

# ITEM 3

Map 45 Lot 66  
UNAPPROVED

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

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**WHEREAS:** Owner Sarah Bartlett Upton Rollins requests approval for an after-the-fact construction of two accessory structures on a legally non-conforming lot, comprising a 294-sf outdoor patio and 84-sf storage shed within the base zone setback of the Shoreland Overlay Zone located on real property with the 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.

Shoreland Development Plan Review	9/10/20	HELD
Site Walk	Not pursued	NOT HELD
Public Hearing	Not pursued	NOT HELD
Shoreland Development Plan Approval	9/10/20	DENIED

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 9/1/2020
2. Shoreland Development Plan, Easterly Surveying, Inc, dated 4/16/2020
3. Applicant Supplemental Narrative, Alger Rollins, dated 9/1/2020
4. Planner Review Notes, dated 9/10/20
- 5.

**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 16.10 Development Plan Application and Review**

**Standard: §16.10.3.4.B**

*All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:*

*[1] Proposed development of principal and accessory structures in compliance with § 16.3.2.17D(2), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.*

*[2] Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.11, Marine-related development.*

*[3] Division of a conforming parcel that is not subject to subdivision as defined in § 16.2.2.*

*[4] Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.*

**Finding:** The application and the structures proposed therein are located on real property within the base zone setback of the Shoreland Overlay Zone, which falls under the Planning Board's jurisdiction.

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

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

**§16.10.10.2.C**

**Standard:** *Permits will be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this section. The applicant is required to demonstrate to the satisfaction of the reviewing authority that the proposed land use activity is in conformance with the purposes and provisions of this title.*

**Finding:** The application appears to infringe upon the intent of several provisions within Title 16 ( e.g., §16.3.2.17.D(1)(d); §16.3.2.17.D.(2)(a);§16.3.2.17.D.(2)(b)), compounded with the absent of legislative mechanisms of the Planning Board to employ to provide relief to the applicant, compels the Planning Board to deny the after-the-fact permit for a 294-ft. patio and 84-sf storage shed.

**Conclusion:** This standard appears unsatisfied.

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

**Chapter 16.3**  
**Land Use Zone Regulations**

**§16.3.2.17.D(1)(d)**

**Standard:** *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...*

**Finding:** 76 Chauncey Creek has an existing devegetation rate of around 18.4%. Since the patio and shed did not have a building permit respectively, they cannot be considered preexisting; therefore, the patio and shed's devegetation rate must factor into the preexisting rates, which brings the total to 20.2%, impinging the ordinance's limit.

**Conclusion:** This standard appears unsatisfied.

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

**16.3.2.17.D.(2)(a)**

**Standard:** All new principal and accessory structures [except certain patios and decks per § 16.3.2.17D(2)(b)] must be set back at least 100 feet, horizontal distance, 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, with the following exceptions:

[1] In the Mixed Use – Badgers Island and Kittery Foreside Zones, the setback requirement is 75 feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland, unless modified according to the terms of §§ 16.3.2.14D and E and 16.3.2.15D.

[2] In the Resource Protection Overlay Zone, the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.

[3] The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor do they apply to other functionally water-dependent uses, as defined in § 16.2.

**Finding:** The patio and shed are classified as new structures that encroach into the property’s base zone setback (100-ft.) of Shoreland Overlay Zone.

**Conclusion:** this standard appears unsatisfied.

**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.

**Finding:** The proposed patio is located approximately 10-ft. from the highest annual tide, which contravenes the standard.

**Conclusion:** This standard appears unsatisfied.

**Vote:**  in favor  against  abstaining

**16.3.2.17.D.(2)(e)**

**Standard:** On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed 80 square feet in area nor eight feet in height and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

**Finding:** The proposed lot is non-conforming, qualifying the lot to permit an accessory structure, yet the lot has an existing accessory structure (the garage) that pre-dates the shed. Furthermore, no building

permit is on file to approve the construction of the shed, which one is required to construct, pursuant to § 16.5.2.A. Moreover, the shed is oversized by 4-sf and appears able to be placed further from the resource if it were permitted.

**Conclusion:** This standard appears unsatisfied.

**Vote: \_\_ in favor \_\_ against \_\_ 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 significant detrimental impact onto the water resource, and the Kittery Planning Board hereby denies the Development at the above referenced property.

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

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

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

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.