

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

**23 Oak Terrace—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 and application from owner/applicant Drew Fitch (23 Oak Terrace, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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
<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>			

**Analysis and Staff Commentary**

The three major elements that the Planning Board (“Board”) needs to review for this shoreland development plan application fall under §16.3.17.D(1)(d), §16.3.17.D(2)(b) and §16.7.3.3.B(3)(3)[5][a]<sup>1,2,3</sup>. In essence, the proposed shoreland development plan application’s major objectives are three fold: (1) replace and expand an existing deck attached to a legally nonconforming structure within the base zone setback of the Shoreland Overlay Zone (OZ-SL-250), (2) revegetate certain areas of the lot (significant portions located below the base zone setback) and provide access (stone path) to a dock.

<sup>1</sup>Land Use and Development Code, Town of Kittery, §16.3.2.17.D(1)(D): *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%.*

<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*

<sup>3</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.*

*Devegetation*

The lot has a pre-existing devegetation rate of approximately 34.2%, which is 14.2% over the limit, pursuant to §16.3.17.D(1)(d). The proposed shoreland development plan intends on removing existing pavement and replacing the disturbed areas with loam and seed. Altogether, the new devegetation rate will reduce to 29.2%, yielding a 5% increase to vegetated ground, or 925.6-sf. Given that the devegetation rate was legally nonconforming, the reduction to 29.2% is permissible without having to fall below the typical 20% cap. Nonetheless, the new devegetation rate cap will be 29.2%.

*Accessory patios or decks and expansion of a nonconforming structure.*

23 Oak Terrace has a deck that appears to preexist the January 1, 1989 vesting date of the Mandatory Shoreland Zoning<sup>4</sup>. Regardless, §16.3.17.D(2)(b) allows for accessory decks under 500-sf to be constructed above 75-ft from the highest annual tide (“H.A.T.”). The existing deck is approximately 170-sf in area with its nearest distance to the H.A.T. about 85-ft. The proposed expansion increases the area by 75-sf (totaling 245-sf) and reduces the distance from the H.A.T by approximately 3.2-ft with a total distance of 81.6-ft. However, approximately 132-sf of the existing deck and 232-sf of the proposed deck are located within the base zone setback of the Shoreland Overlay Zone. Moreover, the shoreland development plan proposes a replacement and expansion of a legally nonconforming structure. It appears approximately 664-sf of the lot’s structures are located within the base zone setback of the Shoreland Overlay Zone, allowing the applicant plenty of area to further expand, pursuant to §16.7.3.3.B(3)(3)[5][a]. As regards to path, it appears that path is conforming as only stepping stones are being proposed. The Board should inquire with the applicant if the stepping stones are reflected into the devegetation calculations.

Altogether, the applicant is below the ordinance 1,000-sf cap to expand a legally nonconforming structure, having 236-sf. remaining for future expansion; the lot’s devegetation rate is decreasing by approximately 5% and the proposed deck is above the 75-ft setback from the H.A.T.

**Planning Board Procedural Steps**

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This applicant is being presented by Planning Board member, Drew Fitch. He will have to recuses himself from the Board, but he’ll be able to participate in the discussion as an applicant.

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 sometime in the next two weeks. As regards the public hearing, if desirable, it should be scheduled for the next Planning Board meeting, February 11, 2021.
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—motion should be made in the affirmative (see below).

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<sup>4</sup> Title 38, M.R.S.A., Chapter 3, §435-§448

## **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 11, 2021 Planning Board meeting from owner/applicant Drew Fitch (23 Oak Terrace, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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 Drew Fitch (23 Oak Terrace, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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 Drew Fitch (23 Oak Terrace, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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 Drew Fitch (23 Oak Terrace, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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 Drew Fitch (23 Oak Terrace, LLC) proposing to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) 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 Drew Fitch (23 Oak Terrace, LLC) proposing to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) located in the Residential-Suburban (R-S) Zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

**Kittery Planning Board  
 Findings of Fact  
 For 23 Oak Terrace  
 Shoreland Development Plan Review**

**UNAPPROVED  
 M2 L3**

**WHEREAS:** Owner/applicant Drew Fitch (Atlantic Development, LLC) requesting approval to replace and expand an existing deck attached to a legally nonconforming dwelling unit located on a legally nonconforming lot by 100-sf., totaling 232-sf., within the base zone setback of the Shoreland Overlay Zone on real property with an address of 23 Oak Terrace, (Tax Map 2, Lot 3) 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
2. Shoreland Development Site Plan, Knight Hill Land Surveying Services, Inc., dated December 18, 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**

<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 13%
<b>Conclusion:</b> The standard appears to be met.
<b>Vote: __ in favor __ against __ abstaining</b>
<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>
<i>[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.</i>

<p>[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%.</p> <p><b>Findings:</b> The proposed shoreland development plan depicts a devegetation rate of 29.2%, which was previously at a legally nonconforming rate of 34.2%.</p> <p><b>Conclusion:</b> The standard appears to be met.</p>
<p><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>16.3.2.17.D(2)(b)</b></p> <p><b>Standard:</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.</p> <p><b>Findings:</b> The proposed shoreland development proposes a deck (245-sf) that is above the 75-ft setback.</p> <p><b>Conclusion:</b> The standard appears to be met</p>
<p><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</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> A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</p> <p><b>Finding:</b> The applicant is proposing an expansion to a legally nonconforming structure that complies with the standards within the Article.</p> <p><b>Conclusion:</b> The requirement appears to be met.</p>
<p><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</p>
<p><b>16.7.3.3.B(3)(e)[5][a]</b></p> <p><b>Standard:</b> 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.</p> <p><b>Finding:</b> The applicant is proposing a replacement and expansion of the legally nonconforming deck that is attached to a legally nonconforming dwelling unit by 100-sf, which brings the total footprint within the base zone setback to 764-ft, leaving the lot with 236-sf. left to expand within the base zone setback of the Shoreland Overlay Zone.</p> <p><b>Conclusion:</b> The requirement appears to be met.</p>
<p><b>Vote:</b> <input type="checkbox"/> in favor <input type="checkbox"/> against <input type="checkbox"/> abstaining</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 plans and 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 appears to be met.</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 is proposing a stepping stone path from upland area near the proposed deck to the dock, which may prevent further erosion and vegetation degradation of shore cover by pedestrian traffic.</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> __ in favor __ against __ 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 is proposing a deck expansion that is oriented away from the Piscataqua River, and the proposed walkway improves access to the lot's dock. Both elements of the development appear not to affect any commercial fishing or maritime activities, nor the district that they are active.</p> <p><b>Conclusion:</b> This requirement appears to be met.</p>	<p><b>Vote:</b> __ in favor __ against __ abstaining</p>
<p><b>Standard:</b> 8. <i>Avoid problems associated with floodplain development and use;</i></p> <p><b>Finding:</b> Portions of the property and dwelling unit are located in the FEMA Flood Zone (AE-100 year). The proposed development appears to be outside this zone, albeit the rear stepping stone path may be located in the flood zone; however, the walkway purpose is to connect to a water dependent use. 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>	<p><b>Vote:</b> __ in favor __ against __ abstaining</p>
<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>	<p><b>Vote:</b> __ in favor __ against __ abstaining</p>
<p><b>Standard:</b> 10. <i>Be recorded with the York county Registry of Deeds.</i></p> <p><b>Finding:</b> The proposed shoreland development plan shall be recorded at the York County Registry of Deeds.</p> <p><b>Conclusion:</b> This standard appears to be met.</p>	<p><b>Vote:</b> __ in favor __ against __ abstaining</p>

**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. None.

**Conditions of Approval** (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan 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 \_\_\_\_\_

\_\_\_\_\_  
**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 (3) paper copies 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 paper 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.





Kittery, ME

01/04/2021

## SDP-20-9

Shoreland Development Plan Application

**Status:** Active

**Date Created:** Dec 22, 2020

### Applicant

DREW FITCH  
drew@atlanticdev.net  
9 LANGTON ST  
KITTERY, ME 03904

### Location

23 OAK TERRACE  
KITTERY, ME

**Owner:** 23 Oak Terrace LLC  
14 Rice Ave, 1, Kittery, ME 03904

### Project Information

#### Size of Waterbody

> 1 Acre

**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

Add new 232sf deck no closer than 81.6' from High Water Mark. Remove existing 132 sf deck  
Add 94 sf walkway constructed of pavers from Oak St. to front door  
Remove 770 sf of asphalt from west side of site and 513 sf from east side of site, revegetate with loam and grass seed  
Add fieldstone steps to existing 194 sf path to existing wood steps leading to existing wood pier

#### Lot Size (SF)

18512

#### Base Zone

Residential-Suburban (R-S)

### 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)**

20

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

6334

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

5414

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

34.2

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

29.2

**B. Building Footprint - Principle and Accessory Structures****Structure distance from Highest Annual Tide or upland edge of wetland (FT)**

81.6

**Building Coverage Existing (sf)**

2315

**(%) Building Coverage Allowed**

20

**Building Coverage Proposed (sf)**

2315

**(%) Building Coverage Existing**

13

**(%) Building Coverage Proposed**

13

**(%) Increase of Coverage**

0

**Type of Construction**

Demo/Rebuild

**Value (\$) of Construction**

0

**C. Building Height****Bldg. Height Existing (FT)**

31

**Bldg. Height Proposed (FT)**

35

**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

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**Attachments**

 2233OakTerraceColorDec19.pdf  
Uploaded by DREW FITCH on Dec 22, 2020 3:01 PM

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**History**

<b>Date</b>	<b>Activity</b>
Dec 22 2020 5:49 pm	DREW FITCH started a draft of Record SDP-20-9
Dec 22 2020 8:02 pm	DREW FITCH submitted Record SDP-20-9
Dec 22 2020 8:02 pm	approval step Application Completeness Review was assigned to Bart McDonough on Record SDP-20-9
Dec 22 2020 8:08 pm	Bart McDonough approved approval step Application Completeness Review on Record SDP-20-9
Dec 22 2020 10:47 pm	completed payment step Shoreland Application Payment on Record SDP-20-9
Dec 22 2020 10:47 pm	approval step Code Dept Approval - Final Plan was assigned to Craig Alfis on Record SDP-20-9

DLN: 1002040087513

**FORECLOSURE DEED**

Maine R.E. Transfer Tax Paid

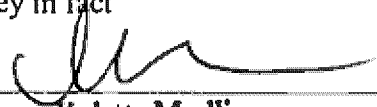
KNOW ALL BY THESE PRESENTS, that U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust with a mailing address of c/o Caliber Home Loans, Inc., 13801 Wireless Way, Oklahoma City, OK 73134 ("Grantor"), for valuable consideration, does hereby give, grant, convey and release unto 23 Oak Terrace LLC, with a mailing address of 9 Langton Street, Kittery, ME 03904 ("Grantee"), its successors, and assigns forever, that certain lot or parcel of land, with any buildings thereon, located at 23 Oak Terrace, Kittery, in York County, Maine, more particularly described in Exhibit A, attached hereto, and fully incorporated herein by reference.

BEING THE SAME PREMISES described in a Mortgage Deed dated February 2, 2007, and recorded in the York County Registry of Deeds at Book 15090, Page 374, which mortgage was foreclosed by civil action in York County Superior Court, Docket No. RE-2017-68. A public auction of the property was held on December 17, 2019, in accordance with the aforesaid judgment.

AND GRANTOR does hereby assign to Grantee all rights and interest of Grantor as high bidder at the public foreclosure sale held in the above matter.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed and sealed this 14 day of January, 2020.

U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, by Caliber Home Loans, Inc., as its attorney in fact



By: Kolette Modlin  
Its: Authorized Officer

State of \_\_\_\_\_  
County of \_\_\_\_\_

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020,

\_\_\_\_\_, in his/her aforesaid capacity, and acknowledged the foregoing to be his/her free act and deed, and the free act and deed of said U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, by Caliber Home Loans, Inc., as attorney-in-fact

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

"See attached"

## ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego

On JAN 14 2020 before me, Shannon Lori McCray, Notary Public  
(insert name and title of the officer)

personally appeared Kolette Modlin  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature   
Shannon Lori McCray, Notary Public

(Seal)



## Exhibit "A"

The land referred to herein is situated in the State of Maine, County of York described as follows:

A CERTAIN LOT OR PARCEL OF LAND WITH THE BUILDINGS THEREON THE SOUTHWESTERLY SIDE OF OAK TERRACE, IN KITTEERY, YORK COUNTY, MAINE, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD SET AT THE SOUTHEASTERLY CORNER OF THIS LOT AT THE SOUTHWESTERLY SIDELINE OF OAK TERRACE, A PUBLIC WAY, AND THENCE RUNNING NORTH 23° 30' 01" WEST FOR 227 FEET, MORE OR LESS, THROUGH AN IRON ROD SET IN THE PROPERTY LINE, IN PART BY SAID WAY, AND IN PART BY LAND NOW OR FORMERLY OF HENRY AND MARIE JOYCE, TO THE MEAN HIGH WATER LINE OF WEIR CREEK; THENCE TURNING AND RUNNING SOUTHWESTERLY AND WESTERLY BY AND ALONG SAID MEAN HIGH WATER LINE, AND IN PART ALONG A COURSE RUNNING SOUTH 57° 04' 07" WEST FOR 106.97 FEET MORE TO A POINT AT LAND NOW OR FORMALLY OF RAYMOND AND VIRGINIA BURGE; THENCE TURNING AND RUNNING SOUTH 25° 51' 00" EAST FOR 147 FEET, MORE OR LESS, THROUGH THE TRUNK OF A BIRCH TREE, AN IRON ROD SET 2 FEET SOUTHEASTERLY OF SAID TREE, A SECOND IRON ROD SET IN THE GROUND ON THIS LINE, TO A UTILITY POLE, ALL BY AND ALONG SAID LAND OF RAYMOND AND VIRGINIA BURGE; THENCE TURNING AND RUNNING SOUTH 40° 22' 59" EAST FOR 24.27 FEET TO AN IRON ROD; THEN SOUTH 75° 40' 55" EAST FOR 13.11 FEET TO AN IRON ROD, THENCE NORTH 63° 05' 00" EAST FOR 40.92 FEET TO AN IRON ROD; THENCE SOUTH 73° 39' 56" EAST FOR 42 FEET TO AN IRON ROD; THENCE SOUTH 20° 44' 20" EAST FOR 10.50 FEET TO AN IRON ROD; THENCE NORTH 76° 59' 59" EAST FOR 10.18 FEET TO AN IRON ROD AT SAID WAY AND THE POINT OF BEGINNING.

REFERENCE IS MADE TO A CERTAIN PLAN OF THE ABOVE PREMISES DESIGNATED "PLAT OF LAND, KITTEERY, MAINE, FOR CAROLYN GALE" DATED SEPTEMBER 11, 1987, BY DURGIN SCHIOFIELD ASSOCIATES, PLAN #50695.

SOURCE OF TITLE: BOOK 11562 PAGE 129 (RECORDED 04/22/2002)

APN: Map 2 Lot 3

**Public Notice**

**NOTICE OF PUBLIC SALE OF REAL ESTATE**

By virtue of and in execution of a Judgment of Foreclosure and

Sale entered in the York County Superior Court on August 6, 2019, in Civil Action, Docket No. RE-2017-68 brought by U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust against Leo J. Guy and Rebecca Guy for the foreclosure of a mortgage recorded in the York County Registry of Deeds in Book 15090, Page 374, the statutory ninety (90) day period of redemption having expired without redemption, notice is hereby given that there will be a public sale on December 17, 2019 at 04:00 PM at 2 Gorges Road, Kittery, ME, 03904 all and singular the premises described in said mortgage and being a certain lot of land with the buildings thereon, situated in the town of Kittery, County of York, and State of Maine, described in said mortgage as being located at 23 Oak Terrace. TERMS OF SALE The property will be sold to the highest bidder at the sale, who shall pay a deposit of Ten Thousand and No/100 Dollars (\$10,000.00) in cash, certified check or funds acceptable to mortgagee at the time and place of sale. The successful bidder shall be required to execute a Purchase and Sale Agreement with said U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust with the aforesaid Ten Thousand and No/100 Dollars (\$10,000.00), as a non-refundable and non-interest bearing deposit thereon providing for a closing within thirty (30) days of the date of the public sale, at which time the balance of the bid price will be due and payable in cash or certified funds payable to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust as aforesaid, which will then deliver a duly executed quitclaim deed. The sale shall be made subject to: (a) any condition which a title search would reveal, (b) any unpaid taxes or assessments due to the Municipality of Kittery, and (c) any facts which an accurate survey of the premises might show. The property shall be sold "as is" and "where is" without any warranties whatsoever expressed, implied or otherwise. Other terms will be announced at the sale. Dated S/John A. Doonan, Esq., Bar No. 3250 S/Reneau J. Longoria, Esq. Bar No. 5746 Attorney for U.S. Bank Trust, N.A., as Trustee

# Portland Press Herald

EST. 1862


# Maine Sunday Telegram

www.pressherald.com

I, Joan M. Jensen, Legal Advertising Representative of the Portland Press Herald and Maine Sunday Telegram newspapers of Portland, Maine, do hereby certify that the attached advertisement appeared in the November 15, November 22 and November 29, 2019 editions of the Portland Press Herald.

  
Legal Advertising Representative

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of December 2019

  
Notary Public

My commission expires

RICHARD W. DeBRUIN  
Notary Public, Maine  
My Commission Expires February 4, 2021

for LSF9 Master Participation Trust Doonan, Graves & Longoria, LLC  
100 Cummings Center  
Suite 225D Beverly, MA  
01915 (978) 921-2670  
11/15/19, 11/22/19,  
11/29/19

Portland, ME 04101 • 207-791-6000 • 800-894-0031



# 23 Oak Terrace

Shoreland Development Plan



1 inch = 40 Feet



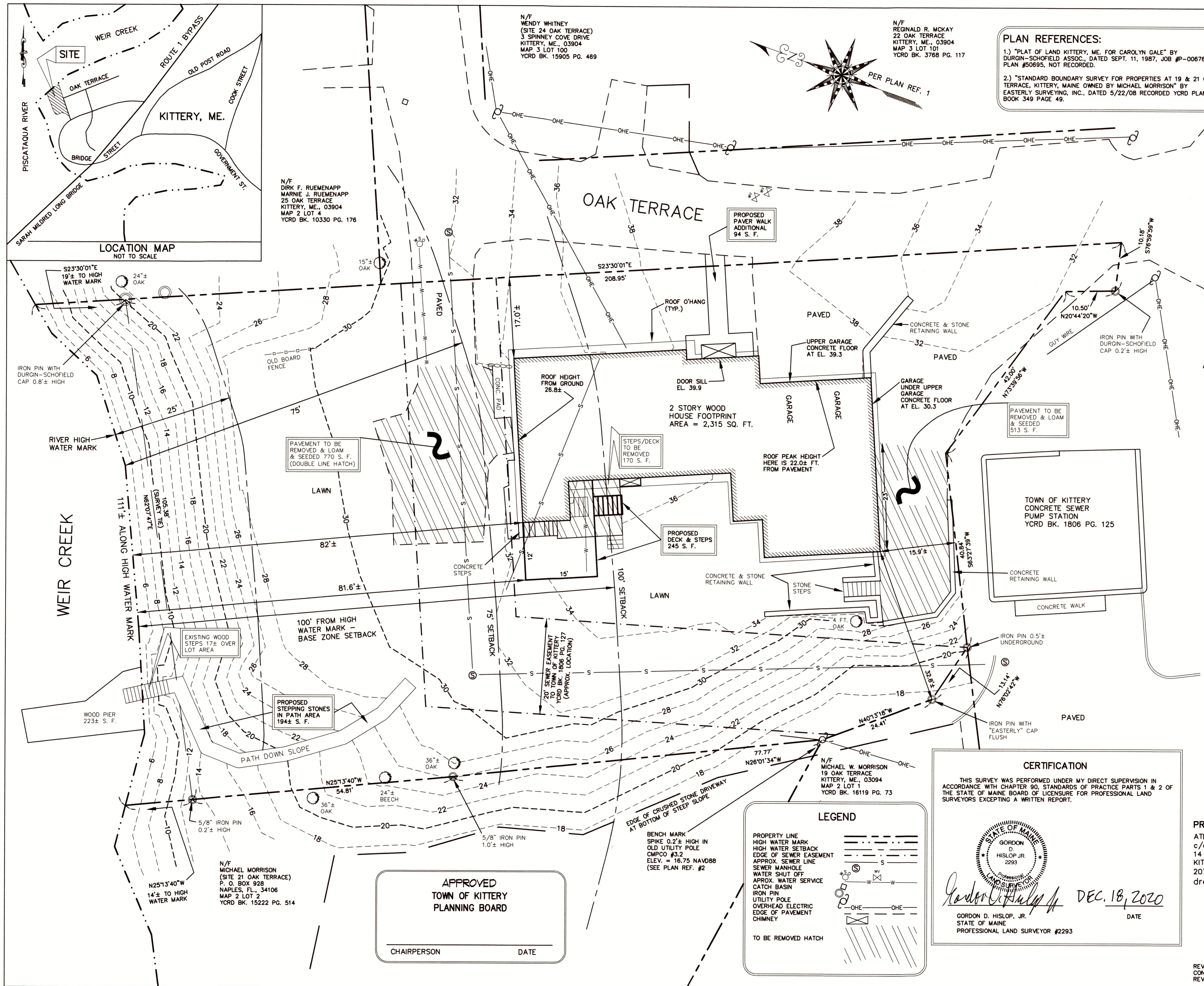
January 7, 2021



	PWater		Map - Lot Labels
	Property Line		Water-poly
	Public Road		
	Right of Way		

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.





	ALLOWED	EXISTING	PROPOSED
LOT AREA	30,000 SQ. FT.	18,512± SQ. FT.	NO CHANGE
CONTINUOUS STREET FRONTAGE	150 FEET	150'±	NO CHANGE
FRONT SETBACK	40 FEET	17.0'±	NO CHANGE
SIDE SETBACK	15 FEET	15.9'±	NO CHANGE
REAR SETBACK	15 FEET	32.8'±	NO CHANGE
HIGH WATER BASE ZONE SETBACK 100 FEET (DECK)		82.0'± (BLDG.)	81.6'± (PRO DECK)
BUILDING HEIGHT	35 FEET	31'± (SOUTH SIDE)	NO CHANGE
BUILDING HEIGHT IN 100' BASE ZONE		26.8'±	NO CHANGE
BUILDING COVERAGE	20%	13% (2,315 SQ. FT.)	NO CHANGE
BUILDING AREA IN BASE ZONE		3% = 532 SQ. FT.	NO CHANGE
DECK & STEPS IN BASE ZONE		132± SQ. FT.	232 SQ. FT.
PIER STEPS AREA IN BASE ZONE (PIER OUTSIDE)		17± SQ. FT.	NO CHANGE
DEVEGATED AREA TOTAL	20%	34.2%	29.2%

**SITE DATA**  
 TAX MAP 2 LOT 3  
 RECORD OWNER: 23 OAK TERRACE, LLC  
 14 RICE AVE., SUITE 1  
 KITTERY, ME., 03904-1643  
 RECORD DEED: Y.C.R.D. BK. 18175 PG. 112  
 AREA: 18,512±/0.43 AC. SQ.FT./0.42 AC.

**PROPOSED SHORELAND DEVELOPMENT SITE PLAN**  
 for land OWNED by  
**23 OAK TERRACE, LLC**  
 known as  
**TAX MAP 2 LOT 3**  
 located along  
**23 OAK TERRACE**  
 KITTERY, MAINE  
 COUNTY OF YORK  
 NOV. 25, 2020 SCALE 1" = 10' PROJECT # 2233PNTS

**PREPARED FOR:**  
 ATLANTIC DEVELOPMENT  
 c/o DREW FITCH  
 14 RICE AVE., SUITE 1  
 KITTERY, ME., 03904-1643  
 207-756-9136  
 drew@atlanticdev.net

**PREPARED BY:**  
 KNIGHT HILL LAND SURVEYING SERVICES, INC.  
 c/o DAVE HISLOP  
 34 OLD POST ROAD  
 NEWINGTON, N. H. 03801  
 (603) 436-1330  
 dave@khillandsurveying.com

**GRAPHIC SCALE**  
 10 0 5 10 20 40  
 ( IN FEET )  
 1 inch = 10 ft.

REVISION 12/18/2020 REVISE NOTES, ADD SIGNATURE BLOCKS, REFORMAT FOR RECORDING, ADD CONTOURS, LOCATION MAP, LEGEND, BENCH MARK DATA AND PLAN TITLE PER KITTERY TOWN PLANNER REVIEW.