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Kittery Planning Board
Findings of Fact
For 134 Whipple Road
Shoreland Development Plan Review

UNAPPROVED
M10 L-6A

WHEREAS: Owners/Applicants Nicolas and Amy Mercier request approval for a shoreland development plan on a legally non-conforming lot with a legally non-conforming structure which will be replaced per a Shoreland Development Plan approved by the Planning Board last year to construct a seawall located within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 134 Whipple Road, Tax Map 10, Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland (SL-OZ-250) Overlay Zone

Hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the plan review notes prepared for 7/28/2022

Shoreland Development Plan Review	6/9/2022 & 7/28/2022
Site Walk	6/28/2022
Public Hearing	7/28/2022
Approval	9/29/2022

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

1. Shoreland Development Plan Application, received 5/19/2022
2. Shoreland Development Plan (dated August 30, 2022), Existing Conditions Plan of Land (dated November 1, 2021), Redi-Rock Wall Design Drawing (dated August 26, 2022) and Landscape Plan (dated June 28, 2022), all from Altus Engineering.

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 16.1 GENERAL PROVISIONS

16.1.8.C(2)(a) Prohibitions and Allowances
<i>(a) Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming</i>
Finding: The proposed development’s devegetated area is 24.1%, which is less than the 24.6% on the existing lot.
Conclusion: The requirement appears to be met.
Vote: ___ in favor ___ against ___ abstaining

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

<p>16.9.3.F. Findings of Fact <i>(2) An application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:</i></p>
<p><i>(a) Maintain safe and healthful conditions;</i></p> <p>Finding: The plan proposes to replace an existing seawall with an engineered seawall designed to stabilize the entire shoreline of the property.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(b) Not result in water pollution, erosion or sedimentation to surface waters;</i></p> <p>Finding: The applicant has applied for a PBR permit and received it from the Department of Environmental Protection and will follow all rules and best practices for erosion and sedimentation control during site preparation and construction to avoid impact on adjacent surface waters.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(c) Adequately provide for the disposal of all wastewater;</i></p> <p>Finding: No changes in the disposal of wastewater are a part of the proposed plan.</p> <p>Conclusion: This requirement is not applicable.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i></p> <p>Finding: The proposed development is a replacement of an existing structure, which does not appear to have an adverse impact.</p> <p>Conclusion: The requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(e) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i></p> <p>Finding: Shore cover is conserved in accordance with the Code, as the applicant plans to remove any invasive species, plant new native species, and cover the top of the replacement seawall with vegetative cover. There are no adverse impacts to visual or actual points of access to waters.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(f) Protect archaeological and historic resources;</i></p> <p>Finding: There does not appear to be any archaeological nor historic resources impacted.</p>

<p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(g) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p>Finding: The property is not located in the Commercial Fisheries / Maritime Use Zone and will have no adverse effect on commercial fishing nor maritime activities.</p> <p>Conclusion: This requirement is not applicable.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(h) Avoid problems associated with floodplain development and use;</i></p> <p>Finding: The proposed construction will not create an adverse impact associated with floodplain management.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(i) Is in conformance with the provisions of this code;</i></p> <p>Finding: The proposed project is in conformance with the provisions of Title 16.</p> <p>Conclusion: This requirement appears to be met.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>
<p><i>(j) Be recorded with the York County Registry of Deeds.</i></p> <p>Finding: A plan suitable for recording has been prepared by Eric D. Weinrieb of Altus Engineering.</p> <p>Conclusion: As stated in the Notices to Applicant contained herein, a Shoreland Development Plan must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.</p> <p style="text-align: right;">Vote: ___ in favor ___ against ___ abstaining</p>

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 40 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
 41 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
 42 Application subject to any conditions or waivers, as follows:

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 44 **Waivers:** None

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

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 48 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved
 49 final plan per Title 16.9.3.I.
- 50 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated
 51 with site and construction to ensure adequate erosion control and slope stabilization.
- 52 3. All Notices to Applicant contained herein (Findings of Fact dated 09/29/2022).

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

- 55 1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer
56 Review Engineer, and submit for Staff review prior to presentation on final plan.

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58 **Notices to Applicant:**

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

- 62 2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with
63 the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper
64 advertisements and abutter notification.

- 65 3. One (1) copy of the final plan and any and all related state/federal permits or legal documents that
66 may be required, must be submitted to the Town Planning Department for signing. Date of Planning
67 Board approval shall be included on the final plan in the Signature Block. After the signed plan is
68 recorded with the York County Registry of Deeds, a copy of the signed and recorded original must be
69 submitted to the Town Planning Department.

- 70 4. This approval by the Town Planning Board constitutes an agreement between the Town and the
71 Developer, incorporating as elements the Development Plan and supporting documentation, the
72 Findings of Fact, and any Conditions of Approval.

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

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77 **Vote: ___ in favor ___ against ___ abstaining**

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79 APPROVED BY THE KITTERY PLANNING BOARD ON September 29, 2022

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85 Dutch Dunkelberger, Planning Board Chair

86 Per Title 16.2.12. - An aggrieved party with legal standing may appeal a final decision of the Planning
87 Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section
88 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.