



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1323 | Fax: (207) 439-6806  
Visit us: [www.kitteryme.gov/planning-board](http://www.kitteryme.gov/planning-board)

## Planning Review Notes March 28, 2024

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### **ITEM 2 – 1 Wood Island– Shoreland Development Plan Review**

Action: Accept application. Approve plan or continue review: Pursuant to §16.9.3 Shoreland Development Review of the Town of Kittery Land Use and Development Code, Samuel Reid, on behalf of the Wood Island Life Saving Association, requests approval for the replacement-in-kind of an existing seawall within the base zone of the Highest Astronomical Tide Line on the property of Wood Island, Tax Map 51, Lot 14, in the Residential-Rural Conservation, Shoreland Overlay, and Resource Protection Overlay Zones.

### **PROCESS SUMMARY**

| REQUIRED | ACTION                        | COMMENTS              | STATUS    |
|----------|-------------------------------|-----------------------|-----------|
| Yes      | Kittery Port Authority Review | 3/14/24               | Approved  |
| Yes      | Staff Review                  | 3/21/24               | Completed |
| No       | Site Visit                    | Optional              | Optional  |
| No       | Public Hearing                | Optional              | Optional  |
| Yes      | Approval                      | Scheduled for 3/28/24 | Pending   |

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### **OTHER POTENTIAL PERMITS AND REQUIREMENTS**

- Building permit through Code Enforcement

### **PROJECT INTRODUCTION**

The parcel of 1 Wood Island covers the entire property of the Town-owned island. Located in the Atlantic Ocean off the coast of Gerrish Island, the property contains a historic lifesaving station, boathouse, and other structures maintained by an entity known as the Wood Island Life Saving Association. The group wishes to repair existing seawalls on the north and south shores of the island, which were damaged by recent storms. The plan proposes a replacement-in-kind, repairing the structures while maintaining the same existing dimensions.

Per **§16.9.B.(2)**, planning board review of the proposal is required due to the lot's proximity within the Shoreland and Resource Protection Overlay zones. Because one of the existing seawalls crosses the highest-astronomical tide (HAT) line, the planning board must approve repairs before any building permits may be issued.

**Staff recommend the planning board approve the application at this time.**

32 **APPLICATION & PLAN REVIEW**

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33 Staff reviewed the submitted application and plan and have the following comments:

- 34 1. The applicant has provided a memo stating that MDEP approval is not required  
35 for this replacement in kind. Staff suggest to the applicant they confirm with  
36 MDEP that no further permitting at the state level is necessary, but state  
37 permitting is **not** the responsibility of the Town.
- 38 2. General provision **§16.1.8.C.4.(b)**. requires expansion of structures within the  
39 base zone setback in the shoreland overlay zone not exceed 30% of the total  
40 footprint of structures existing within the property on January 1, 1989. A seawall  
41 is not considered a “structure” subject to this clause, and the proposed  
42 development does not entail any increase in the size of the wall. **This standard**  
43 **is not applicable.**
- 44 3. The Shoreland Overlay Zone Ordinance **§16.4.28.E.(3).(a)**. requires new principal  
45 and accessory structures to be set back at least 100 feet, horizontal distance,  
46 from the HAT line of any water bodies, tributary streams, the upland edge of a  
47 coastal wetland, or the upland edge of a freshwater wetlands. Because the  
48 seawall is being repaired in the same footprint, **this standard is not applicable.**
- 49 4. **§16.4.28.E.(2)**. allows 20% of total lot area in the shoreland zoning overlay to be  
50 comprised of non-vegetated surfaces or structures. MDEP exempts land used  
51 for shoreline stabilization projects from needing to meet property devegetation  
52 calculations. **This standard is not applicable.**
- 53 5. A survey has not been provided and is not required by staff or the planning  
54 board for replacements-in-kind.

55 **DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS**

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56 The applicant has attained the necessary approval from the Kittery Port Authority, and  
57 repairing the damaged seawalls would further protect the existing historic buildings  
58 on the property. Staff suggest acceptance of the plan and allowing the application to  
59 move to final plan approval and meet all other permitting requirements. The Planning  
60 Board should discuss the plan and determine if it meets the requirements to accept  
61 the plan, and/or direct the applicant to make any changes that are necessary.

62 **RECOMMENDED MOTIONS**

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63 Below are motions for the Planning Board’s consideration:

64 ***Motion to accept the application***

65 Move to accept the plan for a shoreland development application from Samuel Reid,  
66 on behalf of the Wood Island Life Saving Association.

67 ***Motion to approve the application***

68 Move to approve the plan for a shoreland development application from Samuel Reid  
69 on behalf of the Wood Island Life Saving Association.

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2 **Kittery Planning Board**  
3 **Findings of Fact**  
4 **For 1 Wood Island**  
5 **Shoreland Development Plan Review**

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**DRAFT**  
**M 51 L 14**

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8 Note: This approval by the Planning Board constitutes an agreement between the Town and the  
9 Developer incorporating the Development plan and supporting documentation, the Findings of Fact,  
10 and all waivers and/or conditions approved and required by the Planning Board.

11 **WHEREAS:** Samuel Reid, on behalf of the Wood Island Life Saving Association,  
12 requests approval for the replacement-in-kind of an existing seawall within the base  
13 zone of the Highest Astronomical Tide Line on the property of Wood Island, Tax Map  
14 51, Lot 14, in the Residential-Rural Conservation, Shoreland Overlay, and Resource  
15 Protection Overlay Zones.

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18 Pursuant to the Plan Review meetings conducted by the Planning Board as noted in  
19 the plan review notes prepared for 3/28/24

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|---|---------|
| Shoreland Development Plan Staff Review | 3/21/24 |
| Site Walk                               | None    |
| Public Hearing                          | None    |
| Approval                                | 3/28/24 |

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

- 25  
26 1. Shoreland development plan application received 3/5/24 from Samuel Reid on  
27 behalf of the Wood Island Life Saving Association.

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29 **NOW THEREFORE,** based on the entire record before the Planning Board and  
30 pursuant to the applicable standards in the Land Use and Development Code, the  
31 Planning Board makes the following factual findings and conclusions:

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33 **FINDINGS OF FACT**

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35 **Chapter 16.4 LAND USE ZONE REGULATIONS**

**16.4.28.E. Shoreland Overlay Zone**

*(2) The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:*

Finding: The proposal does not impact the devegetated area on the parcel.

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**

**16.9.3.F. Findings of Fact**

*(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:*

*(a). Maintain safe and healthful conditions:*

Finding: By repairing damaged seawalls, the proposal would restore safe conditions on Wood Island.

Conclusion: This requirement appears to be met.

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

*(b) Not result in water pollution, erosion or sedimentation to surface waters:*

Finding: The proposed development as represented in the application will reduce the risk of water pollution, and best practices for erosion and sedimentation will be observed in development.

Conclusion: This requirement appears to be met.

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

*(c) Adequately provide for the disposal of all wastewater:*

Finding: The proposal will not generate any wastewater.

Conclusion: This requirement does not appear applicable.

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

*(d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat:*

Finding: The proposed development as represented in the plans appears to reduce the risk of adverse impact on nearby natural resources.

Conclusion: The requirement appears to be met.

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

*(e) Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters:*

Finding: Shore cover is conserved in accordance with the Code. There are no adverse impacts to visual or actual points of access to water.

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| <p><u>Conclusion:</u> This requirement appears to be met.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p>   |
| <p><i>(f) Protect archaeological and historic resources:</i></p> <p><u>Finding:</u> The proposal would improve the safety of the historic resources on Wood Island.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p>   |
| <p><i>(g) Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district:</i></p> <p><u>Finding:</u> 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><u>Conclusion:</u> This requirement is not applicable.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p> |
| <p><i>(h) Avoid problems associated with floodplain development and use:</i></p> <p><u>Finding:</u> The proposed seawall will meet all flood hazard management standards.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p>   |
| <p><i>(i) Is in conformance with the provisions of this code:</i></p> <p><u>Finding:</u> The proposed repairs do not appear to impact conformance in any way.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p>   |
| <p><i>(j) Be recorded with the York County Registry of Deeds:</i></p> <p><u>Finding:</u> Neither Planning and Development staff nor the planning board require a survey or plan set for the proposed replacement-in-kind.</p> <p><u>Conclusion:</u> This standard is not applicable.</p> <p style="text-align: center;"><b>Vote: ___ in favor ___ against ___ abstaining</b></p>  |

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

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**Waivers:** None

**Conditions of Approval:**

- 1. Without prior approval, no changes, erasures, modifications or revisions may be made to any Planning Board approved final plan per Title 16.9.3.I.
- 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and construction to ensure adequate erosion control and slope stabilization.
- 3. All Notices to Applicant contained herein (Findings of Fact dated 3/28/24

**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 plan.
- 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. 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.
- 4. Prior to construction, applicant shall obtain any and all permits required by the code enforcement office to complete proposed work.

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 3/28/24

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

Per Title 16.2.12. - 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 PORT AUTHORITY  
TOWN HALL  
200 ROGERS RD.  
KITTERY, ME 03904**

Phone: 207-439-0452 ext 301  
Email: [kpa@kitteryme.org](mailto:kpa@kitteryme.org)  
[www.kittery.org](http://www.kittery.org)

March 14, 2024

Sam Reid  
0 Wood Island  
Kittery, ME 03905

Dear Sam Reid,

Your request for an in-kind repair / replacement of a damaged North and South seawall at 0 Wood Island has been approved by the Kittery Port Authority. (Ref. Application KPA-24-3)

This is your letter to proceed from the Kittery Port Authority. A copy has been provided to the Code Enforcement Officer. This approval is contingent on the approval of any other governing bodies that may be required before building commences.

Your approval is good for one year. A permit for which no substantial work has commenced within a year of date of issue will expire. A permit for which work is not substantially complete within two years from date of issue will expire. Expired permits will need to be renewed.

If you have any further questions or make any alterations to your approved plans, please contact the Chair of the Kittery Port Authority.

Respectfully,

Charles Patten  
Kittery Port Authority Chair

Cc: Code Enforcement Officer  
Town Planner  
File

# **CIVILWORKS NEW ENGLAND**

181 WATSON ROAD  
P.O. BOX 1166  
DOVER, NH 03821-1166  
PHONE: 603.749.0443 FAX : 603.749.7348

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## MEMORANDUM

Date: January 25, 2023

To: Sam Reid, President  
Wood Island Life Saving Station Association

Re: Wood Island: South seawall repairs, state and federal permits

From: Duncan Mellor, PE, Civilworks New England

Several precast concrete wall blocks were dislodged from the south seawall during the Dec. 23, 2022 storm. It was discovered that the epoxy resin anchored fiberglass rebar holding the top blocks onto the seawall were too short and did not engage the upper course of wall blocks. Those precast concrete blocks need resetting on top of the seawall and securing to the wall below. The extent of the repairs is much less than 50%.

Existing permits for the seawall reconstruction were issued by the Maine Department of Environment Protection (DEP) and by the US Army Corps of Engineers in 2015, with amendments authorized in 2018. The DEP NRPA permit file number is L-26596, signed Oct. 2, 2018. The US Army Corps of Engineers permit file number is NAE-2015-00072 reissued, signed May 24, 2018. Neither permit lists an expiration date, other than the Corps Maine General Permit (each 5 years), but as work was started within the General Permit window, that expiration date does not apply.

A review of the permitting rules relative to repair and maintenance of authorized structures found the following:

### **Maine DEP NRPA rules:**

Title 38, Chapter 3, subchapter 1, Article 5-A

*§480-Q. Activities for which a permit is not required:*

*2. Maintenance and repair. Maintenance and repair of a structure, other than a crossing, in, on, over or adjacent to a protected natural resource if:*

*A. Erosion control measures are taken to prevent sedimentation of the water; [PL 1995, c. 27, §1 (RPR).]*

*B. [PL 2011, c. 205, §1 (RP).]*

*C. There is no additional intrusion into the protected natural resource; and [PL 1995, c. 27, §1 (RPR).]*

*D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National*



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DOVER, NH 03821-1166

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*Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure. [PL 1995, c. 27, §1 (RPR).]*

*This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; or the repair of more than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;*

## **Army Corps of Engineers, in the current Maine General Permit:**

*35. Maintenance. The permittee shall maintain the activity authorized by these GPs in good condition and in conformance with the terms and condition of these permits. This does not include maintenance dredging, related disposal, or beach nourishment projects, which are subject to review thresholds for GP 5 on page 30, unless specified in written authorization from the Corps.*

### *38. Previously Authorized Activities.*

*a. Projects that received prior authorization from the Corps (via Category 1 or 2) and that completed authorized work under the previous nationwide permits, programmatic permits, regional general permits or letters of permission, shall remain authorized in accordance with the original terms and conditions of those authorizations, including their terms, general conditions, expiration date, and any special conditions provided in a written verification.*

*b. Activities authorized pursuant to 33 CFR Part 330.3 ("Activities occurring before certain dates") are not affected by these GPs.*

*c. Any work not commenced, not under contract to commence, nor completed that was originally authorized by the Corps under the GP in effect between October 13, 2015 and October 13, 2020 remains authorized subject to the terms and general conditions of this GP along with any special conditions included in written authorizations. Exception: if previously authorized work has not commenced or not under contract to commence and a new federally-listed threatened or endangered species may be affected, the Corps shall consult with the U.S. Fish and Wildlife Service or NOAA Fisheries prior to re-authorizing the work under these GPs. Requests for re-authorization shall include an Official Species List per GC 16.*