finding: There does not appear to be any resources impacted.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;

Finding: The property is not located in the Commercial Fisheries / Maritime Use Zone.

Conclusion: This requirement is not applicable.

Vote: ___ in favor ___ against ___ abstaining

8. Avoid problems associated with floodplain development and use;

Finding: A flood zone is located to the rear of the property. No structures or other development is proposed in the flood zone.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

9. Is in conformance with the provisions of this code;

Finding: The proposed development complies with the zoning and design/performance standards of Title 16.

Conclusion: This requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

10. Be recorded with the York county Registry of Deeds.

Finding: A plan suitable for recording has been prepared.

Conclusion: As stated in the Notices to Applicant contained herein, shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: ___ in favor ___ against ___ abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of Owner/applicant William Kules for plans to construct a single family dwelling on a vacant parcel located at 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SH-250') Zones and subject to any conditions or waivers, as follows:

Owner/Applicant William Kules for plans to construct a single family dwelling on a vacant parcel located at 43 Thaxter Lane (Tax Map 64 Lot 11A) in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SH-250') Zones. Agent is Thomas Harmon, Civil Consultants.

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. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. No trees are to be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing trees must be in place prior to construction.
5. All Notices to Applicant contained herein (Findings of Fact dated 4/14/2016).

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

6. 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 presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote of ___ in favor ___ against ___ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON April 14, 2016

Ann Grinnell, 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 mylar.
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 (1) mylar copy 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 mylar 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.

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.



**CIVIL
CONSULTANTS**

Engineers

Planners

Surveyors

P.O. Box 100

293 Main Street

South Berwick

Maine

03908

207-384-2550

March 24, 2016

Mr. Christopher DiMatteo, Town Planner
Town of Kittery
200 Rogers Road
Kittery ME 03904

Re: Kules, 43 Taxter Lane, Tax Map 64 Lot 11A

Dear Mr. DiMatteo:

Enclosed is an application with supporting information. The package includes:

- Shoreland Development Plan Application
- 18 x 24 Site Plan
- 11 x 17 Google Earth photo
- Kittery Tax Map 64
- HHE 200 by Kenneth Gardner
- Current property deed
- October 5, 2007, ZBA extension
- Portion of May 22, 2007, Zoning Board of Appeals Minutes
- 8 ½ x 11 Drip edge filter detail
- 8 ½ x 11 Building Plans
- Check for \$200.00

Very truly yours,
CIVIL CONSULTANTS

Thomas W. Harmon, PE
Principal

Enclosures



SHORELAND DEVELOPMENT PLAN APPLICATION

TOWN OF KITTERY MAINE

200 Rogers Road, Kittery, Maine 03904
 PHONE: (207) 475-1323 FAX: (207) 439-6806
www.kittery.org

MAP _____ LOT _____
DATE: _____
FEE: <u>\$200.00</u>
Asa*: _____

PROPERTY DESCRIPTION	Physical Address	43 Taxter Lane, Kittery		
	Base Zone	RC	Overlay Zone(s)	Shoreland Waterbody/Wetland Protection Area (OZ-SL-250)
PROPERTY OWNER'S INFORMATION (print clearly)	Name	William M. Kules		Mailing Address same
	Phone	301-755-7982		
	Fax			
	Email	wmk@takomasoftware.com		
AGENT INFORMATION (print clearly)	Name	Thomas W. Harmon, PE		Name of Business CIVIL CONSULTANTS
	Phone	207-384-2550		Mailing Address 293 Main Street PO Box 100 South Berwick, ME 03908
	Fax	207-384-2112		
	Email	tharmon@civcon.com		
APPLICANT INFORMATION (print clearly)	Name			Mailing Address 20 Hickory Avenue Takoma Park, MC 20912
	Phone	301-755-7982		
	Email	wmk@takomasoftware.com		
PROJECT DESCRIPTION	Existing Use(s): Vacant Property. Property had a ZBA approval which expired December 31, 2008, due to construction non-commencement.			
ADDITIONAL SUBMITTAL INFORMATION	Proposed Use(s) (describe in detail): House. See attached plans.			

PROJECT DESCRIPTION	Please describe any construction constraints (wetlands, shoreland overlay zone, flood plain, non-conformance, etc.)
	Setback to water-body, see attached plan.

I certify I have provided, to the best of my knowledge, information requested for this application that is true and correct and I will not deviate from the Plan submitted without notifying the Planning and Development Department of any changes.

Applicant's Signature:		Owner's Signature:	
Date:		Date:	

**Applicant Service Accounts: Fees to pay other direct costs necessary to complete the application process, not including application fees. Title 3, Chapter 3.3.*

Minimum Plan Submission Requirements

- 15 Copies of this Application Form, all supporting documents and the Development Plan and Vicinity Map 12 plan copies may be half size (11" x 17") and 3 must be full size (24" x 36").

Shoreland Development Plan format and content:

- A) Paper Size no less than 11" x 17" or greater than 24" x 36"
- B) Plan Scale
 - Under 10 acres: no greater than 1" = 30'
 - 10+ acres : 1" = 50'
- C) Title block:
 - Title: Shoreland and Development Plan
 - Applicant's name and address
 - Name of preparer of plans with professional information
 - Parcel's Kittery tax map identification (map – lot) in bottom right hand corner
 - Vicinity Map or aerial photo showing geographic features 5,000 feet around the site.**
- D) Signature Block:
 - Area of signature by Planning Board Chair and Date of Planning Board Approval

Development Plan must include the following existing and proposed information:

<p>Existing</p> <ul style="list-style-type: none"> <input type="checkbox"/> Land Use Zones and boundaries <input type="checkbox"/> Topographic map (optional) <input type="checkbox"/> Wetlands & Flood plains <input type="checkbox"/> Water bodies and water courses <input type="checkbox"/> Parcel area <input type="checkbox"/> Lot dimensions <input type="checkbox"/> Utilities (Sewer/septic, water, electric, phone) <input type="checkbox"/> Streets, Driveways and rights-of-way <input type="checkbox"/> Structures <input type="checkbox"/> Distance from structure to water body and property lines <input type="checkbox"/> Floor area, volume, devegetated area, and building coverage 	<p>Proposed: (Plan must show the lightened existing topography under the proposed project plan for comparison)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Recreation areas and open space <input type="checkbox"/> Setback lines and building envelopes <input type="checkbox"/> Lot dimensions <input type="checkbox"/> Utilities (Sewer/septic, water, electric, phone) <input type="checkbox"/> Streets, driveways, and rights-of-way <input type="checkbox"/> Structures <input type="checkbox"/> Floor area, volume, devegetated area, and building coverage <p>Distance to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Nearest Driveways and intersections <input type="checkbox"/> Nearest fire hydrant <input type="checkbox"/> Nearest significant water body; ocean, wetland, stream
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RECEIVED

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Dept. Health & Human Services
Division of Health Engineering, 10 SHS
(207) 287-5822 Fax: (207) 287-3165

PROPERTY LOCATION		>> CAUTION: PERMIT REQUIRED - ATTACH IN SPACE BELOW <<	
City, Town, or Plantation	<u>Kittery</u>	<i>CIVIL CONSULTANTS</i>	
Street or Road	<u>#43 Thaxter Lane</u>		
Subdivision, Lot #			

OWNER/APPLICANT INFORMATION	
Name (last, first, MI)	<u>9/o Civil Consultants</u> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Applicant
Mailing Address of Owner/Applicant	<u>PO Box 100 So Berwick Me 03908</u>
Daytime Tel. #	

<p>The Subsurface Wastewater Disposal System shall not be installed until a Permit is attached HERE by the Local Plumbing Inspector. The Permit shall authorize the owner or installer to install the disposal system in accordance with this application and the Maine Subsurface Wastewater Disposal Rules.</p>	
Municipal Tax Map # _____	Lot # _____

OWNER OR APPLICANT STATEMENT		CAUTION: INSPECTION REQUIRED	
I state and acknowledge that the information submitted is correct to the best of my knowledge and understand that any falsification is reason for the Department and/or Local Plumbing Inspector to deny a Permit.		I have inspected the installation authorized above and found it to be in compliance with the Subsurface Wastewater Disposal Rules Application.	
Signature of Owner or Applicant _____	Date _____	Local Plumbing Inspector Signature _____	(1st) date approved _____

PERMIT INFORMATION			
TYPE OF APPLICATION <input checked="" type="checkbox"/> 1. First Time System <input type="checkbox"/> 2. Replacement System Type replaced: _____ Year installed: _____ <input type="checkbox"/> 3. Expanded System <input type="checkbox"/> a. Minor Expansion <input type="checkbox"/> b. Major Expansion <input type="checkbox"/> 4. Experimental System <input type="checkbox"/> 5. Seasonal Conversion	THIS APPLICATION REQUIRES <input checked="" type="checkbox"/> 1. No Rule Variance <input type="checkbox"/> 2. First Time System Variance <input type="checkbox"/> a. Local Plumbing Inspector Approval <input type="checkbox"/> b. State & Local Plumbing Inspector Approval <input type="checkbox"/> 3. Replacement System Variance <input type="checkbox"/> a. Local Plumbing Inspector Approval <input type="checkbox"/> b. State & Local Plumbing Inspector Approval <input type="checkbox"/> 4. Minimum Lot Size Variance <input type="checkbox"/> 5. Seasonal Conversion Permit	DISPOSAL SYSTEM COMPONENTS <input checked="" type="checkbox"/> 1. Complete Non-engineered System <input type="checkbox"/> 2. Primitive System (graywater & alt. toilet) <input type="checkbox"/> 3. Alternative Toilet, specify: _____ <input type="checkbox"/> 4. Non-engineered Treatment Tank (only) <input type="checkbox"/> 5. Holding Tank, _____ gallons <input type="checkbox"/> 6. Non-engineered Disposal Field (only) <input type="checkbox"/> 7. Separated Laundry System <input type="checkbox"/> 8. Complete Engineered System (2000 gpd or more) <input type="checkbox"/> 9. Engineered Treatment Tank (only) <input type="checkbox"/> 10. Engineered Disposal Field (only) <input checked="" type="checkbox"/> 11. Pre-treatment, specify: <u>Oxy Pro 1000 gal</u> <input type="checkbox"/> 12. Miscellaneous Components	DISPOSAL SYSTEM TO SERVE <input type="checkbox"/> 1. Single Family Dwelling Unit, No. of Bedrooms: <u>3</u> <input type="checkbox"/> 2. Multiple Family Dwelling, No. of Units: _____ <input type="checkbox"/> 3. Other: _____ (specify) Current Use <input type="checkbox"/> Seasonal <input checked="" type="checkbox"/> Year Round <input type="checkbox"/> Undeveloped
SIZE OF PROPERTY <u>≈ 1/2</u> <input type="checkbox"/> SQ. FT. <input type="checkbox"/> ACRES	SHORELAND ZONING <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	TYPE OF WATER SUPPLY <input checked="" type="checkbox"/> 1. Drilled Well <input type="checkbox"/> 2. Dug Well <input type="checkbox"/> 3. Private <input type="checkbox"/> 4. Public <input type="checkbox"/> 5. Other	

DESIGN DETAILS (SYSTEM LAYOUT SHOWN ON PAGE 3)			
TREATMENT TANK <input checked="" type="checkbox"/> 1. Concrete <input type="checkbox"/> a. Regular <input checked="" type="checkbox"/> b. Low Profile <input type="checkbox"/> 2. Plastic <input type="checkbox"/> 3. Other: _____ CAPACITY: <u>1000 GAL.</u>	DISPOSAL FIELD TYPE & SIZE <input type="checkbox"/> 1. Stone Bed <input type="checkbox"/> 2. Stone Trench <input checked="" type="checkbox"/> 3. Proprietary Device <u>concrete chambers</u> <input checked="" type="checkbox"/> a. cluster array <input type="checkbox"/> c. Linear <input checked="" type="checkbox"/> b. regular load <input type="checkbox"/> d. H-20 load <input type="checkbox"/> 4. Other: _____ SIZE: <u>256</u> <input checked="" type="checkbox"/> sq. ft. <input type="checkbox"/> lin. ft.	GARBAGE DISPOSAL UNIT <input checked="" type="checkbox"/> 1. No <input type="checkbox"/> 2. Yes <input type="checkbox"/> 3. Maybe If Yes or Maybe, specify one below: <input type="checkbox"/> a. multi-compartment tank <input type="checkbox"/> b. ___ tanks in series <input type="checkbox"/> c. increase in tank capacity <input type="checkbox"/> d. Filter on Tank Outlet	DESIGN FLOW <u>270</u> gallons per day BASED ON: <input type="checkbox"/> 1. Table 501.1 (dwelling unit(s)) <input type="checkbox"/> 2. Table 501.2 (other facilities) SHOW CALCULATIONS for other facilities
SOIL DATA & DESIGN CLASS PROFILE <u>2</u> CONDITION <u>AIII</u> DESIGN <u>1</u> at Observation Hole # <u>2</u> Depth <u>20</u> of Most Limiting Soil Factor	DISPOSAL FIELD SIZING <input type="checkbox"/> 1. Small—2.0 sq. ft. / gpd <input type="checkbox"/> 2. Medium—2.6 sq. ft. / gpd <input checked="" type="checkbox"/> 3. Medium—Large 3.3 sq. ft. / gpd <input type="checkbox"/> 4. Large—4.1 sq. ft. / gpd <input type="checkbox"/> 5. Extra Large—5.0 sq. ft. / gpd	EFFLUENT/EJECTOR PUMP <input checked="" type="checkbox"/> 1. Not Required <input type="checkbox"/> 2. May Be Required <input type="checkbox"/> 3. Required Specify only for engineered systems: DOSE: _____ gallons	<input type="checkbox"/> 3. Section 503.0 (meter readings) ATTACH WATER METER DATA LATITUDE AND LONGITUDE at center of disposal area Lat. <u>43</u> d <u>05</u> m <u>696</u> s Lon. <u>070</u> d <u>39</u> m <u>448</u> s if g.p.s, state margin of error: _____

SITE EVALUATOR STATEMENT			
I certify that on <u>2-12-08</u> (date) I completed a site evaluation on this property and state that the data reported are accurate and that the proposed system is in compliance with the State of Maine Subsurface Wastewater Disposal Rules (10- 144 <u>144</u> CMR 241).			
<u><i>Kenneth Gardner</i></u> Site Evaluator Signature	<u>73</u> SE #	<u>2-12-08</u> Date	<u><i>Kenneth Gardner</i></u> E-mail Address
<u>Kenneth Gardner</u> Site Evaluator Name Printed	<u>207-637-2260</u> Telephone Number	<u>FEB 22 2008</u> Date	<u>CIVIL CONSULTANTS</u> E-mail Address

Note: Changes to or deviations from the design should be confirmed with the Site Evaluator.

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Department of Human Services
Division of Health Engineering, Station 10
(207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation

Kittery

Street, Road, Subdivision

43 Thaxter Ln

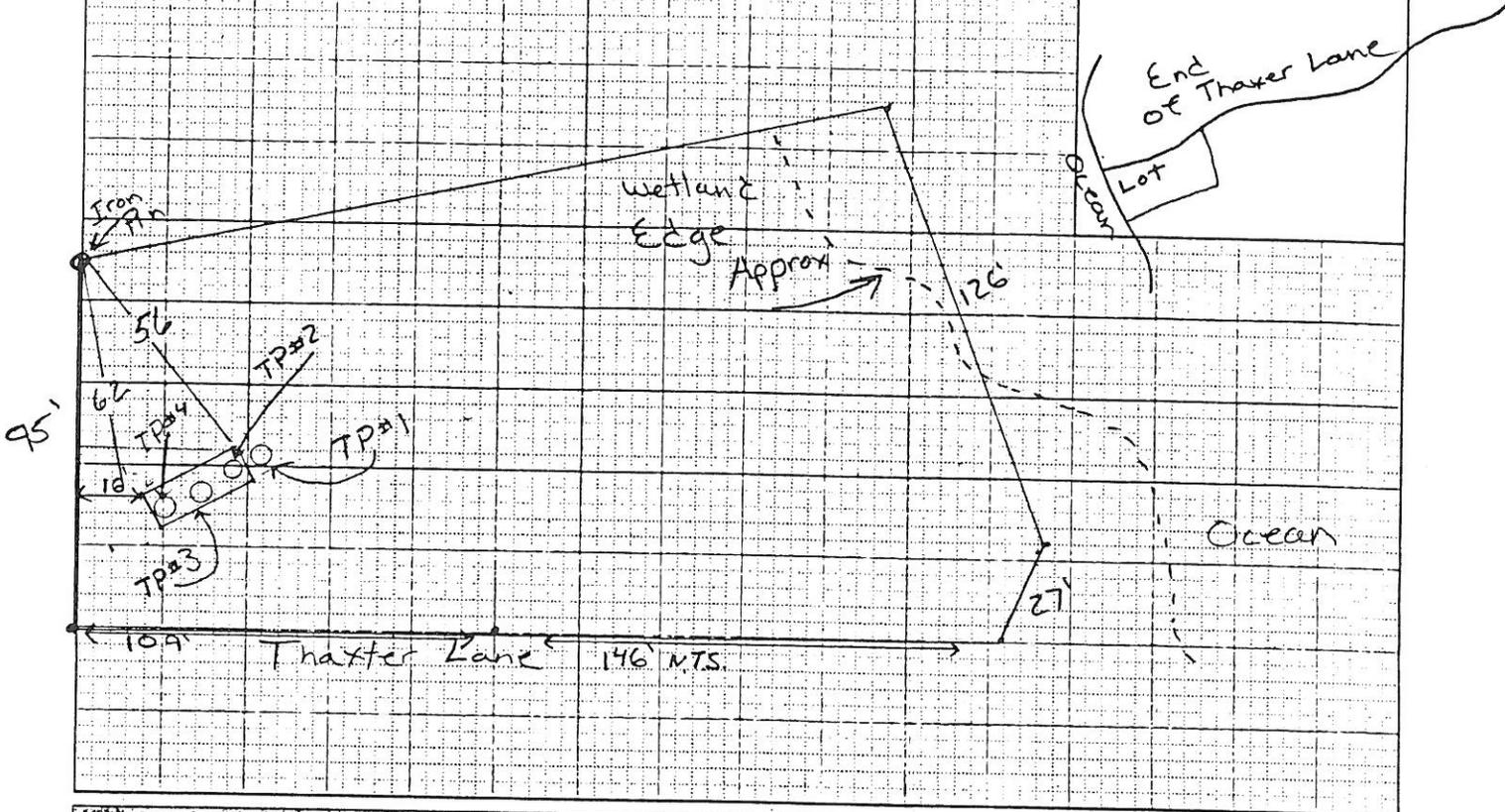
Owner or Applicant Name

c/o Civil Consultants

SITE PLAN

Scale: 1" = 50 ft.

SITE LOCATION MAP
(Attach map from Maine Atlas for First Time System Variance)



SOIL PROFILE DESCRIPTION AND CLASSIFICATION

(Locations of Observation Holes Shown Above)

Observation Hole # 3 Test Pit Boring

2 Depth of organic horizon above mineral soil

Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling
0				
6	Fine	friable		
12	Sandy loam		Dark yellow	
18			Brown	None
24				
30				
36				
42	Bedrock			
48				

Soil Profile 2 Classification AIII Slope 2-3 Limiting Factor 36
Condition Percent Depth

Groundwater
 Restrictive Layer
 Bedrock

Observation Hole # 4 Test Pit Boring

2 Depth of organic horizon above mineral soil

Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling
0				
6	Fine		Dark	
12	Sandy loam	Friable	yellow	
18			Brown	None
24				
30				
36				
42				
48	Bedrock			

Soil Profile 2 Classification AIII Slope 2-3 Limiting Factor 45
Condition Percent Depth

Groundwater
 Restrictive Layer
 Bedrock

Samuel J. Lander
Site Evaluator Signature

SE # 73 Date 2-12-08

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION Maine Department of Human Services
Division of Health Engineering, Station 10
(207) 287-5672 Fax: (207) 287-3165

Town, City, Plantation: Kittery Street, Road, Subdivision: 43 Thaxter Ln Owner or Applicant Name: 9/0 Civil Consultants

SITE PLAN Scale: 1" = _____ ft.

SITE LOCATION MAP
(Attach map from Maine Atlas for First Time System Variance)

SOIL PROFILE DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)

Observation Hole # 1 Test Pit Boring

2 Depth of organic horizon above mineral soil

Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling
0				
6	Fine Sandy loam	Friable	Dark yellow	
12			Brown	
18				none
24				
30				
36				
42	Bedrock			
48				

Soil Profile: <u>2</u>	Classification Condition: <u>AIII</u>	Slope Percent: <u>2-3</u>	Limiting Factor Depth: <u>36</u>	<input type="checkbox"/> Groundwater
				<input type="checkbox"/> Restrictive Layer
				<input checked="" type="checkbox"/> Bedrock

Observation Hole # 2 Test Pit Boring

2 Depth of organic horizon above mineral soil

Depth below mineral soil surface (inches)	Texture	Consistency	Color	Mottling
0				
6	Fine Sandy loam	Friable	Dark yellow	
12			Brown	
18				none
24	Bedrock			
30				
36				
42				
48				

Soil Profile: <u>2</u>	Classification Condition: <u>AIII</u>	Slope Percent: <u>2-3</u>	Limiting Factor Depth: <u>20</u>	<input type="checkbox"/> Groundwater
				<input type="checkbox"/> Restrictive Layer
				<input checked="" type="checkbox"/> Bedrock

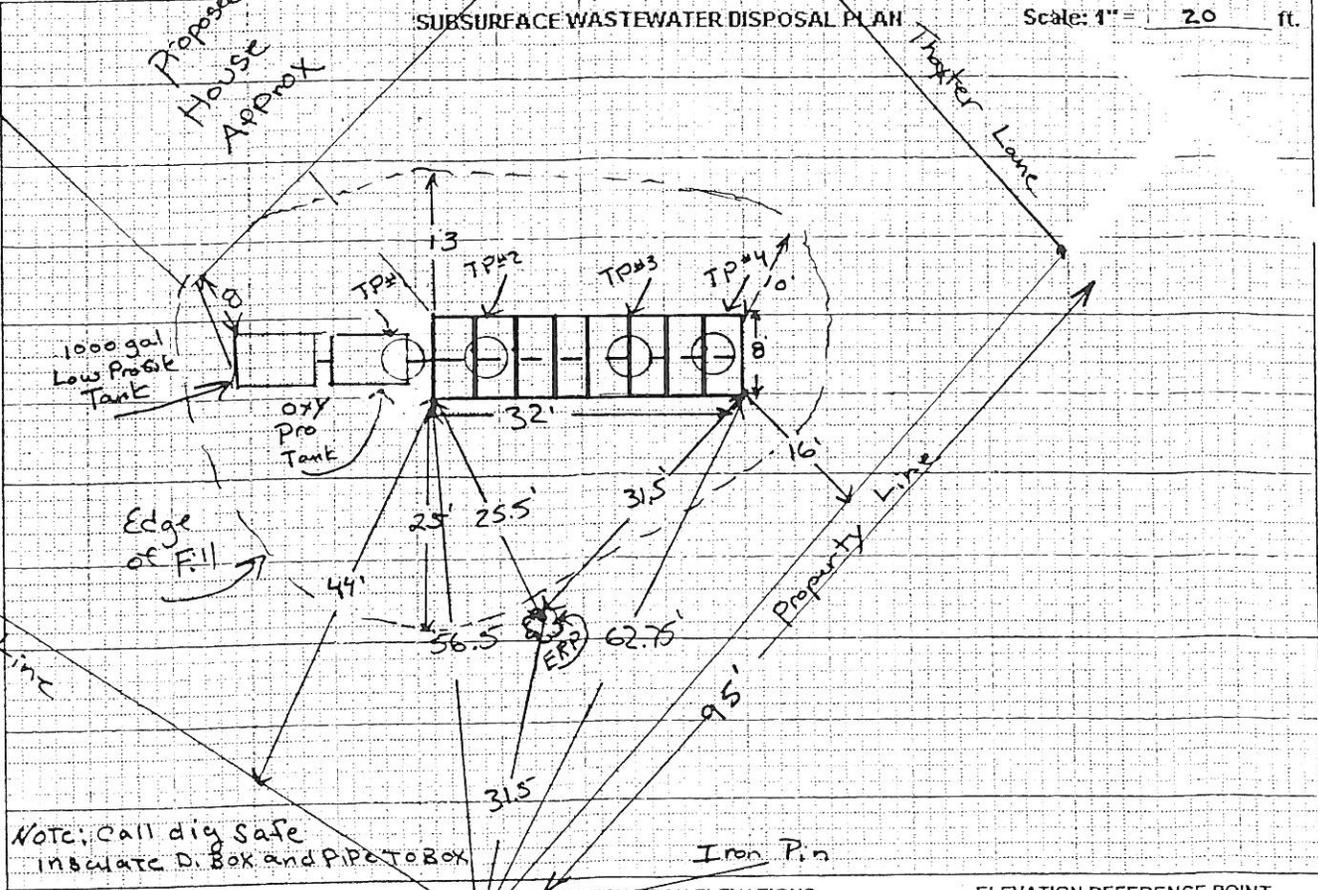
James J. Laiden
Site Evaluator Signature

SE # 23 Date 2-12-08

SUBSURFACE WASTEWATER DISPOSAL SYSTEM APPLICATION

Maine Department of Human Services
Division of Health Engineering, Station 10
(207) 287-5672 Fax: (207) 287-3165

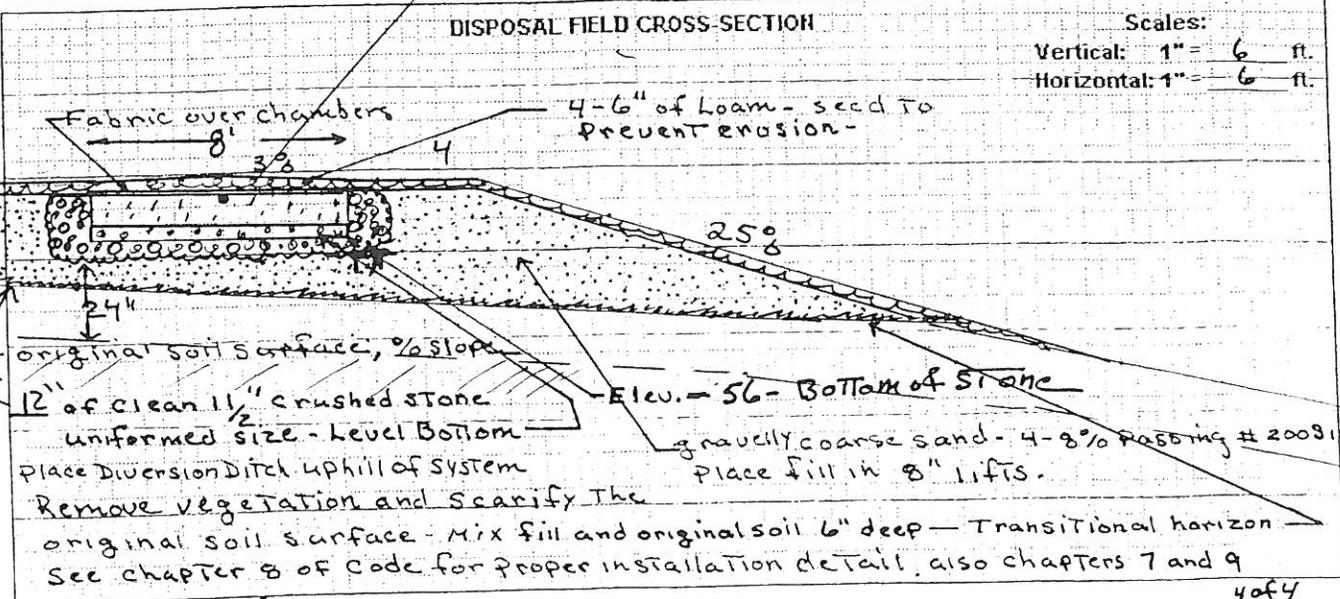
Town, City, Plantation Kittery	Street, Road, Subdivision 43 Thaxter Lane	Owner or Applicant Name C/O Civil Consultants
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Note: Call dig safe
insulate D. Box and Pipe to Box

BACKFILL REQUIREMENTS		CONSTRUCTION ELEVATIONS	
Depth of Backfill (upslope)	36"	Finished Grade Elevation	-25'
Depth of Backfill (downslope)	48"	Top of Distribution Pipe or Proprietary Device	-31'
DEPTHS AT CROSS-SECTION (shown below)		Bottom of Disposal Field	-44'

ELEVATION REFERENCE POINT
Location & Description: **6" Oak with a nail 48" above ground**
Reference Elevation is: 0.0' or:



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that I, *Louisa Davis Cogswell*, of Brookline, Massachusetts, for consideration paid, hereby grant to *Anne L. Marsh*, whose mailing address is 3312 Gallows Road, Falls Church, VA 22042, a ninety percent (90%) interest in common and undivided, and to *William M. Kules and Julia Washburn*, whose mailing address is 20 Hickory Avenue, Takoma Park, MD 20912, as joint tenants, a ten percent (10%) interest in common and undivided, with WARRANTY COVENANTS, in and to the premises situated in the Town of Kittery Point, County of York and State of Maine, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE.

IN WITNESS WHEREOF, Louisa Davis Cogswell, has hereunto set her hand and seal this 13 day of June, 2007.

MAINE R.E. TRANSFER TAX PAID

Patricia A. Tyler
Witness

Louisa Davis Cogswell
Louisa Davis Cogswell

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK SS.

June 13, 2007

Then personally appeared the above-named Louisa Davis Cogswell, and acknowledged the foregoing instrument to be her free act and deed.

Before me,

Barbara J. Matarazzo
Notary Public/~~Attorney at Law~~
Barbara J. Matarazzo

SEAL

SEAL

Exhibit A

All the property owned by Grantor, Louisa Davis Cogswell, conveyed to her by deed of Rosamond Thaxter dated July 20, 1965 and recorded in the York County Registry of Deeds Book 1670, Page 493, the verbatim description of which is as follows:

“Commencing at a concrete hub at the southwesterly corner of the within described parcel, adjoining the northwesterly sideline of a certain proposed thirty foot right of way and running thence north $39^{\circ} 16'$ west by and along other land of the grantor herein a distance of ninety five and twenty five hundredths feet (95.25) to another concrete hub; thence turning and running north thirty eight degrees thirty nine minutes east by and along other land of the grantor a distance of two hundred fifteen and three hundredths feet (215.03) to another concrete hub adjoining land of the Brave Boat Harbor Association; thence turning and running south $66^{\circ} 19'$ east by and along land of said association a distance of one hundred twenty six and forty seven hundredths feet (126.47) to a drill mark in a stone in the bed of an old stone wall; thence running south $67^{\circ} 43'$ east by and along land of said association a distance of twenty one and ninety seven one hundredths feet (21.97) to another concrete hub adjoining the northwesterly sideline of the right of way aforesaid; thence turning and running along said right of way aforesaid; thence turning and running along said right of way south $19^{\circ} 55'$ west a distance of twenty seven and fifty four hundredths feet (27.54) to another concrete hub; thence continuing by and along said right of way south $47^{\circ} 55'$ west a distance of one hundred forty six and thirty four hundredths feet (146.34) to another concrete hub; thence continuing by and along said right of way south $57^{\circ} 34'$ west a distance of One hundred eight and twenty nine hundredths feet (108.29) to the concrete hub and point of beginning.

Meaning and intending hereby to convey that portion of the grantor's land as is designated on a certain plan prepared by Albert Moulton, O.E. dated June 28, 1965, reference being made to said plan for further particulars of description.

Together with the right in common with others to use the existing roadway and the proposed thirty foot road right of way as described on said plan and the right in common with others to use private rights of way leading to said last mentioned road, for access the within described parcel by foot or vehicle from the Town Road on Cutts Island.

The grantees by accepting this deed covenants for there self, their heirs and assigns forever, that in the event she or they shall wish to sell or transfer these premises at any time hereafter, she or they shall first offer the same for sale to the adjoining landowners; and their covenants that this limitation shall run with the land and be binding upon herself, their heirs and assigns forever.”

Meaning and intending hereby to convey the same premises conveyed by said Deed from Rosamond Thaxter to Louisa Davis Cogswell dated July 20, 1965 recorded in the York County Registry of Deeds Book 1670, Page 493.

END OF DOCUMENT


JENSEN BAIRD GARDNER & HENRY
11 Main Street, Suite 4
Kennebunk, ME 04043

William M. Kules
20 Hickory Avenue
Takoma Park, MD 20912

October 5, 2007

Heather Ross, Code Enforcement Officer
Town of Kittery
200 Rogers Road
Kittery, ME 03904

Dear Ms. Ross:

JD OCT 5 2007

I am writing to request an extension of time to begin building at 43 Thaxter Lane. Our original application was approved at the May 22 meeting of the ZBA. We need additional time to finalize the site plan, prepare the building plans and contract with a builder with good environmental credentials. We anticipate building the shed over the winter and spring, with the septic and house next summer.

Ward Feurt, Refuge Manager of the Rachel Carson National Wildlife Refuge, has asked us to avoid major work between April 1 and August 1 because that is the primary bird nesting season. We would like to honor that request, by starting the foundation and septic work in early August 2008. Therefore, we are requesting an extension through December 2008 for completion.

Thank you for your consideration in this matter. If you have any questions, I can be reached at (301) 755-7982 or wmk@takomasoftware.com.

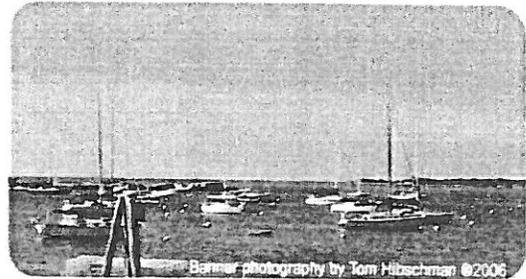
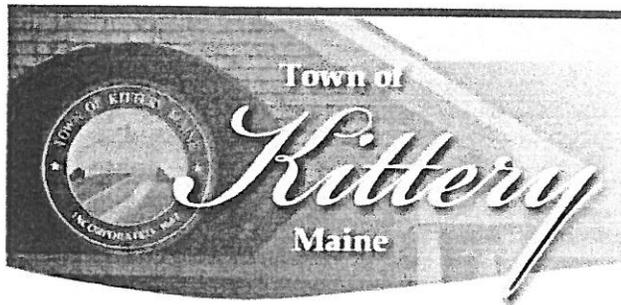
Sincerely,


William M. Kules

Granted an extension till

Dec. 31, 2008


10/9/07

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APPROVED

TOWN OF KITTERY BOARD OF APPEALS

May 22, 2007

Council Chamber

CALL TO ORDER

Chairman LaMarca called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT

Brett Costa, Vern Gardner, Herb Kingsbury, Craig Wilson, Sarah Brown, Secretary and Michael LaMarca, Chairman

ALSO PRESENT

CEO Heather Ross, Recorder Lisa Goms

Chairman LaMarca introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance. The Chair then read the Notice of Hearings.

PUBLIC HEARINGS

1. Derek Swenson requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060B (Page 256), Title 16, Section 32, Subsection 490N2 (Page 388) and Title 16, Section 32, Subsection 490K2 (Page 380) of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to build a 5'6"x7' entry way deck. Located at 2 Paul Street, Map 8, Lot 26, Kittery, in the Urban Residential Zone.
2. William Kales, Juba Washburn and Anne Marsh for Louisa Cogswell requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490 (Page 285), of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to build a house, driveway, and related structures. Located at 43 Thaxter Lane, Kittery Point, Map 64, Lot 11A in the Resource Protection Zone.
3. Gary Beers for Stephen A. Hynes, Trustee of the Real Property Trust Agreement, requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730D (Page 421) of the Kittery Land Use and Development Code Zoning Ordinance in order to locate and relocate replacement mobile home at Site #98 using grandfathered yard definitions and existing setbacks. Located at 6 Cuts Road, Kittery, Map 60, Lot 21, Site #98 in the Mixed Use Zone.

1. Derek Swenson requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060B (Page 256), Title 16, Section 32, Subsection 490N2 (Page 388) and Title 16, Section 32, Subsection 490K2 (Page 380) of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to build a 5'6"x7' entry way deck. Located at 2 Paul Street, Map 8, Lot 26, Kittery, in the Urban Residential Zone.

The Chair then recognizes Derek Swenson.

Mr. Swenson approached the podium and stated at the January 9, 2007, ZBA meeting I was granted approval to rebuild a previously existing 3'x12' deck as part of the front entry to my house. This is a request seeking permission to change the approved 3'x12' deck to a 5'6"x7' deck. During that same meeting, I was also granted permission to continue renovations set forth by the original application and subsequent building permit issued in March 2006. This included a gable dormer that had already been built prior to the stop work order that was issued in November 2006. This gable dormer overhangs the front entry by 5'1" and is 7' wide. In order to match this dimension I am seeking to change the size of the entry deck. This is only a concern because my property is considered a Shoreland Zone. Changing the size of the deck will not impact any surrounding vegetation or wetlands. Although the existing setbacks of the house are already non-conforming, this change will only effect the front setback by only 2 1/2'.

The Chair announced for the record that Brett Costa had arrived.

Chairman LaMarca asked if there was anyone present who would like to speak in favor of, opposed to, or about the application in any way. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported: This is a non-conforming lot, with a non-conforming structures located in the Urban Residential and Shoreland Zones. The Urban Residential Zone requires a 30' front property line setback and the Shoreland Zone requires 100' front setback for structures. Mr. Swenson is proposing to construct a 5'6"x7' front porch entry. The proposed entry would be approximately 12'1" from the front property line where a 30' setback is required and the proposed entry would be approximately 80' from the edge of the wetland where a 100' setback is required. If you remember correctly, we did not have any prior documentation on the size of the front porch that was there before, but we do have photos here this time. It doesn't appear to be any larger or going any closer to the front property line than what had existed.

Sarah Brown asked the applicant to explain what was the main difference and why he needed to do that. Mr. Swenson responded that the issue arose because of miscommunication between himself and the builder. I would have originally asked for this to be a 5'6"x7' deck because it does match the gable dormer which essentially is the entry way to my house. I would have previously asked for this to be submitted with the original appeal. All we had to go by was the fact that there was an existing deck and there was a dormer and before it was torn down the dimensions were taken as the 3'x12' deck so that was all we could go by. The dormer that had been built since that time is larger, 5'6"x7'.

After some deliberation, the Board was satisfied with Mr. Swenson's proposal.

Ms. Brown, as secretary, read the application as follows: Move the application of Derek Swenson requesting a Miscellaneous Appeal to the terms of Title 16, Section 12, Subsection 060B (Page 256), Title 16, Section 32, Subsection 490N2 (Page 388) and Title 16, Section 32, Subsection 490K2 (Page 380) of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to build a 5'6"x7' entry way deck. Located at 2 Paul Street, Map 8, Lot 26, Kittery, in the Urban Residential Zone. Construction shall be in accordance with the sketch submitted, dated and signed by Derek Swenson and Michael LaMarca, Chairman. A motion to approve was made by Mr. Kingsbury, seconded by Mr. Gardner.

A SHOW OF HANDS RESULTED IN A UNANIMOUS VOTE IN FAVOR. MOTION PASSES 6-0. APPLICATION APPROVED.

Chairman LaMarca informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

FINDINGS OF FACT
Application #1 - Derek Swenson

1. *This appeal involved a nonconforming lot with a nonconforming structure.*
2. *The applicant is looking to build a 5'6"x7' front porch in place of the old porch that was at the structure.*
3. *The new structure would be no closer than to the 100' setback for the wetland and the front yard setback.*

CONCLUSIONS

1. *The Board voted 6-0 in favor based on 16.28.130 that this was a no closer than situation.*

A motion to approve the Findings of Fact, as written, was made by Mr. Wilson, seconded by Mr. Kingsbury, with all in favor.

2. William Kules, Julia Washburn and Anne Marsh for Louisa Cogswell requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490 (Page 285), of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to build a house, driveway, and related structures. Located at 43 Thaxter Lane, Kittery Point, Map 64, Lot 11A in the Resource Protection Zone.

The Chair then recognized William Kules.

Mr. Kules approached the podium and stated that he has been coming to Cutts Island since he was about 5 years old. He has been renting a cottage next door to this piece of property and when he saw it for sale last Fall, it seemed like an opportunity to purchase it and build a small house on that lot. I have talked to the neighbors and showed them what we are thinking of doing. A few of them are here tonight. I have tried to address some of their concerns. I met with Wade Fort of Fish and Wildlife and tried to work with them. Hopefully I can answer any questions.

Chairman LaMarca asked if there was anyone present who would like to speak in favor of the application. The Chair recognized Bruce Reed.

Bruce Reed approached the podium and stated that he was a lawyer in Kennebunk that represented the owner, Louisa Cogswell who is in her mid 30's. She lives in Brookline, Massachusetts and is here on her behalf. We are obviously interested parties, we have a contract with Mr. Kules and would like to see the application go forward. I have dealt with Mr. Kules' attorney in Kennebunk also. Ms. Cogswell has owned the property since well before zoning and it would strike me that she would be entitled to a variance. I am just here to observe and am an interested party.

The Chair then asked is there was anyone else who would like to speak in favor of the application, opposed to, or about the application in any way. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported that this is a vacant, non-conforming lot of record located in the Resource Protection Zone. The Resource Protection district (Page 241) specifies "the applicable approvals and land use standards in the shoreland zoning apply to all proposed uses in the resource protection district". With that in mind we need to go back to the Shoreland Zoning Table (Page 312) 16.32.490 specifies on #15 "One- and two-family residential uses within the Resource Protection Zone are not allowed unless Note #9 is met.

Note #9: No new single-family dwelling are permitted in the RP district except that the Zoning Board of Appeals may approve an application for one single-family dwelling or modular home on an unbuilt upon lot in the RP district if all the following conditions are satisfied:

A. The lot was legally created and recorded as of the date this Shoreland Zoning ordinance is enacted;

The lot was created on August 11, 1965, by deed; there has been no change in deeds or the lot since that time and it does pre-date the Shoreland Zone Ordinance.

B. Demonstration that the proposed single-family dwelling or modular home cannot be located on a portion of the lot located outside the RP district;

The lot is entirely within the RP District.

C. The proposed single-family dwelling or modular home will not be located within one hundred (100) feet, horizontal distance, from the normal high-water line on any river or water body, coastal wetland, or freshwater wetland shown on the official shoreland zoning map.

The structure is shown on the survey proposed to be more than 100' outside of that.

D. Standards for granting a Shoreland Zoning permit in Section 16.32.490(O)(4) are satisfied; and,

The beginning of that paragraph deals with procedures for the

permits and how many days in which they have to be approved or denied. The first section basically goes through that. The second paragraph goes on to say "The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this section. After the submission of a complete application to the appropriate administrative body or agent, an application shall be approved or approved with conditions if it makes a positive finding based on the information presented that the proposed use..." I can read through those if you like, but I would just like to make note that the Board knows that they are there so that they can go through them when it is appropriate.

- E. Proof is submitted to the local plumbing inspector by September 1, 1995, that a subsurface wastewater disposal system can be installed in conformance with the State of Maine subsurface wastewater disposal rules or the value of the land of the lot as assessed by the Town Assessor exceeds thirty thousand dollars (\$30,000).

We do not have record of a subsurface wastewater disposal system having been submitted by that date, but we do have record that the property is valued at more than \$30,000. It is valued at \$201,900.

Chairman LaMarca, addressing CEO Ross, stated that before going into questions from the Board, he just wanted to clarify that there are no boundary issues, wetland issues. There are no issues from the Code Enforcement Office, is that correct? CEO Ross responded, Correct. Chairman LaMarca asked if this was a situation where the applicants are allowed to do this only with the Board's permission. CEO Ross stated, Yes.

Sarah Brown stated that she had a point of order and strongly objected to this appeal being tried as a Miscellaneous; why is this not a variance? This should be a variance.

Brett Costa responded that it was because of where it is, it is allowed under these special rules. Anything created before zoning was enacted will be allowed by these rules. It was a legal lot and was deeded and has not changed.

Chairman LaMarca commented that the Variance is when you have a rule or a particular section that says you cannot, but we're going to let them anyway. Whereas, Miscellaneous comes into play where you are allowed to but only with permission or it's not specifically stated that you cannot do it, but you may if you get permission.

CEO Ross read the following to explain why this appeal can fall under Miscellaneous:

Under the titles and duties of the Zoning Board of Appeals, 16 04 050(B)(2)(c)
Miscellaneous Appeals. To hear and decide those appeals specifically mentioned herein, to permit variations in:
i. Nonconformance as prescribed in Article III of Chapter 16 28, Nonconformance.

If you go to Article III of Chapter 16 28 170 Nonconforming lots of record.

- A. Vacant Lots. A nonconforming lot of record may be built upon provided that all provisions of this title except lot size and frontage can be met. Relaxation of yard or other requirements not involving area or frontage shall be obtained only by Miscellaneous Appeal to the Zoning Board of Appeals.

Mr. Costa stated that because it was a lot of record in 1964 before the rules changed, it falls under this. You could not buy a lot now, deed it and do this. It would have to be deeded before a certain date.

Chairman LaMarca commented that with the exception of area or frontage shall be obtained only by Miscellaneous Appeal doesn't this deal with area. CEO Ross stated that that is what makes it a nonconforming lot. If it is the lot in question, it is a nonconforming lot of record so it can be built only under a Miscellaneous Appeal, but you have the other issue compounding it that it is in the Resource Protection District and has to meet those criteria.

Chairman LaMarca entertained that the Board affirm that the application as submitted is correct and proper, which would be a Miscellaneous Appeal. All those that agree that a Miscellaneous Appeal is correct and the application is proper, please raise your hand; all those who feel it is not, please raise your hand. **VOTE: 5/1 in favor that the application falls under a Miscellaneous Appeal.**

Mr. Kingsbury asked if someone would explain to him where exactly the lot was located. Mr. Kules gave him a complete description of where it was.

Craig Wilson asked the applicant to tell about his conversation with Fish & Wildlife and what their concerns were. Mr. Kules responded that he met with Wade Ford in Wells and showed him the site plan and explained what we wanted to do. They are not thrilled about having something happen there, but Mr. Ford agreed that something was likely to happen at some point whether it was us or someone else. We talked about issues that could impact the refuge, one of the things that came up was the bird nesting season, which is from April to August. They try not to do any major work during that period of time because it would disrupt the birds nesting. If we get a permit, we would try to avoid doing any major work during that time. We talked about impervious surfaces and basically I just explained what I was thinking of doing.

Mr. Wilson added that one of the charges is going to be how we are to protect shore cover and asked Mr. Kules what is going to happen in the shore cover area.

Mr. Kules responded that their intention is very little. We do not intend to build anything there. You will see on the site plan that the Well is in the corner, it is not in the shoreland side. There will be a well in that corner, but we do not intend to build anything or clear anything. We might eradicate some of the poison ivy; we certainly do not intend to take down any trees, very minimal.

Mr. Wilson asked if Mr. Kules would be adverse to a condition that stated that it is essential to be left in its natural state, nuisances may be eliminated, dangerous trees.

Ms. Brown stressed her concern regarding her opinion that there should be no building in the Resource Protection Zone.

Chairman LaMarca stated that correspond was received from Earleean Wells, who is the Chairman of the Kittery Conservation Commission and the letter stated she only had one issue with the size of the impervious driveway parking area. The Chair asked Mr. Kules about the driveway and what it is going to be, asphalt, etc. Mr. Kules stated that his intention was to leave it dirt unless there is a reason not to. The only reason I would think about putting gravel is for the truck path.

Vern Gardner stated that the Board could stipulate that it be a non-pervious surface, dirt, gravel and that the north portion of the property all that is within the coastal wetlands setback area and beyond be left in its natural state.

Chairman LaMarca commented that he liked saying non-pervious surface because then if it gets muddy and wants to put something in there, it would not prevent him from keeping his driveway in a mode that he can use it as long as it stays impervious. CEO Ross stated that the Board would probably want to specify that it remain dirt or be crushed gravel.

Chairman LaMarca had no problem with coming up with wording with the rest of the lot being left in its natural state. There are a lot of rules of what you can and cannot do. So the question is do we have to do that. If we say yes you can build what is on this plan, we are not saying that that eliminates all the other restrictions that are on that zone. Do we have to say that you have to meet all the restrictions? Board members commented that yes, restrictions would have to be spelled out. Mr. Costa stated that just because we are granting them the right to build a house doesn't mean that they don't have to follow the rules for the Shoreland Zone.

Lengthy discussion by the Board continued regarding what should and should not be allowed within the Resource Protection Shoreland Zones with the whole purpose being to keep this lot as natural as possible.

The Board voted on two stipulations: 1. The driveway stays pervious – VOTE 6/0; 2. Include invasive species in the stipulation – VOTE 4/1.1. The second stipulation would read: The coastal wetland setback area would remain undisturbed with the exception of diseased, invasive species, dangerous trees and up to a 5' wide meandering pathway.

Ms. Brown expressed her opposition to this appeal in regards to the fact that this was a Resource Protection Zone and building should not be allowed and should not be permitted.

Mr. Kingsbury brought the Board's attention to 16.32.490(O)(4)(a-i) which reads as follows:

After the submission of a complete application to the appropriate administrative body or agent, an application shall be approved or approved with conditions if it makes a positive finding based on the information presented that the proposed use:

- a. Will maintain safe and healthful conditions;
- b. Will not result in water pollution, erosion or sedimentation to surface waters;
- c. Will adequately provide for the disposal of all wastewater;
- d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f. Will protect archaeological and historic resources as designated in the comprehensive plan;
- g. Will not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
- h. Will avoid problems associated with floodplain development and use; and
- i. Is in conformance with the provisions of Subsection N of this section, Land Use Standards.

Mr. Kingsbury suggested that the Board go through these one at a time just as what would be done with a Special Exception. Board members concurred.

VOTE: a – 6/0; b – 5/1; c – 6/0; d – 3/2/1; e – 5/1; f – 6/0; g – 6/0; h – 6/0; and i – 5/1

Ms. Brown, as secretary, read the application as follows: Move the application of William Kules, Julia Washburn and Anne Marsh for Louisa Cogswell requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 490 (Page 285), of the Kittery Land Use and Development Code Zoning Ordinance in order to build a house, driveway, and related structures. Located at 45 Thaxter Lane, Kittery Point, Map 64, Lot 11A in the Resource Protection Zone.

A SHOW OF HANDS RESULTED IN A 4-2 VOTE IN FAVOR. MOTION PASSES 4-2. APPLICATION APPROVED.

Chairman LaMarea informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court, and they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

FINDINGS OF FACT

Application #2 – William Kules

1. This appeal involved a vacant, nonconforming lot in the Resource Protection Zone.
2. The applicant is looking to build a new home and structures. A 24'x40' house with an 8'x16' front porch and a 12'x16' screen porch along with an 8'x12' detached utility shed.

CONCLUSIONS

1. The Board, with heavy discussion, approved this application 4-2 based on the Standards in 16.32.490(O)(4)(a-i), as well as Table 16.32.490 with the stipulations that the driveway will remain a pervious surface and that the Coastal Wetland Setback as indicated on the map will remain undisturbed with the exception of disease, invasive species, and dangerous trees and up to a 5' wide meandering pathway would be allowed.

A motion to accept the Findings of Fact, as stated, was made by Mr. Wilson, seconded by Mr. Gardner, with all in favor.

3. Gary Beers for Stephen A. Hynes, Trustee of the Real Property Trust Agreement, requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730D (Page 421) of the Kittery Land Use and Development Code Zoning Ordinance in order to locate and relocate replacement mobile home at Site #98 using grandfathered yard definitions and existing setbacks. Located at 6 Cutts Road, Kittery, Map 60, Lot 21, Site #98 in the Mixed Use Zone.

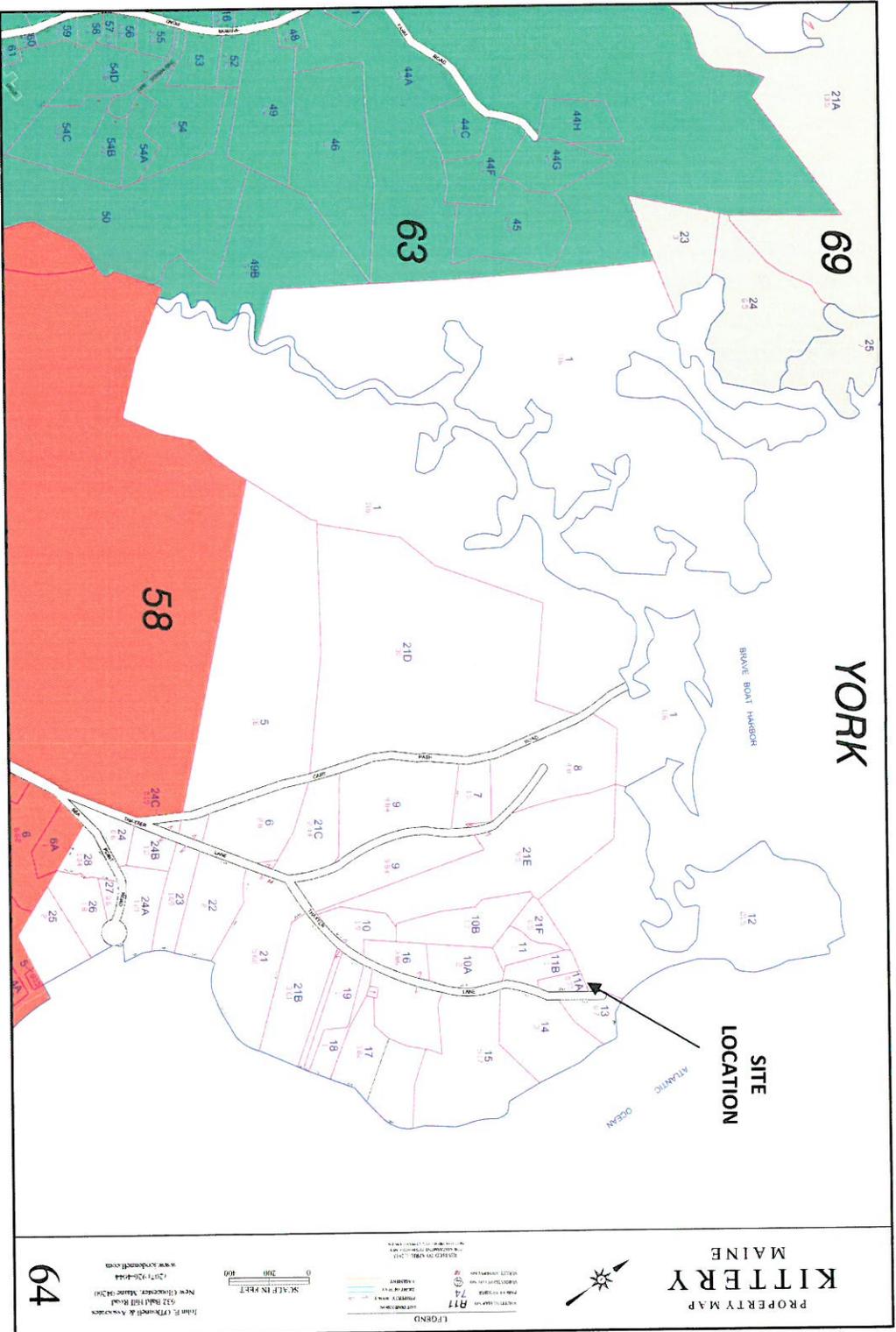
Mr. Beers returned for permission from the Board to replace another mobile home at Yankee Green. Some discussion and explanation of the trailer set up proceeded amongst the Board and Mr. Beers.

Ms. Brown, as secretary, read the application as follows: Move the application of Gary Beers for Stephen A. Hynes, Trustee of the Real Property Trust Agreement, requesting a Miscellaneous Appeal to the terms of Title 16, Section 32, Subsection 730D (Page 421) of the Kittery Land Use and Development Code Zoning Ordinance in order to locate and relocate replacement mobile home at Site #98 using grandfathered yard definitions and existing setbacks. Located at 6 Cutts Road, Kittery, Map 60, Lot 21, Site #98 in the Mixed Use Zone to be approved. Replacement and construction shall be in accordance with the sketch submitted, dated and signed by Gary Beers and Michael LaMarea, Chairman.

A SHOW OF HANDS RESULTED IN A UNANIMOUS VOTE IN FAVOR. MOTION PASSES 6-0. APPLICATION APPROVED.

Chairman LaMarea informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for that, it merely gave the CEO authority to issue such Permit.

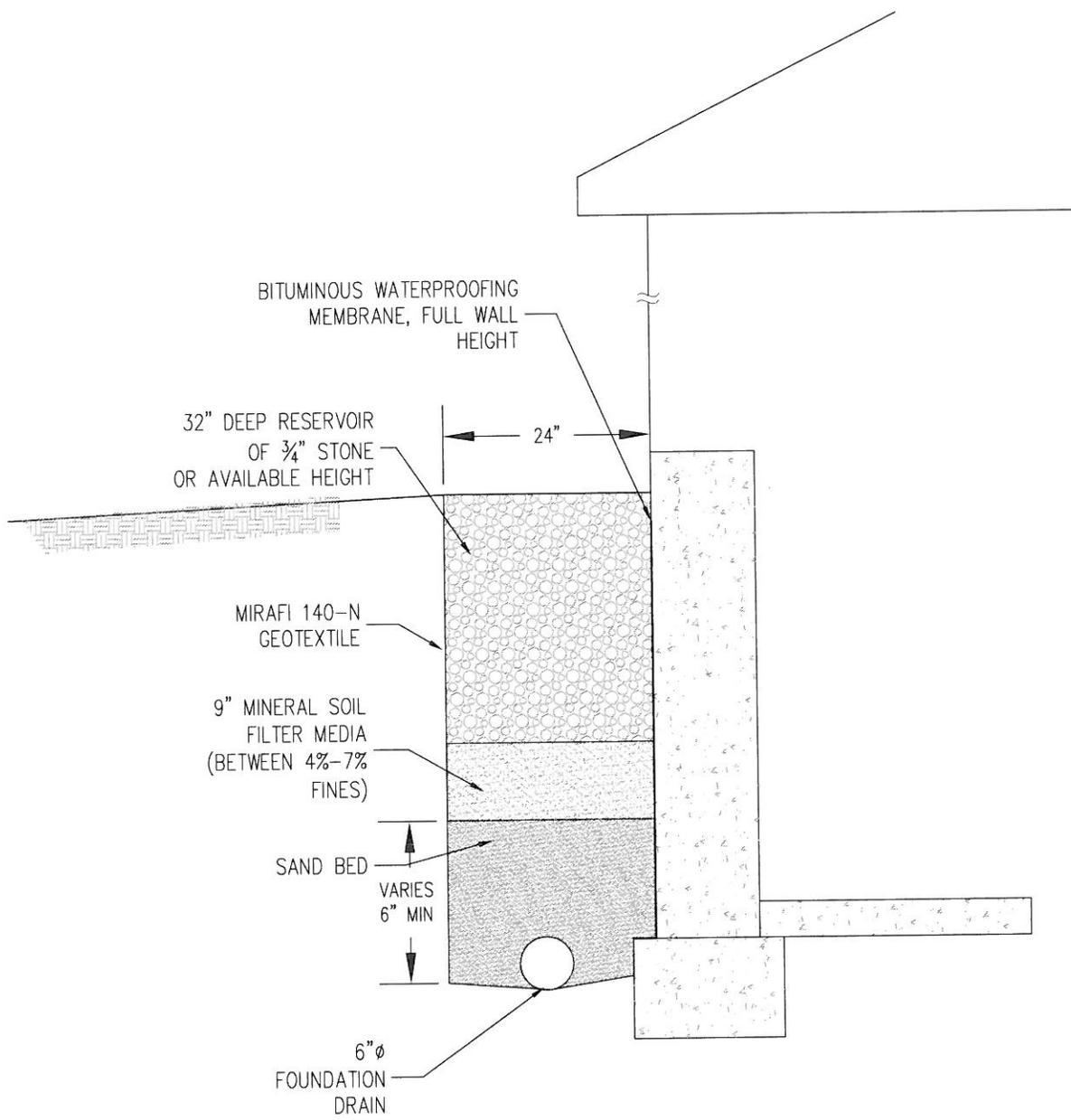


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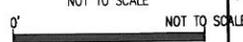


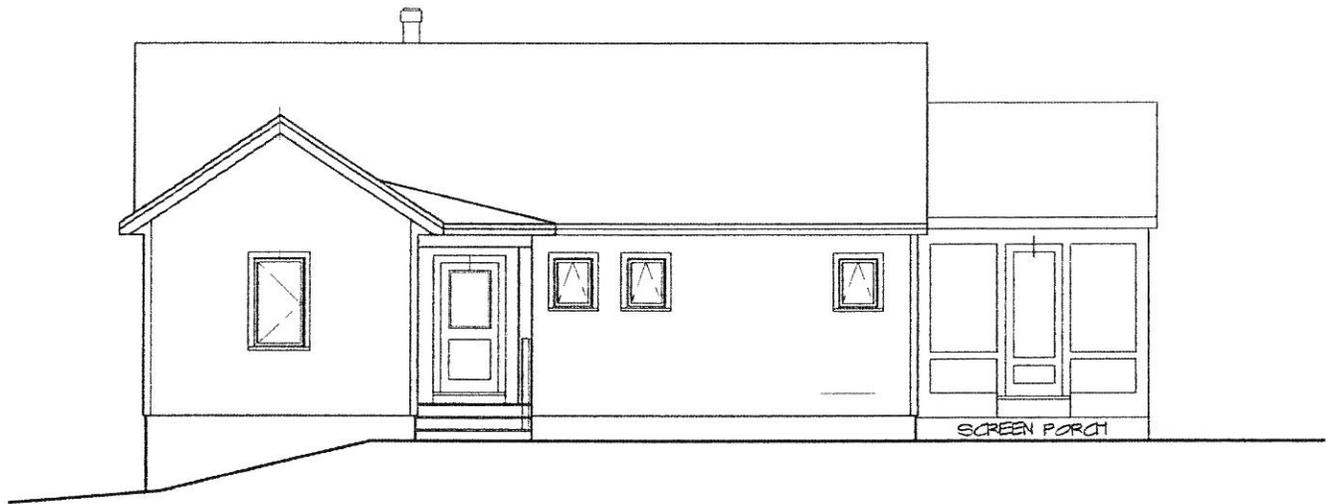
**CIVIL
CONSULTANTS**
P.O. Box 100 South Berwick, Maine 03908 207-384-2550

43 Thaxter Lane



ROOFLINE DRIP EDGE FILTER DETAIL
NOT TO SCALE

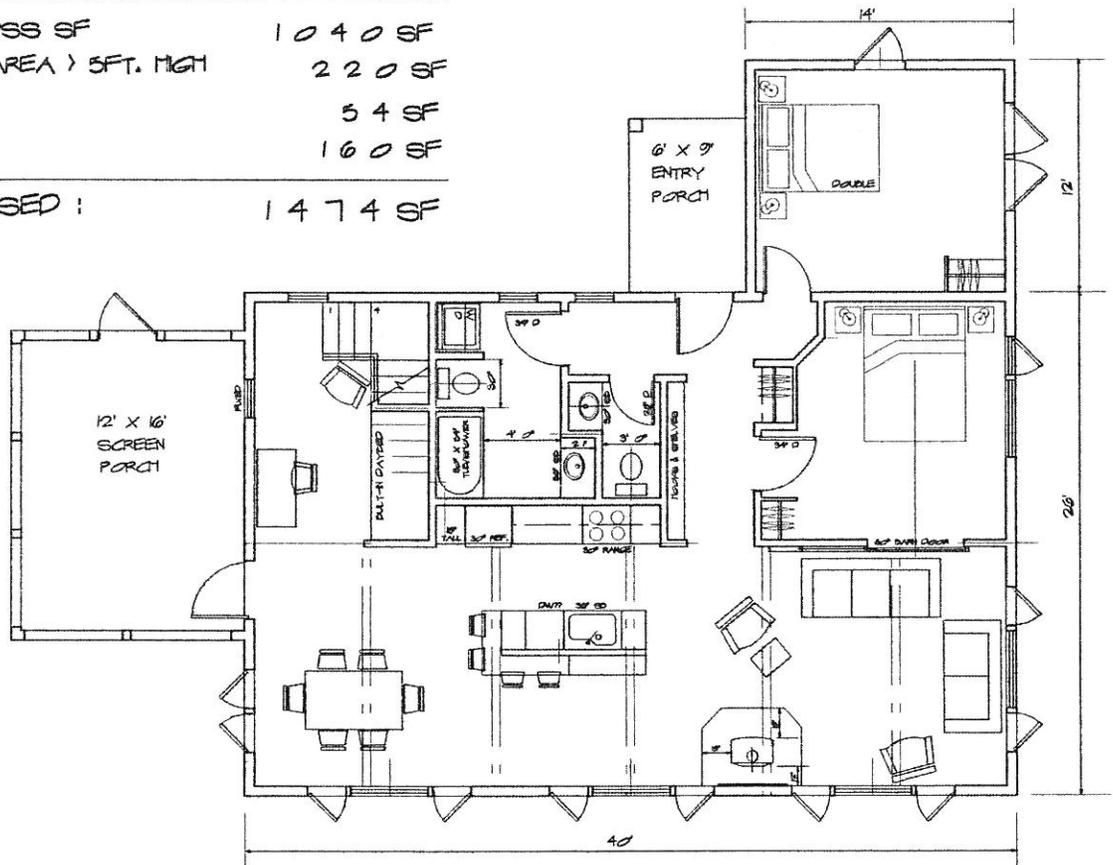
 CIVIL CONSULTANTS Engineers Planners Surveyors P.O. Box 100 South Berwick Maine 03908 207-384-2550 www.civcon.com	ROOFLINE DRIP EDGE FILTER DETAIL TAX MAP 64 LOT 11A 43 THAXTER LANE KITTERY, MAINE	NOT TO SCALE 	PROJECT NO: 04-481.02
	CLIENT ADDRESS: 20 HICKORY AVENUE TAKOMA PARK, MD 20912	PREPARED FOR: WILLIAM KULES DATE: 03/23/2016 DRAWN BY: JAA CHECKED BY: APPROVED BY:	1



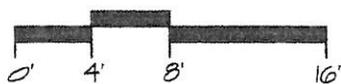

 ENTRY - FRONT ELEVATION
 SCALE: 1" = 10'-0"

PROPOSED BUILDING AREA

1ST FLOOR, GROSS SF	1040 SF
LOFT, FINISHED AREA > 5FT. HIGH	220 SF
ENTRY PORCH	54 SF
SCREEN PORCH	160 SF
TOTAL PROPOSED :	1474 SF

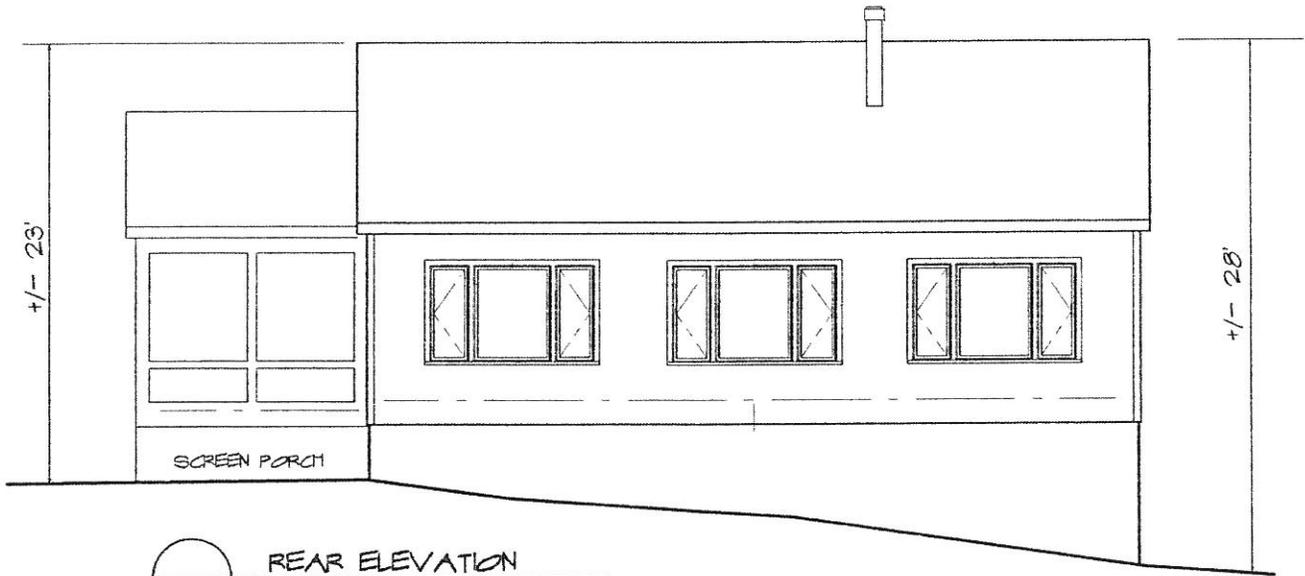



 1ST FLOOR PLAN
 SCALE: 1" = 10'-0"

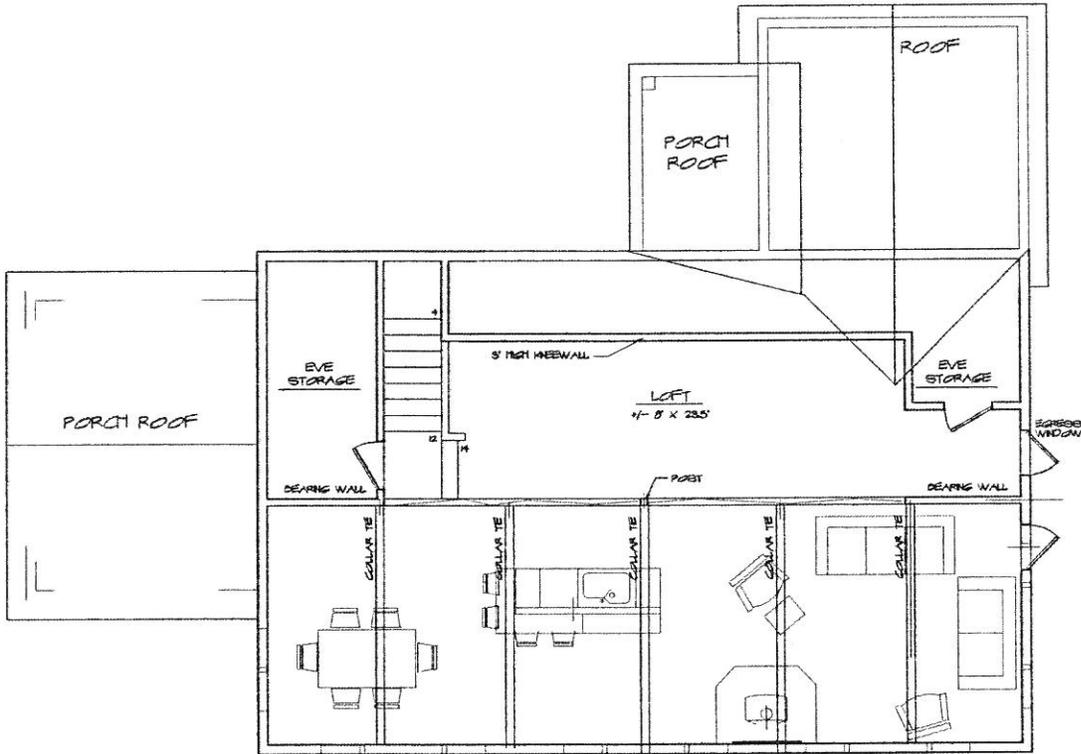


KULES - MARSH COTTAGE
 43 THAXTER LANE, KITTERY POINT, ME

9 Sheafe Street Portsmouth NH 03801 603-427-2632		
ANNE WHITNEY ARCHITECT		
Project:	Date:	
01512	3/17/16	1 OF 3



REAR ELEVATION
SCALE: 1" = 10'-0"

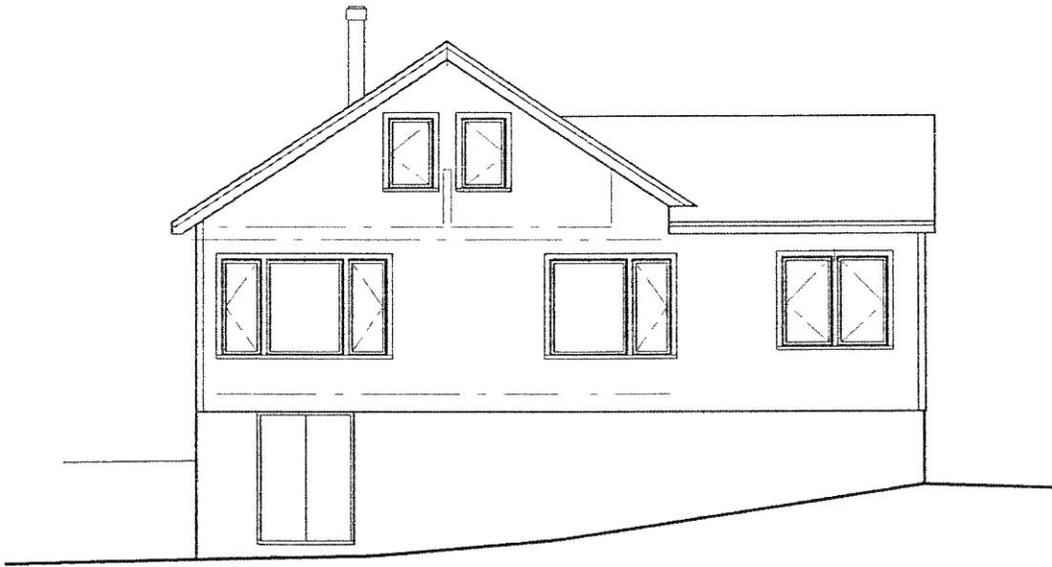


LOFT AND CATHEDRAL CEILING PLAN
SCALE: 1" = 10'-0"

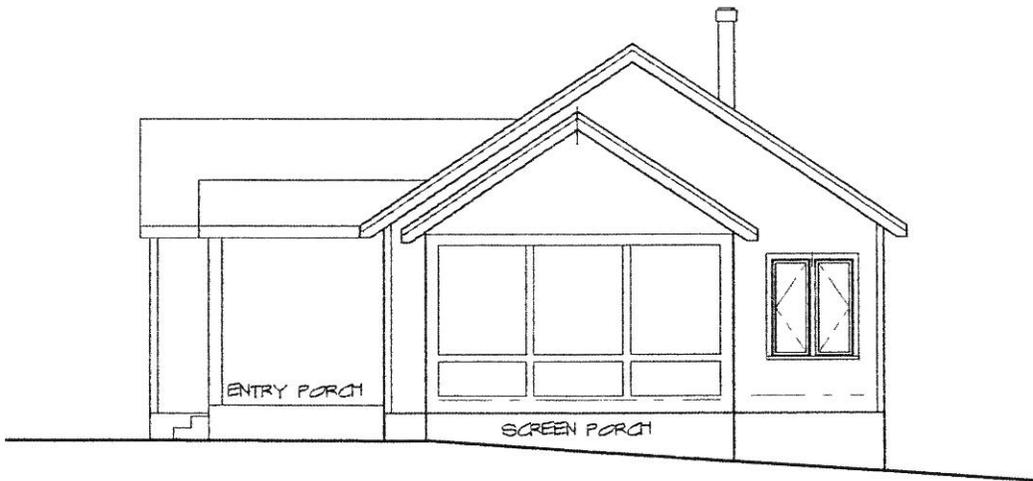


KULES - MARSH COTTAGE
43 THAXTER LANE, KITTERY POINT, ME

9 Sheafe Street Portsmouth NH 03801 603-427-2832			
ANNE WHITNEY ARCHITECT			
Project:	Date:		
#1512	9/17/16	2 OF 3	




 MARSH SIDE ELEVATION
 SCALE : 1" = 10'-0"




 ROAD SIDE ELEVATION
 SCALE : 1" = 10'-0"

KULES - MARSH COTTAGE
 43 THAXTER LANE, KITTERY POINT, ME

9 Sheate Street Portsmouth NH 03801 603-427-2832		
ANNE WHITNEY ARCHITECT		
Project: #1512	Date: 3/17/16	3 OF 3



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NO.	REVISIONS	INT.	DATE
1			

RECORD OWNER:
 ADD OWNER NAME HERE XXXX
 OWNER ADDRESS:
 ADD OWNER ADDRESS HERE

AERIAL PHOTO
 TAX MAP 64 LOT 11A
 43 THAXTER LANE
 KITTERY, MAINE
 PREPARED FOR:
 WILLIAM KULES
 20 HICKORY AVENUE TAKOMA PARK, MD 20912
 CLIENT ADDRESS:

DATE: 03/23/2016
 DRAWN BY: JAA
 CHECKED BY:
 APPROVED BY:

AERIAL PHOTO

PROJECT NO: 04-481.02

C1

SHEET: 1 OF 1

PREPARED FOR:
 PRELIMINARY APPROVAL
 NOT FOR CONSTRUCTION

NOT TO SCALE
 NOT TO SCALE