

**Town of Kittery Maine  
 Town Planning Board Meeting  
 January 28, 2021**

**4 Pepperell Road—Shoreland Development Plan Review**

Action: Accept or deny plan as complete; continue application to a subsequent meeting, schedule site walk and/or public hearing; approve or deny plan: Pursuant to §16.7.3.3.B *Nonconforming structure repair and/or expansion* and §16.10.3.4 *Shoreland Development Review* of the Town of Kittery Land Use and Development Code, the Planning Board shall consider an after-the-fact permit application from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio with an enclosed screened porch and expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued	Not pursued
No	Site Visit	At the Board's discretion	To be determined—PB discretion
Yes	Completeness/Acceptance	Scheduled for the 1/28/21	Ongoing
No	Public Hearing	At the Board's discretion	To be determined—PB discretion
Yes	Plan Approval	May be held at the 1/28/21 meeting	Pending
<p>Applicant: Plan Review Notes reflect comments and recommendations regarding applicability of Town Land Use Development Code, and standard planning and development practices. Only the PB makes final decisions on code compliance and approves, approves with conditions or denies final plans. Prior to the signing of the approved Plan any <b>Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.</b> 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.</p>			

**Project Introduction**

This past spring, the applicant approached the Planning Department seeking approval to expand a deck that overlooks Spruce Creek. A preliminary site plan illustrated a preexisting deck of 40-sf to be expanded by approximately 84-sf. to a total in area at 114-sf. Additionally, the applicant proposed a revegetation expansion of 58-ft to off-set the proposed deck expansion. During the course of the proposal's review, the Planning Department discovered that the existing deck attached to the house was unpermitted by Code Enforcement and presented itself as a safety hazard resulting from the deck being supported by a suspended structure (chain-links). Given the observed code violations, the applicant was compelled to remove the structure. Moreover, the deck was an unpermitted expansion of a legally nonconforming structure, pursuant to §16.7.3.3.B(3)(e)[5](a)<sup>1</sup>. Typically, the matter would have been settled at that point, but the illegal deck had a doorway leading into the house. The absence of any outdoor landing area would have created a more dangerous situation as there is a significant drop in elevation at the point of egress. Understanding this and taken into consideration that the applicant desired more sitting area space at that location, the Planning

<sup>1</sup> Land Use and Development Code, Town of Kittery, §16.7.3.3.B(3)(e)[5][a]: *For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located in the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.*

Department and Code Enforcement sought to work with the applicant to brainstorm various design conceptions that would comply with applicable zoning ordinances for that location. To the south of the proposed area of work is an existing earthen patio area that is elevated slightly and supported by vegetation and some stonework. It was agreed upon by all parties that if something similar was constructed and no structural attachments were to be affixed and attached to the earthen patio area and the dwelling unit, it would be permitted. The idea was to create natural vegetation patio mound whose soils were supported primarily by vegetation and some stone work. At the meeting's conclusion, the applicant was instructed to come up with a plan and submit a building permit application for review.

A building permit application was submitted on June 9, 2020 stating that an 8' x 12' earth and stone patio was to be built with no further described structural attachments thereto. The applicant and Code Enforcement Officers were corresponding intermittently throughout the summer with communication tapering off by early autumn. The application remained dormant thereafter with no final inspection request submitted by the applicant. On November 12, 2020, Code Enforcement observed the construction of a stone retaining wall with an attached screen porch and subsequently filed a Notice of Violation ("NOV") to the applicant. The NOV stated that the attached screened-in structure was outside the scope of the original building permit. The applicant was directed to either remove the screened enclosure, apply for an after-the-fact shoreland development plan with the Planning Board, or appeal the NOV to the Board of Appeals ("BOA")

### **Analysis and Staff Commentary**

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The Shoreland Development Plan application before the Board seeks approval for an after-the-fact permit for a patio enclosed by a retaining wall and screened area. The applicant is requesting a waiver for §16.10.10.1.B(1) to not submit a completed shoreland development site plan, however, a preliminary survey is on file and included in the Board's packets that essentially depicts the existing and proposed conditions.

Considering the waiver request and the information in-hand, the application appears to be complete in the instance the Board were to grant a waiver from §16.10.10.1.B(1). As the Board can discern from the plan that was provided, the lot has a large devegetation rate (44.2%). This rate would not have changed if the proposed earthen patio was constructed in accordance with the parameters of the issued building permit. Nevertheless, the patio as it is currently is constituted may exceed the devegetation rate of (44.2%) by approximately 96-sf as a result of patio having an enclosed screen porch.

The inclusion of the screened enclosure affixed to the patio is in clear violation of §16.7.3.3.B(3)(e)[5](a) as its presence constitutes an expansion of a legally nonconforming structure under the base zone setback towards the high water line. This structure at the minimum should be directed to be removed.

The constitution of the patio needs to be debated by the Board. Specifically, the Board needs to decide if the patio as it is currently constructed satisfies the provisions under §16.3.2.17.D(2)(b)<sup>2</sup>. If it is decided that it does not comply with the aforementioned standard, then the Board should direct the applicant on what would be permissible, if anything at all.

In conclusion, the patio was constructed above the scope of the building permit and what was agreed to by Town staff during their site visit with the applicant. There was a good faith effort to find a solution that would meet the needs of the applicant and the applicable zoning ordinances. Be that as it may, the evidence confirms that there are a few code violations with this application which requires a Planning Board remedy. The NOV gave the applicant the multiple recourses: remove only the screened enclosure in order to satisfy

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<sup>2</sup> Land Use and Development Code, Town of Kittery, §16.3.2.17.D(2)(b), *Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone*

its conditions, seek approval from the Planning Board for what was built, or appeal the NOV to the BOA. Ultimately, the applicant elected to seek approval from the Planning Board for what was built.

### **Planning Board Procedural Steps**

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

1. Plan acceptance: Before the board can move on the application, a vote must occur to accept the plan.
2. Thereafter, the Board should determine if a site visit, public hearing, or both need to occur. If a site walk is necessary, the Board may want to consider scheduling one at their earliest convenience. As regards the public hearing, if desirable, it should be scheduled for February 25, 2021 Planning Board meeting.
3. If a public hearing is not elected to take place, the Board should consider the following:
  - a. Move to continue the application to a subsequent meeting if more time for consideration is required by the Board,
  - b. approve with or without conditions; or
  - c. deny the application

### **Recommended Motions**

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

#### *Motion to continue application*

Move to continue the shoreland development plan application to the February 14, 2021 Planning Board meeting from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio with an enclosed screened porch and expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

#### *Motion to schedule a site walk*

Move to schedule a site walk on \_\_\_\_\_, 2021, for a shoreland development plan application from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio with an enclosed screened porch and expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

#### *Motion to schedule public hearing*

Move to schedule a public hearing on the February 25, 2021 Planning Board meeting for a shoreland development plan application from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio with an enclosed screened porch and expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

#### *Motion to approve with conditions*

Move to approve the shoreland development plan application from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio on legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones with the following conditions:

1. Applicant shall remove the enclosed screen porch;

2. Applicant shall demonstrate to the Code Enforcement Office that no expansion of a nonconforming structure has occurred; and
3. Applicant shall comply with the June 9, 2020 building permit conditions..

*Motion to deny*

Move to deny the shoreland development plan application from owner/applicant Elizabeth Kirschner requesting approval to maintain a patio with an enclosed screened porch and expand a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland Overlay Zone on real property with an address of 4 Pepperell Road, (Tax Map 18, Lot 45-4) located in the Residential-Kittery Point Village (R-KPV) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

**Kittery Planning Board  
 Findings of Fact  
 For 76 Chauncey Creek Road  
 Shoreland Development Plan Review**

**UNAPPROVED  
 M18 L45-4**

**WHEREAS:** Owner/applicant Sarah Bartlett Upton Rollins requests approval to expand a legally nonconforming dwelling unit on a legally nonconforming lot by 440-sf within the base zone setback of the Shoreland Overlay Zone located on real property with an address of 76 Chauncey Creek Road, Tax Map 45, Lot 66, in the Residential-Kittery Point Village (R-KPV) zone and the Shoreland (SL-OZ-250) and Resource Protection (OZ-RP) Overlay Zones.

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued	Not pursued
No	Site Visit	At the Board's discretion	To be determined— PB discretion
Yes	Completeness/Acceptance	Scheduled for the 1/28/21	Ongoing
No	Public Hearing	At the Board's discretion	To be determined— PB discretion
Yes	Plan Approval	May be held at the 1/28/21 meeting	Pending

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

1. Shoreland Development Plan Application, dated 12/22/2020

**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(1)(d)**

**Standard:** *The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:*

*[1] Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use – Badgers Island (MU-BI) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.*

*[2] Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.*

*[3] Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum devegetated area is 50%.*

**Findings:** The proposed shoreland development application depicts a pre-existing devegetation rate of 44.2%, however, the patio with the enclosed screen porch would exceed that devegetation rate.

Accordingly, the applicant shall remove the screened enclosed porch in order to come into compliance with this standard.

**Conclusion:** The standard appears to be unmet until remedial actions are taken.

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

**16.3.2.17.D(2)(b)**

**Standard:** *Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.*

**Findings:** The proposed shoreland development application proposes a patio that is below the 75-ft setback and is made of materials and constructed in a manner that was not permitted under the June 9, 2020 building permit. The applicant shall reconstruct the patio that complies with said building permit.

**Conclusion:** The standard appears to be unmet until remedial actions are taken.

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

**Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**  
**Article III Nonconformance**

**16.7.3.1 Prohibitions and Allowances**

**Standard:** *A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming*

**Finding:** The applicant is proposing an expansion to a legally nonconforming structure that does not comply with the standards within the Article.

**Conclusion:** The requirement appears to be unmet until remedial actions are taken.

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

**16.7.3.3.B(3)(e)[5][a]**

**Standard:** *For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located in the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.*

**Finding:** The applicant is proposing an expansion of the legally nonconforming dwelling unit by 96-sf, below the base zone setback of the Kittery Point Village (R-KPV) zoning district. This is an unpermitted expansion. All proposed expansions of the nonconforming structure shall be deconstructed and removed from the property.

**Conclusion:** The requirement appears to be unmet until remedial actions are taken.

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

**Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW**  
**Article X Shoreland Development Review**

**16.10.10.2 Procedure for Administering Permits**

*D. An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:*

**Standard:** 1. *Maintain safe and healthful conditions;*

**Finding:** The proposed application as represented in the plans and application does not appear to have an adverse impact.

**Conclusion:** This requirement appears to be met.

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

**Standard:** 2. *Not result in water pollution, erosion or sedimentation to surface waters;*

**Finding:** The proposed application appears to be designed in a manner that does not result in an increase of water pollution, erosion, or sedimentation to surface waters

**Conclusion:** This requirement appears to be met.

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

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

**Finding:** The proposed application does not include an increase in the number of bedroom units, thereby not requiring an upgrade to the subsurface wastewater disposal system at this time.

**Conclusion:** This requirement is inapplicable

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

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

**Finding:** The proposed application does not appear to have an adverse impact.

**Conclusion:** This requirement appears to be met.

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

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

**Finding:** The proposed application does not appear to have an adverse impact on shore cover, visual cover and points of access to inland and coastal waters

**Conclusion:** This requirement appears to be met.

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

**Standard:** 6. *Protect archaeological and historic resources;*

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

**Conclusion:** This requirement appears to be met.

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

<p><b>Standard:</b> 7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p><b>Finding:</b> The proposed application does not appear to have an adverse impact on commercial fishing and maritime activities on the commercial/maritime activities district.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining
<p><b>Standard:</b> 8. <i>Avoid problems associated with floodplain development and use;</i></p> <p><b>Finding:</b> Portions of the property are located in the FEMA Flood Zone (AE-100 year). The proposed patio appears to be outside this zone. Accordingly, the proposed expansion does not appear to have an impact on the current floodplain or flood-prone area.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining
<p><b>Standard:</b> 9. <i>Is in conformance with the provisions of this code;</i></p> <p><b>Finding:</b> The proposed development does not comply with the applicable standards of Title 16.</p> <p><b>Conclusion:</b> This requirement appears to be unmet.</p>
<b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining
<p><b>Standard:</b> 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p><b>Finding:</b> the Planning Board waived the requirement for a shoreland development site plan, thus no plan will be recorded at the York County Registry of Deeds.</p> <p><b>Conclusion:</b> This standard appears to be met.</p>
<b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining

**NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

**Waivers:**

1. §16.10.10.1.B(1)

**Conditions of Approval**

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan unless conforming with the provision under §16.10.9.2 and §16.10.9.3.
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. With the exception of the vegetation identified on the plan for removal, no vegetation will be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing vegetation must be in place prior to grading or construction. The rock fill shall not replace existing vegetation.



4. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all onsite work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 1/28/2021).

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

1. Prior to the issuance of Certificate of Occupancy, the applicant shall remove the enclosed screen porch;
2. Prior to the issuance of a Certificate of Occupancy, applicant shall demonstrate to the Code Enforcement Office that no expansion of a nonconforming structure has occurred; and
3. Applicant shall comply with the June 9, 2020 building permit conditions..

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

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

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

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

**Notices to Applicant:**

1. Incorporate any plan revisions on the final plan as required by Planning Board and submit for Staff review prior to presentation of final 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.

**Appeal of Decision:**

1. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

# SHORELAND DEVELOPMENT PLAN APPLICATION



**TOWN OF KITTERY**  
**Planning & Development Department**  
 200 Rogers Road, Kittery, ME 03904  
 Telephone: 207-475-1323 Fax: 207-439-6806

MAP _____ LOT _____
DATE: _____
FEE: \$ 200.00
ASA*: _____

<b>PROPERTY DESCRIPTION</b>	Physical Address	4 Peppercorn Road		
	Base Zone		Overlay Zone (s)	
<b>OWNER INFORMATION</b>	Name	Elizabeth Kirschner		Mailing Address  4 Peppercorn Road Kittery, ME 03905
	Phone	617-872-7624		
	Email	e.kirschner1@gmail.com		
<b>AGENT INFORMATION</b>	Name	"		Company
	Phone			Mailing Address
	Email			
	Fax			
<b>APPLICANT INFORMATION</b>	Name	"		Mailing Address
	Phone			
	Email			

<b>PROJECT DESCRIPTION</b>	<u>Existing Use:</u>	This project has been completed. A property survey was conducted, three town members visited on site and gave permission for me to build a stone patio in the rear, which was then screened in + give a corrugated top of kind to my driveway
	<u>Proposed Use (describe in detail):</u>	was excavated to provide additional gardens. The deck patio's use is simply as a place to view my gorgeous view of Spring Creek. (per) Contract and construction all in which we fully believe was compliant.

<b>PROJECT DESCRIPTION</b>	Please describe any construction constraints (wetlands, shoreland overlay zone, flood plain, non-conformance, etc.)		
	<p><i>Len in a shallow zone hence we built silt socks at the bottom of the patio to prevent leaching into Spice Creek! As a Master Gardener, I also built a stone wall behind my back gardens to prevent erosion. aesthetics + environmental concerns are very important</i></p>		
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.			
<b>Applicant's Signature:</b>	<u><i>Elizabeth Diachen</i></u>	<b>Owner's Signature:</b>	<u><i>Elizabeth Diachen</i></u>
<b>Date:</b>	<u><i>12/23/20</i></u>	<b>Date:</b>	<u><i>12/22/20</i></u>

\* 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 SUBMITTAL REQUIREMENTS	
<input type="checkbox"/>	<b>15 Copies of this Application Form, all supporting documents, and the Development Plan and Vicinity Map</b> <b>12 plan copies may be half-size (11"x17") and 3 must be full-size (24"x36")</b>
<b>Shoreland Development Plan format and content:</b>	
A) Paper Size; no less than 11" X 17" or greater than 24" X 36"	<i>is a post-project review?</i>
B) Plan Scale	
<input type="checkbox"/> Under 10 acres: no greater than 1" = 30'	
<input type="checkbox"/> 10 + acres: 1" = 50'	
C) Title Block	
<input type="checkbox"/> Title: Shoreland Development Plan	
<input type="checkbox"/> Applicant's name and address	
<input type="checkbox"/> Name of preparer of plan with professional information	
<input type="checkbox"/> Parcel's Kittery tax map identification (map - lot) in bottom right corner	
<input type="checkbox"/> Vicinity Map or aerial photo showing geographic features 5,000 feet around the site.	
D) Signature Block	
<input type="checkbox"/> Area for signature by Planning Board Chair and Date of Planning Board Approval	

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

**AN APPLICATION THE TOWN PLANNER DEEMS SUFFICIENTLY LACKING IN CONTENT WILL NOT BE SCHEDULED FOR PLANNING BOARD REVIEW.**

## Expansion/Construction Analysis within the Shoreland Overlay Zone<sup>1</sup> (see Table 16.9)

Size of water body or wetland:  <500 sf    <501 sf-1 acre    >1 acre

Structure distance from water body: \_\_\_\_\_ feet *not going to be 300?*

STRUCTURE	Existing	Proposed	% Increase*	
SF (Area)	sf	sf	%	
CF (Volume)	cf	cf	%	
Construction:	New: <input type="checkbox"/> Demo/Rebuild: <input type="checkbox"/> Maintenance/repair: <input type="checkbox"/>			Value: \$
*Total increase in area and/or volume may not exceed 30% for any new construction since 1/1/1989.				

PARCEL DE-VEGETATION	% Allowed*	Existing SF	Proposed SF	% Proposed*
Lot Size (sf)	%	sf	sf	%
*See underlying zone standards for de-vegetated area percent allowed within a Shoreland Overlay.				

BUILDING COVERAGE	% Allowed*	Existing SF	Proposed SF	% Proposed*
Lot Size (sf)	%	sf	sf	%
*See underlying zone standards for building coverage percent allowed.				

<sup>1</sup>Calculations for area, volume, and de-vegetated areas must be included on the final plan and certified by a State of Maine registered architect, landscape architect, engineer, or land surveyor.

4 Pepperrell Road  
Kittery Point, ME 03905  
December 11, 2020

[e.kirschner1@gmail.com](mailto:e.kirschner1@gmail.com)  
617-872-7634

Dave Evans  
Town of Kittery  
Planning and Development Department  
200 Rogers Road  
Kittery, ME 03904

Dear Dave Evans,

I'm writing in regards to the town's objection to my back patio, per our discussion. From what I understand, it's the screens and corrugated roof that seem to be the problem, neither of which can be considered a "permanent structure."

The patio, of course, is a permanent structure as it was built in accordance to everything we discussed when you and two other town members visited the property last spring.

Constructed of stone and earth, Peter Garland, my builder, even built the silt socks which surround the base such that no water can leach into Spruce Creek. I then added additional plantings to "hold" the soil.

As you know, I ripped out a third of my driveway to create more gardens, hence revegetating as I went along. All this was done, at considerable expense, beginning with the property survey, which was conducted last spring.

If I understand correctly, the issue concerns the permit, which Peter pulled for me as I had trouble accessing the application on-line. I assure you, and the town, that the patio would not have been screened in, nor the corrugated roof added, if we believed we were not in accordance. The reason is obvious: the back of my house is highly visible; nothing can be hid.

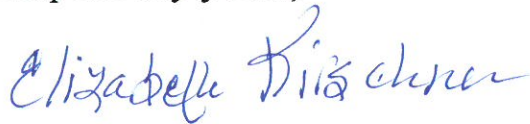
Both Peter and I have a vivid recollection of asking very specific questions regarding the project as it was extremely important to both us that everything be in compliance, hence we acted in good faith and it seems to me that good faith is extremely valuable and necessary, especially in lieu of the ongoing pandemic.

I will, per your recommendation, fill out the application for a post-project Planning Board review. It is my hope that the project will be approved, as is.

The back patio is a modest, but lovely addition to my home, a home I've always wanted to keep "right-sized" and in accordance with its beautiful surroundings.

As I'm now 65, my hope is stay in and care for this property as long as I am able. I love Kittery Point, and as a tax-paying citizen, I would never willfully violate anything that would affect the environment I live in. It's simply too precious, this place and our wonderful community.

Respectfully yours,



Elizabeth Kirschner



Kittery, ME

01/21/2021

**BP-20-133**

**Building Permit**

**Status:** Active

**Date Created:** Jun 09, 2020

**Applicant**

peter Garland  
p90x180@gmail.com  
29 Wentworth St  
Kittery, ME 03904  
2079940662

**Location**

4 PEPPERRELL ROAD  
KITTERY, ME

**Owner:**

KIRSCHNER, ELIZABETH  
4 PEPPERRELL ROAD , null, KITTERY, ME 03905

**Owner Information**

**Are you the owner of the property**

No

**Property Owner Mailing Address**

4 pepperrell rd kittery point maine

**Applicant/Primary Contractor**

**Contractor's Name**

Peter Garland

**Business Name**

--

**License #**

--

**License Expiration Date**

--

**License Type**

--

**Type of Business**

--

**Corporation/Partnership/LLC License #**

--

**Mailing Address**

29 wentworth st

**City**

Kittery

**State**

Me

**Zip Code**

03904

**Preferred Telephone #**

2079940662

**Alternative Phone #**

--

**Email**

p90x180@gmail.com

**Property Information**

**Proposed Distance of Structure to Front Yard Property Line**

60ft

**Proposed Distance of Structure to Side/Rear Yard Property Line**

20ft

**Proposed Distance of Structure to Fresh/Coastal Wetland**

57.2ft

**Disturbing More than 1 CY of earth in the Shoreland or Resource Protection Overlay Zone?**

No

**MDEP Erosion Control Certification #**

--

**Is the property located within a FEMA Floodplain? If so, a FEMA Minor Development application may be required. Please check with Code Enforcement Officer.**

No

**Is the Lot or Existing Structure(s) non-conforming for size, frontage, setbacks or other zoning requirement?**

No

**Project Description**

**Complete description of project, including dimensions of any proposed structures:**

8' x 12' earth and stone patio at the north westernmost corner of the house

**Estimated Project Cost (Do not include the dollar symbol [\$]).**

750

**Property Type**

Residential

**Project Type**

New Construction

**Will this project create one acre or more of disturbed area? If yes, you will be required to file a MDEP Notice of Intent to Comply with the Maine Construction Permit. Excavation will require a Maine Dep certified contractor in erosion control measures.**

No

**Is this project to construct a new dwelling (Single-Family, Duplex, etc.) or Mobile Home Construction?**

No

**Is this project on public sewer or private septage?**

Public Sewer

**Registered Professional Engineer (IF APPLICABLE)**

**Name**

--

**Company Name**

--

**Mailing Address**

--

**Phone #**

--

**Email**

--

**Area of Responsibility**

--

**Registration #**

--

**Expiration Date**

--



**Registered Architect (IF APPLICABLE)**

<b>Name</b>	<b>Company Name</b>
--	--
<b>Mailing Address</b>	<b>Phone #</b>
--	--
<b>Email</b>	<b>Registration #</b>
--	--
<b>Expiration Date</b>	
--	

**Certification**

I certify that the information contained in this application and any related submissions to be true and accurate to the best of my knowledge. I understand that I am responsible for compliance with all applicable Town, State and Federal regulations and that failure to comply may result in the imposition of fines, legal fees, and the abatement of any violations to include abandonment of use and occupancy and corrective action such as the removal or modification of improvements if setbacks or other requirements have not been met and satisfied. I understand that this is an application and that I shall not begin any improvements until the appropriate permit(s) is/are issued nor will I make use of the improvements without first having obtained an occupancy permit. I will notify the Code Enforcement Officer of any changes to this application. A PERMIT ISSUED IS SUBJECT TO APPLICABLE ORDINANCES AND MUBEC AS ADOPTED BY THE STATE OF MAINE AND TOWN OF KITTEERY AND IS ONLY VALID FOR WORK AS DESCRIBED ON THIS PERMIT APPLICATION.



<b>I am the</b>	<b>Applicant/Contractor Name</b>
Contractor	Peter Garland
<b>Property Owner Name</b>	<b>Date</b>
Elizabeth Kirschner	06/09/2020

**Internal Only - For Building Permit**

**Permit Fee (enter Fee amount only)**

--

**Conditions of Approval/Staff Comments**

--

**Attachments**



1591714972025101087684395990719.jpg  
Uploaded by peter Garland on Jun 09, 2020 11:03 AM



Kurshner.jpeg

Uploaded by Dave Evans on Aug 13, 2020 10:10 AM

## History

### Date

### Activity

Jun 09 2020 2:53 pm	peter Garland started a draft of Record BP-20-133
Jun 09 2020 3:03 pm	peter Garland submitted Record BP-20-133
Jun 09 2020 3:03 pm	approval step Code Department Review was assigned to Dave Evans on Record BP-20-133
Aug 13 2020 2:11 pm	Dave Evans approved approval step Code Department Review on Record BP-20-133
Aug 13 2020 2:11 pm	approval step Finance Review was assigned to Pauline Brewster on Record BP-20-133
Aug 13 2020 2:41 pm	Pauline Brewster approved approval step Finance Review on Record BP-20-133
Aug 17 2020 1:22 pm	completed payment step Permit Fee on Record BP-20-133
Aug 17 2020 1:22 pm	approval step Plan Review/Inspection Approval was assigned to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis assigned approval step Residential Sewer Approval to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis assigned approval step Residential DPW Approval to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis assigned approval step Assessing Review to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis approved approval step Plan Review/Inspection Approval on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis waived approval step Residential Sewer Approval on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis waived approval step Residential DPW Approval on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis waived approval step Assessing Review on Record BP-20-133
Aug 17 2020 1:43 pm	approval step Code Department Final Approval was assigned to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis approved approval step Code Department Final Approval on Record BP-20-133
Aug 17 2020 1:43 pm	inspection step Rough Inspection was assigned to Craig Alfis on Record BP-20-133
Aug 17 2020 1:43 pm	Craig Alfis altered Record BP-20-133, changed expirationDate from "" to "Aug 17 2022 4:00AM"



**TOWN OF KITTERY**  
**Code Enforcement Officer**  
200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1308 Fax: (207) 439-6806

**NOTICE OF VIOLATION AND ORDER TO ABATE**

November 12, 2020

Elizabeth Kirschner  
C/O Verrill; Attn. Kenneth Doran  
1 Portland Square  
Portland, ME 04101

**Location: 4 Pepperrell Road #4, Kittery Point, ME 03905**  
**Tax Map 18 Lot 45-4**

Dear Ms. Kirschner,

TAKE NOTICE that it has come to the attention of the Code Enforcement Office, through observations made from adjacent properties and the right-of-way that the patio constructed on the property in the summer of 2020 was built beyond the scope of the building permit and is now considered an unpermitted enclosed patio. A list of violations is attached as Exhibit A.

Pictures taken of the violation on or about November 12, 2020 are included as Exhibit B. These pictures show that presence of the enclosed patio, which was built beyond the scope of the original building permit issued on August 17, 2020. The building permit and record of the permit is included as Exhibit C.

Due to the nature of the violations, you are hereby ordered to either remove the structure within 30 days of receipt of this letter including the roof and walls of the enclosed patio; or, you may seek after-the-fact Planning Board Approval and must submit a completed application to appear before the Planning Board within 30 days of receipt of this letter. Failure to comply within 30 days will result in fines assessed in accordance with § 16.4.5.I(1)(a):

*Fine imposed: \$200 for the first seven-day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate violation with an additional minimum of \$100 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500 for each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.*

You may appeal this decision by Administrative Appeal to the Board of Appeals within 30 days of the date of this letter pursuant to Town Code §16.6.4.A and §16.6.5.A.

Sincerely,

David Evans  
Assistant Code Enforcement Officer  
200 Rogers Road  
Kittery, Maine 03904  
207-475-1305

## EXHIBIT A

### ORDINANCE VIOLATION LIST

Code Cite	Code Provision	Observation
Town Code 16.5.2.A	<i>Permit. No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.</i>	Enclosed patio located where only an open patio was permitted. Enclosure of the patio is beyond the scope of the issued building permit.
International Building Code 2015 R105.3	<i>Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:</i>  <i>1. Identify and describe the work to be covered by the permit for which application is made.</i>	Enclosed patio was not part of the submitted plan to build a patio

**EXHIBIT B**



## EXHIBIT C





ZONING DATA PER KITTERY TOWN CODE "TITLE 16 LAND USE AND DEVELOPMENT CODE" (PER F-CODE ONLINE 2/27/2020). (SEE NOTE #6).

OZ-SL-250' REQUIREMENTS (SEE 16.3.2.17):

BASE ZONE: RESIDENTIAL-KITTERY POINT VILLAGE (R-KPV)

MINIMUM LOT SIZE: 20,000 SQ. FT.  
 MINIMUM LAND AREA PER DWELLING UNIT: 20,000 SQ. FT.  
 MINIMUM SHORE FRONTAGE: 50 FT.  
 MAXIMUM DEVEGETATED COVERAGE\*: 20%  
 \*SEE 16.3.2.17.D.1.d.iii

OVERLAY ZONES:

WATER BODY/WETLAND PROTECTION AREA - 250' (OZ-SL-250')

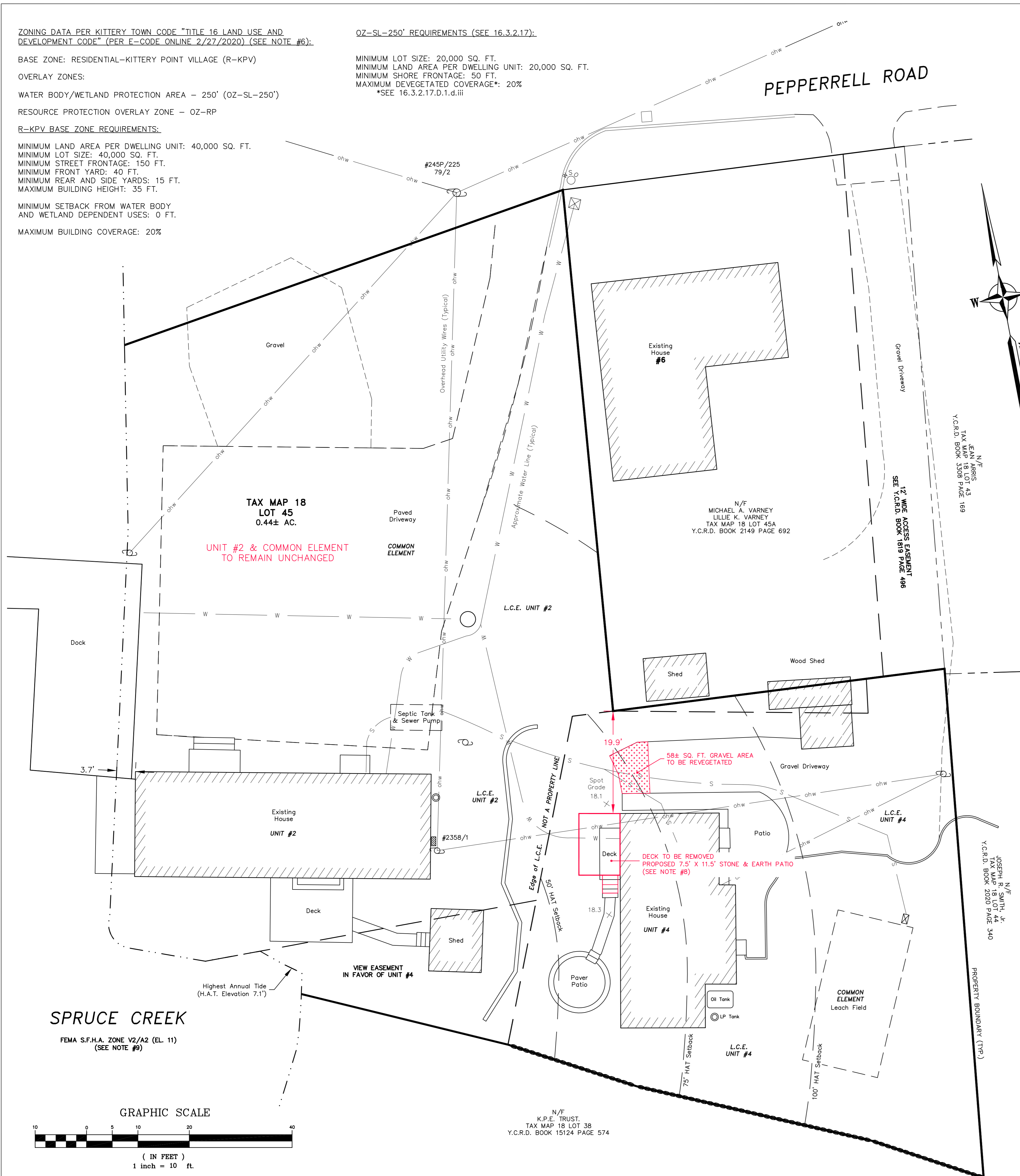
RESOURCE PROTECTION OVERLAY ZONE - OZ-RP

R-KPV BASE ZONE REQUIREMENTS:

MINIMUM LAND AREA PER DWELLING UNIT: 40,000 SQ. FT.  
 MINIMUM LOT SIZE: 40,000 SQ. FT.  
 MINIMUM STREET FRONTAGE: 150 FT.  
 MINIMUM FRONT YARD: 40 FT.  
 MINIMUM REAR AND SIDE YARDS: 15 FT.  
 MAXIMUM BUILDING HEIGHT: 35 FT.

MINIMUM SETBACK FROM WATER BODY AND WETLAND DEPENDENT USES: 0 FT.

MAXIMUM BUILDING COVERAGE: 20%



PEPPERRELL ROAD

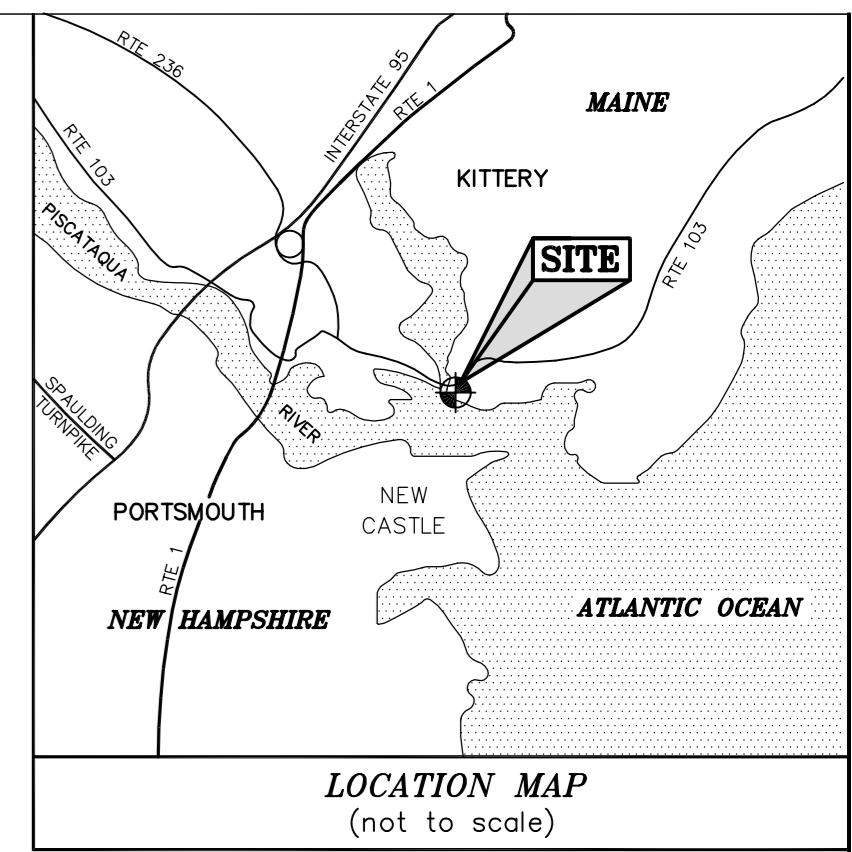
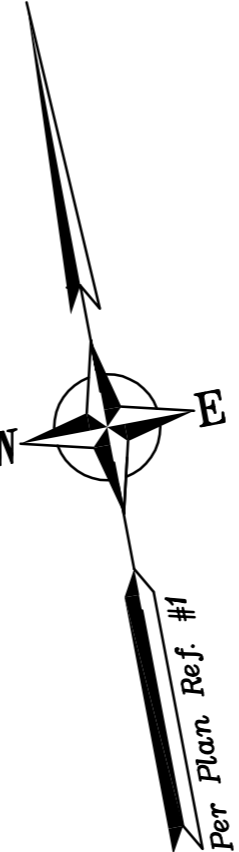
TAX MAP 18 LOT 45 0.44± AC.

UNIT #2 & COMMON ELEMENT TO REMAIN UNCHANGED

N/F MICHAEL A. VARNEY LILLIE K. VARNEY TAX MAP 18 LOT 45A Y.C.R.D. BOOK 2149 PAGE 692

10' WIDE ACCESS EASEMENT SEE Y.C.R.D. BOOK 1819 PAGE 498

N/F JESSIE N. SMITH, JR. TAX MAP 18 LOT 44 Y.C.R.D. BOOK 3308 PAGE 189



PLAN REFERENCES:

- "SEA CABINS RETREAT CONDOMINIUM ASSOCIATION SITE PLAN, FOR PROPERTY AT 2 & 4 PEPPERRELL ROAD, KITTERY, YORK COUNTY, MAINE, OWNED BY EMILE R. BUSSIERE, JR. & ALISON K. BUSSIERE", PREPARED BY NORRTH EASTERLY SURVEYING, INC., PROJECT No. 09613, AND RECORDED AT THE Y.C.R.D. AS CONDO FILE 780 PAGE 1.

NOTES:

- OWNERS OF RECORD: TAX MAP 18 LOT 45 UNIT #4 ELIZABETH KIRSCHNER Y.C.R.D. BOOK 15664 PAGE 132 DATED JUNE 24, 2009
- TOTAL EXISTING PARCEL AREA: TAX MAP 18 LOT 45 0.44± Acres
- BASIS OF BEARING IS PER PLAN REFERENCE #1.
- APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
- EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
- ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE TOWN OF YORK PRIOR TO DESIGN OR CONSTRUCTION.
- THE BOUNDARY SHOWN HEREON IS PER PLAN REFERENCE #1.
- REFER TO DESIGN DRAWINGS TO BE PROVIDED BY THE APPLICANT FOR SPECIFICATIONS.
- REFERENCE IS MADE TO FEMA FIRMETTE 230171 0005 D, MAP REVISED JULY 3, 1986.

DEVEGETATED COVERAGE CALCULATION (TOTAL LOT):

	EXISTING	PROPOSED
TOTAL LOT AREA:	19,166± SQ. FT.	
<b>UNIT #2</b>		
BUILDINGS	1,300± SQ. FT.	1,300± SQ. FT.
PAVEMENT	3,824± SQ. FT.	3,824± SQ. FT.
DOCK	200± SQ. FT.	200± SQ. FT.
WALKWAY & STEPS	122± SQ. FT.	122± SQ. FT.
DECK	199± SQ. FT.	199± SQ. FT.
RETAINING WALLS	44± SQ. FT.	44± SQ. FT.
<b>UNIT #2 TOTAL</b>	5,689± SQ. FT. (29.7%) NO CHANGE	5,689± SQ. FT. (29.7%)
<b>UNIT #4</b>		
BUILDINGS	992± SQ. FT.	992± SQ. FT.
FRONT STEPS & PATIO	350± SQ. FT.	350± SQ. FT.
REAR DECK	40± SQ. FT. (-40 SQ. FT.)	0 SQ. FT.
STONE/EARTH PATIO	0± SQ. FT. (+86 SQ. FT.)	86 SQ. FT.
REAR STEP	10± SQ. FT.	10± SQ. FT.
REAR WALKWAY	22± SQ. FT.	22± SQ. FT.
REAR PATIO	114± SQ. FT.	114± SQ. FT.
GRAVEL & EDGING	1,252± SQ. FT. (-58 SQ. FT.)	1,194± SQ. FT.
<b>UNIT #4 TOTAL</b>	2,780± SQ. FT. (14.5%) (-12 SQ. FT.)	2,768± SQ. FT. (14.4%)
<b>LOT TOTAL</b>	8,469± SQ. FT. (44.2%) (-12 SQ. FT.)	8,457± SQ. FT. (44.2%)

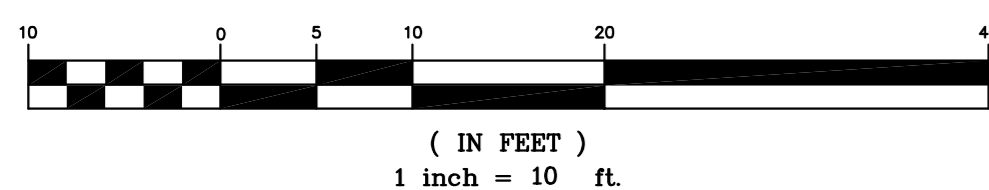
YORK,ss REGISTRY OF DEEDS  
 Received \_\_\_\_\_  
 at \_\_\_\_\_ h \_\_\_\_\_ m \_\_\_\_\_ M., and  
 Filed in Plan Book \_\_\_\_\_ Page \_\_\_\_\_  
 ATTEST: \_\_\_\_\_  
 Register

PURPOSE OF PLAN:  
 THE PURPOSE OF THIS PLAN IS TO SHOW REPLACEMENT OF A REAR DECK WITH A STONE AND EARTH PATIO TO UNIT #4 AS SHOWN HEREON WITH REVEGETATION AS NECESSARY TO BE WITHIN THE LIMITED COMMON AREA OF UNIT #4. NO CHANGE IS PROPOSED TO UNIT #2.

PRELIMINARY

SPRUCE CREEK  
 FEMA S.F.H.A. ZONE V2/A2 (EL. 11)  
 (SEE NOTE #9)

GRAPHIC SCALE



N/F K.P.E. TRUST TAX MAP 18 LOT 38 Y.C.R.D. BOOK 15124 PAGE 574

**PROPOSED SITE PLAN**  
 FOR PROPERTY AT  
**4 Pepperrell Road**  
 Kittery Point, York County, Maine  
 UNIT #4 OWNED BY  
**Elizabeth Kirschner**  
 4 Pepperrell Road, Kittery Point, ME 03905

North  
  
**EASTERLY SURVEYING, Inc.**  
 SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1  
 (207) 439-6333 KITTERY, MAINE 03904

SCALE: 1" = 10'	PROJECT NO. 09613	DATE: 4/30/2020	SHEET: 1 OF 1	DRAWN BY: A.M.P.	CHECKED BY: A.M.P.
REV. DATE	STATUS	BY	CHKD	APPD.	

DRAWING No: 09613\_Site  
 FIELD BOOK No: "Kittery Point #15" **Tax Map 18 Lot 45**