

**Kittery Planning Board**  
**Findings of Fact**  
**For 32 Pocahontas Road**  
**Shoreland Development Plan Review**

**UNAPPROVED**

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

Hereinafter the "Development" and

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the plan review notes prepared for 5/12/2022

Shoreland Development Plan Review	5/12/2022
Approval	5/12/2022

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"):

1. Shoreland Development Plan Application, received 4/14/2022
2. Site Plan and Existing Conditions Plan of Land, Easterly Surveying, dated 04/04/2022

**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**

<b>16.4.28.E. Shoreland Overlay Zone</b>
<i>(2)(a) 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>Finding:</u> The proposed development does not increase the lot's devegetated area.
<u>Conclusion:</u> The requirement is not applicable.
<b>Vote: ___ in favor _0_ against _0_ abstaining</b>

**Chapter 16.1 GENERAL PROVISIONS**  
**Article VIII General Development Requirements**

<b>16.1.8.C(2)(a) Prohibitions and Allowances</b>
<i>A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i>
<b>Finding:</b> The proposed development does not increase nonconformity of any structure or aspect of the lot.
<b>Conclusion:</b> The requirement appears to be met.
Vote: ___ in favor ___ against <u>0</u> abstaining
<b>16.1.8.C(4) Nonconforming Structures</b>
<b>16.1.8.C(4)(b) Nonconforming structure repair and/or expansion</b>
<b>16.1.C.8.(4)(b)[3](e)[v][A]</b>
<i>For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.</i>
<b>Finding:</b> The property file was reviewed and staff determined that the current footprint of the house (including all accessory structures) have existed since 1986. Thus, the footprint may be enlarged up to 30%. The existing structure's footprint is 1,916 square feet and an enlargement up to 574 square feet would be allowed. The proposed expansion of the accessory structure is 43 square feet, less than what is allowed.
<b>Conclusion:</b> This requirement appears to be met.
Vote: ___ in favor ___ against <u>0</u> abstaining

**Chapter 9 MARITIME AND SHORELAND RELATED DEEVELOPMENT**  
**Article III Planning Board Shoreland Development Review**

<b>16.9.3.F. Findings of Fact</b>
<i>(2) 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:</i>
<i>(a). Maintain safe and healthful conditions;</i>
<b>Finding:</b> The proposed development as represented in the plans and application does not appear to have an adverse impact.
<b>Conclusion:</b> This requirement appears to be met.
Vote: ___ in favor <u>0</u> against <u>0</u> abstaining
<i>(b) Not result in water pollution, erosion or sedimentation to surface waters;</i>

<p><b>Finding:</b> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters.</p> <p><b>Conclusion:</b> This requirement appears to be met</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(c) Adequately provide for the disposal of all wastewater;</i></p> <p><b>Finding:</b> No changes in the disposal of wastewater are a part of the proposed plan.</p> <p><b>Conclusion:</b> This requirement is not applicable.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i></p> <p><b>Finding:</b> The proposed development as represented in the plans and application does not appear to have an adverse impact.</p> <p><b>Conclusion:</b> The requirement appears to be met.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(e) Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p><b>Finding:</b> Shore cover is conserved in accordance with the Code. There are no points of access.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(f) Protect archaeological and historic resources;</i></p> <p><b>Finding:</b> There does not appear to be any resources impacted.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(g) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p><b>Finding:</b> The property is not located in the Commercial Fisheries / Maritime Use Zone and will have no adverse effect on commercial fishing nor maritime activities.</p> <p><b>Conclusion:</b> This requirement is not applicable.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(h) Avoid problems associated with floodplain development and use;</i></p> <p><b>Finding:</b> The proposed construction will not create an adverse impact associated with floodplain management.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p> <p style="text-align: right;"><b>Vote:</b> ___ in favor _0_ against _0_ abstaining</p>
<p><i>(i) Is in conformance with the provisions of this code;</i></p> <p><b>Finding:</b> The proposed expansion is in conformance with the provisions of Title 16.</p>

<b>Conclusion:</b> This requirement appears to be met.
<b>Vote:</b> ___ in favor _0_ against _0_ abstaining
<i>(j) Be recorded with the York County Registry of Deeds.</i>
<b>Finding:</b> A plan suitable for recording has been prepared by Peter L. Agrodnia of North Easterly Surveying.
<b>Conclusion:</b> As stated in the Notices to Applicant contained herein, a Shoreland Development Plan must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
<b>Vote:</b> ___ in favor _0_ against _0_ 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 subject to any conditions or waivers, as follows:

**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 per Title 16.9.3.I.
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. All Notices to Applicant contained herein (Findings of Fact dated 05/26/2022).

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

1. 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 plan.

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

**Vote of** \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON \_\_\_\_\_

\_\_\_\_\_  
Dutch Dunkelberger, Planning Board Chair

**Notices to Applicant:**

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final plan.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) 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 copy of the signed and recorded original must be submitted to the Town Planning Department.

4. An approved plan for expansion of a non-conforming structure must be recorded by the applicant with the York County Registry of Deeds within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any structures on the parcel, the Shoreland Overlay zone and/or the Resource Protection Overlay zone boundary and evidence of approval by the municipal review authority.
5. 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 16.2.12.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.