

**Town of Kittery Maine  
 Town Planning Board Meeting  
 January 14, 2021**

**18 Crockett Neck 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 Development Code, the Planning Board shall consider an application from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (350-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 applicable
No	Site Visit	At the Board's discretion	To be determined—PB discretion
Yes	Completeness/Acceptance	January 14, 2021	Ongoing
No	Public Hearing	At the Board's discretion	To be determined—PB discretion
Yes	Plan Approval		Pending

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 **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.** 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.

**Project Introduction**

18 Crockett Neck Road (“Project”) is situated on the northern bank of Barter’s Creek located within the Residential—Kittery Point Village (R-KPV) zone and overlaid by the Shoreland (SL-OZ-250) and, in part, the Resource Protection (RP-OZ) and FEMA Flood (AE-100 year) zones. The project’s current conditions comprise a single-family dwelling unit (2,354-sf) with an attached deck (516-sf), a dock extending into Barter’s Creek, an elevated garden buttressed by a retaining wall (136-sf) and a hardscape patio area (268.4-sf) that appears to abut the northeast side of the deck. The lot on which the structures lie totals an area of 23,958-sf., which is beneath the permitted dimensional standards for both land area per dwelling unit and lot size, pursuant to §16.3.2.3.D(2)(a) and §16.3.2.3.D(2)(b).<sup>1,2</sup> Moreover, the front yard setback is encroached upon by both the deck (at its closest, 9-ft.) and dwelling unit (14-ft.).<sup>3</sup> Altogether, the lot and its structures qualify as nonconforming. In regard to the lot and structures thereon having legally nonconforming vesting status, information obtained from the Assessor’s database suggested the dwelling unit existed (1850 CE) prior to the Town’s adoption of its zoning ordinance (1977 CE), entitling the lot and those pre-existing structures to legal nonconforming status.

At its core, the application seeks from the Planning Board (“Board”) approval to reconstruct a 350-sf section of the existing deck with an exact replacement with the intent of not expanding or deviating from its current

<sup>1</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(a) *Minimum land area per dwelling unit:40,000 square feet.*

<sup>2</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(b) *Minimum lot size:40,000 square feet.*

<sup>3</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(d) *Front yard setback:40 feet.*

**Shoreland Development Review**

footprint. The deck area proposed to be replaced is located, at its closest, approximately 40-ft from the highest annual tide (“H.A.T.”) of Barter’s Creek. Considering that the proposed work seeks to replace a section of a legally nonconforming structure (the deck) below the base zone setback within the Shoreland Overlay Zone, the Board has jurisdiction over the review of this shoreland development plan and is tasked to make a determination whether or not the proposed application satisfies the requirements and intentions of the pertinent zoning ordinances.<sup>4</sup>

**Analysis and Staff Commentary**

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As stated above, the applicant is seeking approval to reconstruct a portion of an existing deck. After reviewing the property record, it appeared that the dwelling unit and deck were existing prior to the enactment of the Mandatory Shoreland Zoning, which qualifies both structures as legally nonconforming.<sup>5</sup> Given that no expansion is proposed, the Board is permitted to review and approve a replacement of a legally nonconforming structure, provided that the structure adheres to the standards of §16.6.6.B. *Factors of Consideration* and the proposed structure does not become more nonconforming.<sup>6</sup> Typically, such a proposal as is before the Board would not warrant such a review as is dictated by §16.7.3.3.B(3); however, the deck is closer to a water body (<1ac) than is permitted under Table 16.9: *Minimal Setbacks from Wetlands and Water Bodies*, thus, necessitating a more comprehensive review under the provisions of §16.6.6.B.

Another component of a shoreland development plan review process is determining the devegetation percentage of a lot, pursuant to §16.3.2.17.D(1)(d). Since the applicant is seeking a waiver from §16.10.10.1.B(1)—not to provide a comprehensive site plan—a desktop analysis was conducted to determine the lot’s devegetation rate. After comparing the property card from the Assessor’s database to the Town’s GIS datasets, taken together, it appeared that the lot’s devegetation rate hovered around 15.8 %, which is well below the 20% allowance. It is the opinion of staff that the waiver request is indeed warranted on two accounts: (1) no expansion is proposed that would otherwise alter the current setback distances and building footprint and devegetation rates; (2) the lot’s existing devegetation rate, based on the desktop analysis, was well below the 20% maximum.

As mentioned above, the Board is tasked to review the standards under §16.6.6.B before rendering a decision on the application. Below are those factors, verbatim, for the Board to review and ponder.

<i>16.6.6.B Factors of Consideration</i>	
(1) The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;	(11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
(2) The conservation of property values and the encouragement of the most appropriate uses of land;	(12) Whether the proposed use will be adequately screened and buffered from contiguous properties;
(3) The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;	(13) The assurance of adequate landscaping, grading and provision for natural drainage;
(4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other	(14) Whether the proposed use will provide for adequate pedestrian circulation;

<sup>4</sup> Land Use and Development Code, Town of Kittery, §16.7.3.3.N(2) *The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure provided the proposed expansion meets all of the following criteria: (a) A vertical expansion that follows the existing building footprint; (b) Will not result in setbacks less than those existing; (c) Is not located in the Shoreland Overlay or Resource Protection Overlay Zone.*

<sup>5</sup> Title 38, M.R.S.A., Chapter 3, §435-§448

<sup>6</sup> Land Use and Development Code, Town of Kittery, §16.7.3.3.B(3)(a)

**Plan Review Notes  
18 Crockett Neck Road  
Tax Map 26, Lot 45**

**ITEM 4**

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effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;	
(5) Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot; (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;	(15) Whether the proposed use anticipates and eliminates potential nuisances created by its location; and
(7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;	(16) The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9
(8) The necessity for paved off-street parking;	
(9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;	
(10) Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;	

In summary, it appears that the proposed deck replacement complies with the applicable standards within Title 16, considering that it is a replacement of a legally nonconforming structure proposing no further expansion.

**Planning Board Procedural Steps**

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 needs to determine if a site visit, public hearing, or both need to occur. If a site walk is necessary, the Board should consider scheduling it some time in the next two week. As regards the public hearing, if desirable, it should be scheduled for the next Planning Board meeting, January 14, 2020.
3. If a public hearing is not elected to take place, the Board should consider the following:
  - a. to 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
4. If the Board is leaning towards a final decision, a motion to waive §16.10.10.

**Recommended Motions**

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

*Motion to continue application*

Move to continue the shoreland development plan application to the February 11, 2021 Planning Board meeting from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland

**Plan Review Notes  
18 Crockett Neck Road  
Tax Map 26, Lot 45**

**ITEM 4**

**Shoreland Development Review**

Overlay Zone on real property with an address of 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 accept application as complete*

Move to accept the shoreland development plan application as complete from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 11, 2021, Planning Board meeting for a shoreland development plan application from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 Anne and Marshall Gaffney proposing to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 deny*

Move to deny the shoreland development plan application from owner/applicant Anne and Marshall Gaffney proposing to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 18 Crockett Neck Road  
 Shoreland Development Plan Review**

**UNAPPROVED**

**M26 L45**

**WHEREAS:** Owner/applicant Patricia A. & Stephen E. Bradley proposing to expand a legally nonconforming dwelling unit on a legally nonconforming lot by 360-sf within the base zone setback of the Shoreland Overlay Zone on real property with an address of 71 Old Dennett Road (Tax Map 6, Lot 5) located in the Residential-Suburban (R-S) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued	Not applicable
No	Site Visit	At the Board's discretion	To be determined—PB discretion
Yes	Completeness/Acceptance	Scheduled for the December 10, 2020 meeting	Ongoing
No	Public Hearing	At the Board's discretion	To be determined—PB discretion
Yes	Plan Approval	May take place at the December 10, 2020 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: December 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**

<p><b>§16.3.2.3.D(e)</b>  <b>Standard:</b> <i>Maximum building coverage: 20%</i>  <b>Findings:</b> The proposed shoreland development plan illustrates a building coverage rate of 11.9%  <b>Conclusion:</b> The standard appears to be met.</p>
<p><b>Vote: __ in favor __ against __ abstaining</b></p>
<p><b>§16.3.2.17.D(1)(d)</b>  <b>Standard:</b> <i>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:</i></p> <p>[1] <i>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.</i></p> <p>[2] <i>Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.</i></p>

<p><i>[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%.</i></p> <p><b>Findings:</b> Considering no further expansion of any structures were proposed in the application, a waiver request to forego a shoreland development site plan was ___ by the Planning Board at their January 14, 2021 meeting as enough data were available via a desktop analysis to determine that the lot had an approximate devegetation rate of 15.8%.</p> <p><b>Conclusion:</b> The standard appears to be met.</p>
<p><b>Vote: __ in favor __ against __ abstaining</b></p>

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

<p><b>§16.7.3.1 Prohibitions and Allowances</b></p> <p><b>Standard:</b> <i>A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i></p> <p><b>Finding:</b> The applicant proposed the replacement a legally nonconforming structure (350-sf of deck space) for which no expansion was planned from its existing footprint, thereby becoming no less nonconforming while complying with the applicable standards within this Article.</p> <p><b>Conclusion</b> The requirement appears to be met.</p>
<p><b>Vote: ___ in favor ___ against __ abstaining</b></p>
<p><b>§16.7.3.3.B(3)(e)[5][a]</b></p> <p><b>Standard:</b> <i>3) This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies.</i></p> <p><i>(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 title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.6.6.B.</i></p> <p><b>Finding:</b> The proposed shoreland development plan was to replace a section of s legally nonconforming deck that was not becoming more nonconforming located (40-ft) below the 75-ft setback of the H.A.T.. With the Planning Board concluding that the deck’s legally nonconforming status was indeed vested, and as a result of said vesting, coming to a consensus on the inapplicability of the 75-ft setback provision, pursuant to §16.3.2.17.D(2)(b) along with finding that the application satisfied the criteria under §16.6.6.B <i>Facts of Consideration</i>, it appeared the proposed deck replacement was in compliance.</p> <p><b>Conclusion</b> The requirement appears to be met.</p>
<p><b>Vote: ___ in favor ___ against __ abstaining</b></p>



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

<p><b>16.10.10.2 Procedure for Administering Permits</b></p> <p><i>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:</i></p>
<p><b>Standard:</b> 1. <i>Maintain safe and healthful conditions;</i></p> <p><b>Finding:</b> The proposed development as represented in the application does not appear to have an adverse impact.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining</p>
<p><b>Standard:</b> 2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i></p> <p><b>Finding:</b> The proposed development appears to be designed in a manner that does not result in an increase of water pollution, erosion, or sedimentation to surface waters</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining</p>
<p><b>Standard:</b> 3. <i>Adequately provide for the disposal of all wastewater;</i></p> <p><b>Finding:</b> The proposed development 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.</p> <p><b>Conclusion:</b> This requirement is not applicable.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining</p>
<p><b>Standard:</b> 4. <i>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 does not appear to have an adverse impact.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining</p>
<p><b>Standard:</b> 5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p><b>Finding:</b> The application proposed a deck replacement that appeared not to disturb any shore cover.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining)</p>
<p><b>Standard:</b> 6. <i>Protect archaeological and historic resources;</i></p> <p><b>Finding:</b> There appears to be no archaeological and historical resources located on the lot.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p><b>Vote:</b> <u>  </u> in favor <u>  </u> against <u>  </u> abstaining</p>

<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 application proposed the replacement of a portion of a deck and demonstrated not have any appeared adverse impact on commercial or maritime operations.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> __ in favor __ against __ 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 development appears to be outside this zone. Accordingly, the proposed deck replacement 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> __ in favor __ against __ 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 complies with the applicable standards of Title 16.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> __ in favor __ against __ abstaining
<p><b>Standard:</b> 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p><b>Finding:</b> Given no expansion was planned and no further devegetation was to occur, the Planning Board waived the requirement for a shoreland development site plan.</p> <p><b>Conclusion:</b> This standard is not applicable.</p>
<b>Vote:</b> __ 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 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. Planning Board at their January 14, 2021 meeting waived the requirement under §16.10.10.1.B(1).

**Conditions of Approval** (not 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 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 1/14/2021).

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 \_\_\_\_\_

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**Dutch Dunkelberger, Planning Board Chair**

**Notices to Applicant:**

1. 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.

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At its core, the application seeks from the Planning Board (“Board”) approval to reconstruct a 350-sf section of the existing deck with an exact replacement with the intent of not expanding or deviating from its current

<sup>1</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(a) *Minimum land area per dwelling unit:40,000 square feet.*

<sup>2</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(b) *Minimum lot size:40,000 square feet.*

<sup>3</sup> Land Use and Development Code, Town of Kittery, 16.3.2.3.D(2)(d) *Front yard setback:40 feet.*

**Shoreland Development Review**

footprint. The deck area proposed to be replaced is located, at its closest, approximately 40-ft from the highest annual tide (“H.A.T.”) of Barter’s Creek. Considering that the proposed work seeks to replace a section of a legally nonconforming structure (the deck) below the base zone setback within the Shoreland Overlay Zone, the Board has jurisdiction over the review of this shoreland development plan and is tasked to make a determination whether or not the proposed application satisfies the requirements and intentions of the pertinent zoning ordinances.<sup>4</sup>

**Analysis and Staff Commentary**

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As stated above, the applicant is seeking approval to reconstruct a portion of an existing deck. After reviewing the property record, it appeared that the dwelling unit and deck were existing prior to the enactment of the Mandatory Shoreland Zoning, which qualifies both structures as legally nonconforming.<sup>5</sup> Given that no expansion is proposed, the Board is permitted to review and approve a replacement of a legally nonconforming structure, provided that the structure adheres to the standards of §16.6.6.B. *Factors of Consideration* and the proposed structure does not become more nonconforming.<sup>6</sup> Typically, such a proposal as is before the Board would not warrant such a review as is dictated by §16.7.3.3.B(3); however, the deck is closer to a water body (<1ac) than is permitted under Table 16.9: *Minimal Setbacks from Wetlands and Water Bodies*, thus, necessitating a more comprehensive review under the provisions of §16.6.6.B.

Another component of a shoreland development plan review process is determining the devegetation percentage of a lot, pursuant to §16.3.2.17.D(1)(d). Since the applicant is seeking a waiver from §16.10.10.1.B(1)—not to provide a comprehensive site plan—a desktop analysis was conducted to determine the lot’s devegetation rate. After comparing the property card from the Assessor’s database to the Town’s GIS datasets, taken together, it appeared that the lot’s devegetation rate hovered around 15.8 %, which is well below the 20% allowance. It is the opinion of staff that the waiver request is indeed warranted on two accounts: (1) no expansion is proposed that would otherwise alter the current setback distances and building footprint and devegetation rates; (2) the lot’s existing devegetation rate, based on the desktop analysis, was well below the 20% maximum.

As mentioned above, the Board is tasked to review the standards under §16.6.6.B before rendering a decision on the application. Below are those factors, verbatim, for the Board to review and ponder.

<i>16.6.6.B Factors of Consideration</i>	
(1) The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;	(11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
(2) The conservation of property values and the encouragement of the most appropriate uses of land;	(12) Whether the proposed use will be adequately screened and buffered from contiguous properties;
(3) The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;	(13) The assurance of adequate landscaping, grading and provision for natural drainage;
(4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other	(14) Whether the proposed use will provide for adequate pedestrian circulation;

<sup>4</sup> Land Use and Development Code, Town of Kittery, §16.7.3.3.N(2) *The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure provided the proposed expansion meets all of the following criteria: (a) A vertical expansion that follows the existing building footprint; (b) Will not result in setbacks less than those existing; (c) Is not located in the Shoreland Overlay or Resource Protection Overlay Zone.*

<sup>5</sup> Title 38, M.R.S.A., Chapter 3, §435-§448

<sup>6</sup> Land Use and Development Code, Town of Kittery, §16.7.3.3.B(3)(a)

**Plan Review Notes  
18 Crockett Neck Road  
Tax Map 26, Lot 45**

**ITEM 4**

**Shoreland Development Review**

effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;	
(5) Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot; (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;	(15) Whether the proposed use anticipates and eliminates potential nuisances created by its location; and
(7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;	(16) The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9
(8) The necessity for paved off-street parking;	
(9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;	
(10) Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;	

In summary, it appears that the proposed deck replacement complies with the applicable standards within Title 16, considering that it is a replacement of a legally nonconforming structure proposing no further expansion.

**Planning Board Procedural Steps**

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 needs to determine if a site visit, public hearing, or both need to occur. If a site walk is necessary, the Board should consider scheduling it some time in the next two week. As regards the public hearing, if desirable, it should be scheduled for the next Planning Board meeting, January 14, 2020.
3. If a public hearing is not elected to take place, the Board should consider the following:
  - a. to 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
4. If the Board is leaning towards a final decision, a motion to waive §16.10.10.

**Recommended Motions**

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

*Motion to continue application*

Move to continue the shoreland development plan application to the February 11, 2021 Planning Board meeting from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to a legally nonconforming dwelling unit on a legally nonconforming lot within the base zone setback of the Shoreland

**Plan Review Notes  
18 Crockett Neck Road  
Tax Map 26, Lot 45**

**ITEM 4**

**Shoreland Development Review**

Overlay Zone on real property with an address of 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 accept application as complete*

Move to accept the shoreland development plan application as complete from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 11, 2021, Planning Board meeting for a shoreland development plan application from owner/applicant Anne and Marshall Gaffney requesting approval to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 Anne and Marshall Gaffney proposing to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 deny*

Move to deny the shoreland development plan application from owner/applicant Anne and Marshall Gaffney proposing to replace in situ a deck (1,200-sf) attached to 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 18 Crockett Neck Road, (Tax Map 26, Lot 45) 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 18 Crockett Neck Road  
 Shoreland Development Plan Review**

**UNAPPROVED**

**M26 L45**

**WHEREAS:** Owner/applicant Patricia A. & Stephen E. Bradley proposing to expand a legally nonconforming dwelling unit on a legally nonconforming lot by 360-sf within the base zone setback of the Shoreland Overlay Zone on real property with an address of 71 Old Dennett Road (Tax Map 6, Lot 5) located in the Residential-Suburban (R-S) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued	Not applicable
No	Site Visit	At the Board's discretion	To be determined—PB discretion
Yes	Completeness/Acceptance	Scheduled for the December 10, 2020 meeting	Ongoing
No	Public Hearing	At the Board's discretion	To be determined—PB discretion
Yes	Plan Approval	May take place at the December 10, 2020 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: December 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**

<p><b>§16.3.2.3.D(e)</b>  <b>Standard:</b> <i>Maximum building coverage: 20%</i>  <b>Findings:</b> The proposed shoreland development plan illustrates a building coverage rate of 11.9%  <b>Conclusion:</b> The standard appears to be met.</p>
<p><b>Vote: __ in favor __ against __ abstaining</b></p>
<p><b>§16.3.2.17.D(1)(d)</b>  <b>Standard:</b> <i>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:</i></p> <p>[1] <i>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.</i></p> <p>[2] <i>Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.</i></p>



*[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:** Considering no further expansion of any structures were proposed in the application, a waiver request to forego a shoreland development site plan was \_\_\_ by the Planning Board at their January 14, 2021 meeting as enough data were available via a desktop analysis to determine that the lot had an approximate devegetation rate of 15.8%.

**Conclusion:** The standard 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**

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

**Finding:** The applicant proposed the replacement a legally nonconforming structure (350-sf of deck space) for which no expansion was planned from its existing footprint, thereby becoming no less nonconforming while complying with the applicable standards within this Article.

**Conclusion** The requirement appears to be met.

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

**§16.7.3.3.B(3)(e)[5][a]**

**Standard:** 3) *This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies.*

*(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 title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.6.6.B.*

**Finding:** The proposed shoreland development plan was to replace a section of s legally nonconforming deck that was not becoming more nonconforming located (40-ft) below the 75-ft setback of the H.A.T.. With the Planning Board concluding that the deck’s legally nonconforming status was indeed vested, and as a result of said vesting, coming to a consensus on the inapplicability of the 75-ft setback provision, pursuant to §16.3.2.17.D(2)(b) along with finding that the application satisfied the criteria under §16.6.6.B *Facts of Consideration*, it appeared the proposed deck replacement was in compliance.

**Conclusion** The requirement appears to be met.

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

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

<p><b>16.10.10.2 Procedure for Administering Permits</b></p> <p><i>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:</i></p>
<p><b>Standard:</b> 1. <i>Maintain safe and healthful conditions;</i></p> <p><b>Finding:</b> The proposed development as represented in the application does not appear to have an adverse impact.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>Standard:</b> 2. <i>Not result in water pollution, erosion or sedimentation to surface waters;</i></p> <p><b>Finding:</b> The proposed development appears to be designed in a manner that does not result in an increase of water pollution, erosion, or sedimentation to surface waters</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>Standard:</b> 3. <i>Adequately provide for the disposal of all wastewater;</i></p> <p><b>Finding:</b> The proposed development 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.</p> <p><b>Conclusion:</b> This requirement is not applicable.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>Standard:</b> 4. <i>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 does not appear to have an adverse impact.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>Standard:</b> 5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p><b>Finding:</b> The application proposed a deck replacement that appeared not to disturb any shore cover.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>Standard:</b> 6. <i>Protect archaeological and historic resources;</i></p> <p><b>Finding:</b> There appears to be no archaeological and historical resources located on the lot.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<p style="text-align: right;"><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>

<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 application proposed the replacement of a portion of a deck and demonstrated not have any appeared adverse impact on commercial or maritime operations.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> __ in favor __ against __ 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 development appears to be outside this zone. Accordingly, the proposed deck replacement 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> __ in favor __ against __ 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 complies with the applicable standards of Title 16.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>
<b>Vote:</b> __ in favor __ against __ abstaining
<p><b>Standard:</b> 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p><b>Finding:</b> Given no expansion was planned and no further devegetation was to occur, the Planning Board waived the requirement for a shoreland development site plan.</p> <p><b>Conclusion:</b> This standard is not applicable.</p>
<b>Vote:</b> __ 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 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. Planning Board at their January 14, 2021 meeting waived the requirement under §16.10.10.1.B(1).

**Conditions of Approval** (not 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 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 1/14/2021).

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 \_\_\_\_\_

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**Dutch Dunkelberger, Planning Board Chair**

**Notices to Applicant:**

1. 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.



Kittery, ME

01/07/2021

## SDP-20-7

Shoreland Development Plan Application

**Status:** Active

**Date Created:** Nov 24, 2020

### Applicant

Marshall Gaffney  
mmarshanne@comcast.net  
18 Crockett Neck Rd  
Kittery Pt, ME 03905

### Location

18 CROCKETT NECK ROAD  
KITTERY, ME

**Owner:** GAFFNEY TR, J ANNE  
18 J ANNE GAFFNEY REV LIVING TRUS 18 CROCKETT NECK  
ROAD, null, KITTERY POINT, ME 03905-5609

### Project Information

#### Size of Waterbody

Unknown

**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

#### Full description of the project

Replacing an existing "L" shape deck (40x30x5) -----no change in size

#### Lot Size (SF)

24650

#### Base Zone

Residential-Kittery Point Village (R-KPV)

### Overlay Zone(s)

**OZ-SL-250 Shoreland Overlay Zone\ \tWater Body/Wetland Protection Area 250'**

**OZ-SL-75 Shoreland Overlay Zone Stream Protection Area 75'**

**OZ-CFMU Commercial Fisheries/Maritime Uses Overlay Zone**

**OZ-RP Resource Protection Overlay Zone**

#### Project within buffer of overlay zone?

WITHIN 100FT or 75FT (0-100FT from Highest Annual Tide)  
see sect. A, B, C, D, F Planning Board Review

A. Devegetated Area - Parcel Devegetation

**% Allowed (Enter 20% , 50%, 60% or 70% per narrative above)**

0

**Existing (sf) Devegated Area within 250' Shoreland Overlay Zone**

0

**Proposed (sf) Devegated Area within 250' Shoreland Overlay Zone**

0

**% Existing Devegated Area within 250' Shoreland Overlay Zone**

0

**% Proposed Devegated Area within 250' Shoreland Overlay Zone**

0

## B. Building Footprint - Principle and Accessory Structures

**Structure distance from Highest Annual Tide or upland edge of wetland (FT)**

54

**Building Coverage Existing (sf)**

385.5

**(%) Building Coverage Allowed**

100

**Building Coverage Proposed (sf)**

385.5

**(%) Building Coverage Existing**

100

**(%) Building Coverage Proposed**

100

**(%) Increase of Coverage**

0

**Type of Construction**

Demo/Rebuild

**Value (\$) of Construction**

7000

## C. Building Height

**Bldg. Height Existing (FT)**

6

**Bldg. Height Proposed (FT)**

6

## D. Certifications

**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 Code Enforcement Departments of any changes.**

**I understand an approved Shoreland Development Plan must be recorded in the York Country Registry of Deeds and I am responsible for incurred costs.**

**I understand 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**

**Applicant is**

Owner



## Attachments

- pdf
 img20201123\_16404573.pdf  
 Uploaded by Marshall Gaffney on Nov 24, 2020 5:38 PM
- pdf
 img20201123\_16404573.pdf  
 Uploaded by Marshall Gaffney on Nov 24, 2020 5:32 PM
- odt
 Waiver Request --shoreland.odt  
 Uploaded by Marshall Gaffney on Nov 24, 2020 5:23 PM
- pdf
 img20201124\_17371226.pdf  
 Uploaded by Marshall Gaffney on Nov 24, 2020 5:37 PM
- odt
 Note to planning board.odt  
 Uploaded by Marshall Gaffney on Dec 21, 2020 5:50 PM

## History

Date	Activity
Nov 24 2020 8:47 pm	Marshall Gaffney started a draft of Record SDP-20-7
Nov 24 2020 10:23 pm	Marshall Gaffney added attachment Waiver Request --shoreland.odt to Record SDP-20-7
Nov 24 2020 10:37 pm	Marshall Gaffney added attachment img20201124_17371226.pdf to Record SDP-20-7
Nov 24 2020 10:39 pm	Marshall Gaffney submitted Record SDP-20-7
Nov 24 2020 10:39 pm	approval step Application Completeness Review was assigned to Bart McDonough on Record SDP-20-7
Dec 21 2020 5:33 pm	Bart McDonough approved approval step Application Completeness Review on Record SDP-20-7
Dec 21 2020 10:50 pm	Marshall Gaffney added attachment Note to planning board.odt to Record SDP-20-7
Dec 22 2020 12:41 pm	completed payment step Shoreland Application Payment on Record SDP-20-7
Dec 22 2020 12:41 pm	approval step Code Dept Approval - Final Plan was assigned to Craig Alfis on Record SDP-20-7

BK 10489PG032

010470

**WARRANTY DEED**  
(Maine Statutory Short Form)

We, **J. MARSHALL GAFFNEY** and **J. ANNE GAFFNEY** of 18 Crockett Neck Road, Kittery Point, in the County of York and State of Maine, for consideration paid, grant to **J. ANNE GAFFNEY** and **J. MARSHALL GAFFNEY**, Trustees or their successors in trust under the **J. ANNE GAFFNEY REVOCABLE LIVING TRUST**, dated September 7, 2000, and any amendments thereto with **WARRANTY COVENANTS**, the land situated in the Town of Kittery, in the County of York and State of Maine, and being more particularly described in a deed from Richard E. Seeger, Jr. to J. Marshall Gaffney and J. Anne Gaffney dated May 25, 1987 and recorded in the York County Registry of Deeds in Book 4335, Page 037, said deed containing the following description verbatim:

SEE "EXHIBIT A" ATTACHED

NO R.E. TRANSFER TAX PAID

IN WITNESS WHEREOF, We, **J. MARSHALL GAFFNEY** and **J. ANNE GAFFNEY** have hereunto set our hands and seals this 1 day of March 2001.

[Signature]  
WITNESS

[Signature]  
**J. MARSHALL GAFFNEY**

[Signature]  
WITNESS

[Signature]  
**J. ANNE GAFFNEY**

STATE OF New Hampshire  
COUNTY OF Rockingham

March 1, 2001  
Date

Then personally appeared the above named **J. MARSHALL GAFFNEY** and **J. ANNE GAFFNEY** who acknowledged the foregoing instrument to be their free act and deed.

Before me

[Signature]  
Notary Public / Attorney at Law  
M & C Bank & Trust Dept. 14, 2001  
**GARY HOLMES**

BK 10489PG033

EXHIBIT A

"A certain lot or parcel of land together with the buildings thereon situated in Kittery, County of York and State of Maine and lying easterly of Crockett's Neck Road, so-called, and bounded and described as follows:

BEGINNING at a point on the easterly sideline of Crockett's Neck Road, marked by an iron pipe with plug at the southwesterly corner of land of Barbara Seeger, formerly of Grace L. Sessions, thence running South seventy-nine degrees twenty-five minutes thirty seconds East (S 79°25'30" E) by along said Barbara Seeger's land one hundred eighty-five and seventeen hundredths (185.17) feet to a point marked by an iron pipe with plug at land of Donald E. and Frances Lamont; thence running South nine degrees eleven minutes no seconds East (S 09°11'00" E) by land of Lamont fifty-five (55) feet to an iron pipe with plug; thence continuing on the same course to the low water mark of Barters Creek, so-called; thence running southwesterly and southerly along the shore of Barters Creek at low water to a point easterly of the northerly side of a sluiceway running beneath Crockett's Neck Road; thence running from said low water mark a short distance to said sluiceway and thence continuing westerly about ten (10) feet by said sluiceway to said Crockett's Neck Road; thence running northwesterly and northerly by and along said Crockett's Neck Road two hundred sixty-six (266) feet, more or less, to the point of beginning.

Meaning and intending to convey and hereby conveying the same premises described in a deed from Richard E. Seeger and Brenda W. Seeger to this grantor by deed dated December 2, 1976 and recorded in York County Registry of Deeds Book 2161, page 321.

Said premises are conveyed together with an easement for the right to install, repair, maintain, alter and operate a leachfield for a septic system across a portion of land of Barbara Seeger more particularly described in a deed of easement from Barbara Seeger to this grantor dated March 20, 1987, recorded in said Registry Book 4222, Page 336.

Said premises are conveyed subject to an easement for access and enjoyment of light and view granted by this grantor to Barbara Seeger for the benefit of her adjoining lot, which easement is more fully set forth in Easement Deed from Richard E. Seeger, Jr. to Barbara Seeger dated May 5, 1987 and recorded in said Registry Book 4284, Page 74."

RECEIVED YORK S.S.

01 MAR 12 PM 2:31

ATTEST: *Luis M. Mass*  
REGISTER OF DEEDS

WILLIAM SMYTH ESQ

12

Note to the Planning board----- Ref. SDP-20-7

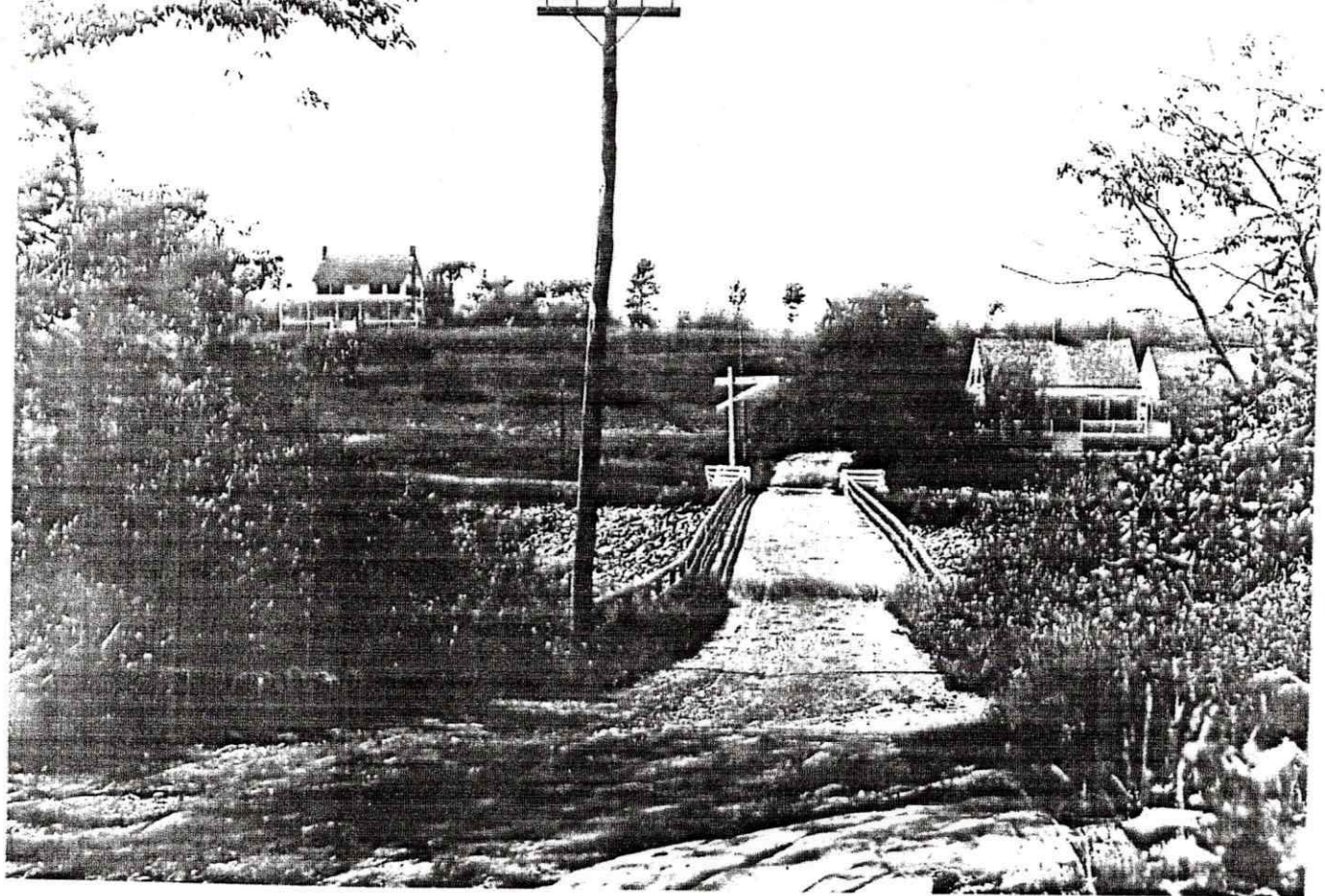
The question has been raised asking to relocate the deck. The deck which is only 5ft wide is really a walkway around the house to the front door (infact it is the only way to the door) and does connect on to a deck on the far end of the house. There is no place to relocate it to. The plan is replace it in kind. I have lived here for 32 years and the deck/walkway was here when I bought the house. I respectfully request a waiver from having to submit a Shoreland Development Plan.

Marshall Gaffney ----- owner

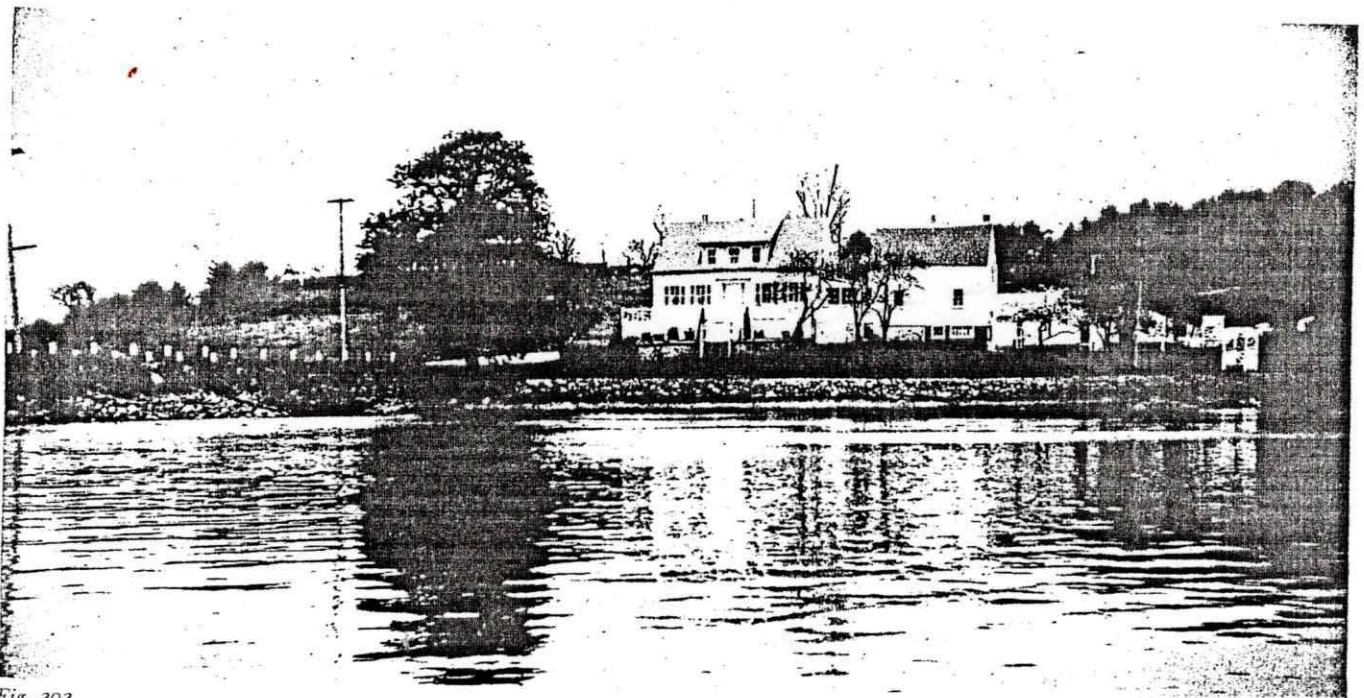
## Request Waiver to the Building Permit BP 20-359

I request a waiver for a “ Shoreland Development Plan Application” as the project is to replace an existing deck with no changes to size. The deck is the only way to the front door and I have pictures dating from 1900 and 1930 showing the deck. The new deck will not cause any damage to the shoreland.





Approx  
1900



Approx  
1930

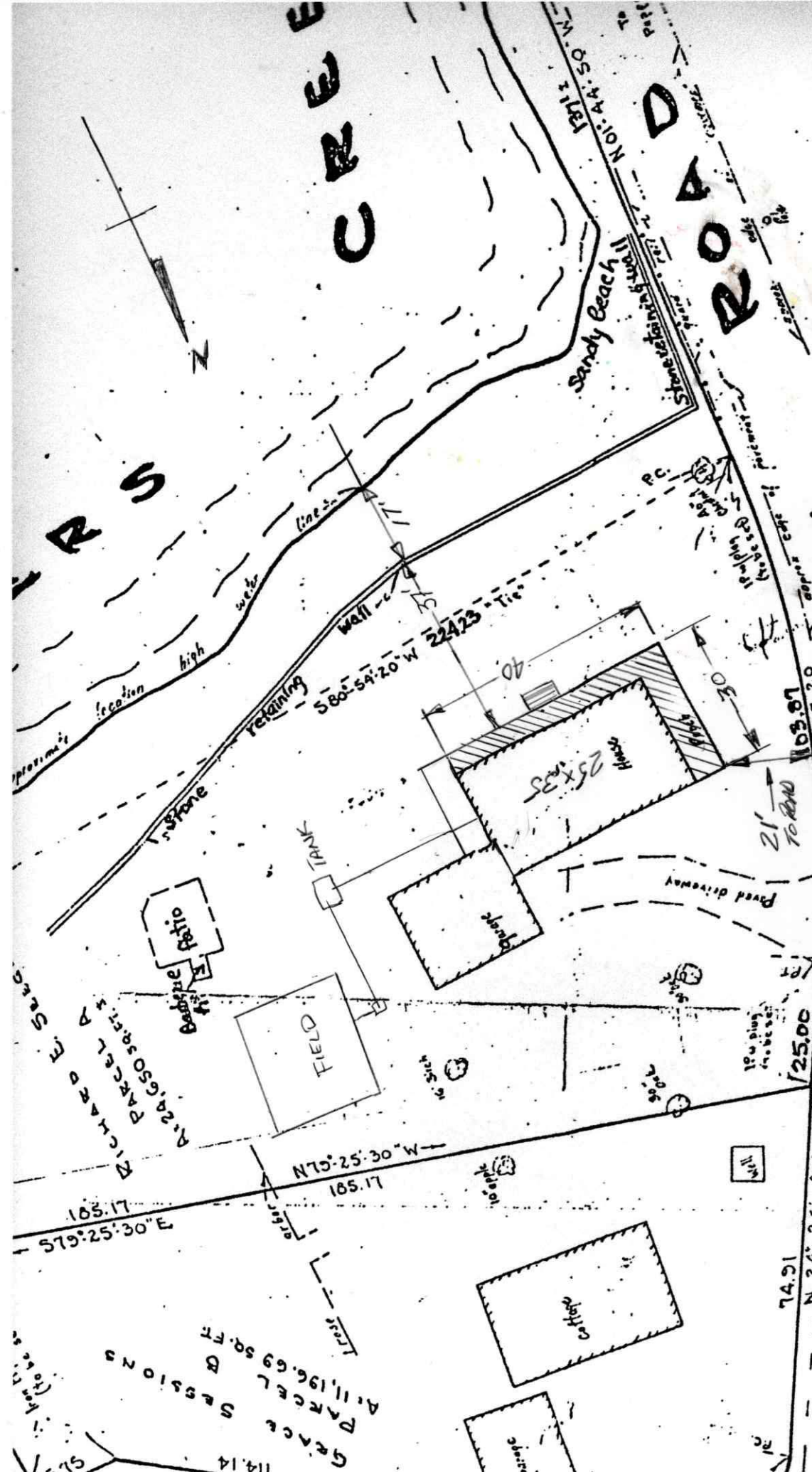
Fig. 292

### A TIDEWATER HOUSE AT KITTERY POINT, MAINE

Most early houses were built like this one on backwaters—safer and more convenient for the vessels of the day, for even their trading brigs were small enough to lie at their cob wharfs in these creeks, and to rest on the mud at low water.

One of the earlier owners was shanghai'd and away for two years, during which time he is said to have been sold out by the holder of his mortgage.





APPROVED

TOWN OF KITTERY, MAIN  
BOARD OF APPEALS

# CROCKETTS NECK

18 CROCKETT NECK RD KP  
LOT 26 45

EXISTING DECK TO BE REPLACED





# 18 Crocketts Neck Road

Shoreland Development Plan



1 inch = 40 Feet



January 7, 2021



	PWater		Water-poly
	Property Line		
	Public Road		
	Map - Lot Labels		

Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.





# 18 Crocketts Neck Road

Shoreland Development Plan

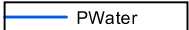


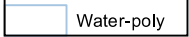


1 inch = 30 Feet



January 7, 2021



-  PWater
-  Property Line
-  Public Road
-  Water-poly

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## 18 Crockett Neck Road Photographs





## 18 Crockett Neck Road Photographs

