

# ITEM 1

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## Town of Kittery Planning Board Meeting October 27, 2022

**ITEM 1 – 35 Badgers Island West, Shoreland Development Plan**

Action: review for completeness, continue, approve, or deny plan: Pursuant to §16.4 Land Use Regulations and §16.9.3 Shoreland Development Review requirements of the Town of Kittery Land Use and Development Code, owner B.I.W. Group, LLC and agent Steven Riker with Ambit Engineering request approval to expand a legally non-conforming building and convert an existing office building to 10 residential units on a legally conforming lot located on real property with the address of 35 Badgers Island West, Tax Map 44, Lot 71, in the Mixed-Use Badgers Island Zone (MU-BI), Shoreland Overlay Zone (OZ-SL-250’), and Resource Protection Overlay Zone (OZ-RP).

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**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	October 27, 2022	Pending
NO	Site Visit	N/A	N/A
YES	Shoreland Development Plan Review Completeness/Acceptance	N/A	N/A
NO	Public Hearing	N/A	N/A
YES	Shoreland Development Plan Review Plan Approval	N/A	N/A

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.

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**Project Introduction**

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35 Badgers Island West (“Property”) is located along the bank of the Piscataqua River within the Mixed-Use Badgers Island (MU-BI) zoning district, the Shoreland Overlay Zone (OZ-SL-250) and the Resource Protection Zone (OZ-RP). as well as Commercial Fisheries/Maritime Use (OZ-CFMU) The Lot is legally conforming in size– there are 75-foot shoreland setbacks in this zone and 25-foot setback for particular circumstances.

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The Proposed project is to expand an existing building and revise the current use from an Office building to 10 Residential Units. This includes expanding the current footprint of the building with an addition on the North and South of the existing building and includes a 10-stall underground parking under each of the proposed 2-story additions. The northern addition crosses the setback to the HAT line. While the existing building does not comply with the current HAT delineation (minor intrusion) the proposal seeks to impact the HAT setback with the north side addition and proposes a minimum setback of 60.8 feet where 75 feet is required.

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Additionally, the Applicant’s proposal states that the Total Land Area of the Lot is 58,985 square feet. The plan set lists the total lot size as 54,883 square feet. In the 1996 plan the proposed Lot size is listed at 56,260 square feet. The town GIS states the lot is 43,560 square feet so there are some varying discrepancies.

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27 The applicant's data states the current building footprint is 5,922 square feet and was built on the existing  
28 footprint of the Marine Warehouse which was 4,000 square feet. The proposed expansion of the existing  
29 building has a post construction footprint of 13,289 square feet.

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31 **Development Standards**

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33 The GreenPages office building was originally permitted in 1994. The office building was built  
34 on the footprint of a marine warehouse that encroached on the 75-foot setback at one end. One  
35 large addition, known as Phase II was approved in 1996 which expanded the GreenPages 3-story  
36 building from about 10,750 sf to 14,976 sf in total for all floors.

37  
38 Because the existing building is non-confirming the pertinent shoreland zone section is:

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40 § 16.1.8 (C)(4)[3][a]

41  
42 [v] All other legally existing nonconforming principal and accessory structures that do not meet the water  
43 body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered  
44 as follows, as long as other applicable municipal land use standards are met and the expansion is not  
45 prohibited by § 16.1.8C(4)(b)[3][e][ii] and [iii], above:

46 **[A]**

47 For structures located less than the base zone setback from the normal high-water line of a water body,  
48 tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total  
49 footprint for all structures may not be expanded to a size greater than 1,000 square feet, or **30% larger**  
50 **than the footprint that existed on January 1, 1989, whichever is greater.** The maximum height of any  
51 portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or  
52 the height of the existing structure, whichever is greater.

53 **[B]**

54 In addition to the limitations in § 16.1.8C(4)(b)[3][e][v] above, for structures that are legally  
55 nonconforming due to their location within the Resource Protection Overlay Zone when located at less  
56 than 250 feet from the normal high-water line of a water body or the upland edge of a coastal or  
57 freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a  
58 size greater than 1,500 square feet, or 30% larger than the footprint that existed at the time the Resource  
59 Protection Overlay Zone was established on the lot, whichever is greater. The maximum height of any  
60 structure may not be greater than 25 feet, or the height of the existing structure, whichever is greater,  
61 except that any portion of those structures located less than the base zone setback from the normal high-  
62 water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland must meet  
63 the footprint and height limits in § 16.1.8C(4)(b)[3][e][iv][A] and [v][A], above.

64  
65 § 16.4.28 **Shoreland Overlay Zone (OZ-SL).**

66  
67 Mixed-use. Badgers Island (MU-BI) and Mixed-Use - Kittery Foreside (MU-KF) Zones,  
68 where the maximum devegetated area is 60%.

69 Devegetation: The current devegetated area according to the applicant is listed as 27,125  
70 square feet and is proposed to decrease to 24,385 square feet. This is to be accomplished by  
71 reclaiming surface parking and creating the underground parking under the proposed 2-story

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72 additions.

73 § 16.4.24 (D)(1)(a)-(h) **Mixed-use. Badgers Island (MU-BI)**

74 Dimensions and requirements standards the standard appear to be met within (a)-(h). Standards:

75 (1) The following space standards apply:

76 (a) Minimum land area per dwelling unit: 3,000 square feet.

77 (1) For each of the first two dwelling units and thereafter: 6,000 square feet.

78 (b) Minimum lot size: 6,000 square feet.

79 (c) Minimum street frontage: 50 feet.

80 (d) Minimum front yard: five feet.

81 (e) Minimum rear and side yards: 10 feet.

82 (f) Maximum building height: 40 feet.

83 (g) Minimum setback from:

84 (1) Water body and wetland water-dependent uses: zero feet.

85 (2) All other uses (including buildings and parking): 75 feet unless modified, according to the terms of  
86 Subsection E of this section.

87 (h) Minimum open space on the site: 40%. (Note: The Planning Board may reduce the required open space to  
88 30% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent  
89 use.)  
90

91 Please Note the code referenced by the applicant is Section 16.3.2.14.E the code is conditionally the  
92 same but since recodification the correct citation is § 16.4.24 (3)

93 Once the Town proposed zoning changes that changed the area known as Badgers Island to the MU-BI  
94 zone in the late 1990s, the Town received a dispensation from DEP (we have documents and recent  
95 confirmation from DEP) allowing the Town of Kittery to permit buildings in the MU-BI Zone closer than  
96 75 feet but no closer than 25 feet to the HAT if the applicant meets one of the following standards found  
97 under 16.4.24.D.(3) below:  
98

99 **(3) Appropriate waterfront activity incentives.**

100 **To encourage objectives of the Comprehensive Plan to:**

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102 1) Provide public access to the waterfront;

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104 2) Retain and expand commercial water-dependent uses;

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106 3) Take extraordinary steps to preserve the environmental quality of the shoreline and tidal waters, the  
107 required setback from water bodies and wetlands may be reduced to 25 feet where the Planning Board  
108 finds a development plan significantly contributes to accomplishment of the above objectives by  
109 satisfactorily achieving one or more of the following:  
110

111 (a) Public access. Grants an easement to the Town, or other acceptable party, providing public access to  
112 the waterfront at no charge to the general public via a developed accessible pedestrian route with  
113 appropriate signage or includes an outdoor deck or patio for customer seating at a  
114 restaurant open to the general public; or  
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116 (b) Retain/expand commercial water-dependent uses. Provides for inclusion of commercial water-  
117 dependent use(s) on the property for the duration of the portion of the project that encroaches closer than  
118 the normal minimum setback from water bodies and wetlands. Provision of fewer than six boat  
119 slips for leisure/recreational boating do not constitute a commercial water-dependent use for the purposes  
120 of this section; or

121  
122 **(c) Preserve the environmental quality of coastal resources. Protect existing wildlife habitat,**  
123 **conserve shore cover and ensure the quality of stormwater runoff by satisfying all of the following**  
124 **standards:**

125  
126 **[1] Retain and protect existing significant wildlife habitat that provides food, cover and/or nesting**  
127 **for migratory songbirds and wading birds;**

128  
129 **[2] In order to conserve shore cover, contiguous areas of shrubberies of varying height, such as**  
130 **dwarf species of barberry, serviceberry, holly, crabapple, dogwood, cotoneaster, euonymus,**  
131 **firethorn and/or osa rugosa, as well as erosion-resistant ground cover plantings must be retained**  
132 **and planted, and existing trees retained, wherever practicable in the setback;**

133  
134 **[3] Implementation of a stormwater management plan endorsed by the York County Soil and**  
135 **Water Conservation District (SCS), or the Town's engineering peer review consultant, that treats**  
136 **stormwater with appropriate BMPs and removes pollutants in accordance with the most-current**  
137 **edition of the Maine Department of Environmental Protection BMP Manual, Stormwater**  
138 **Management for Maine. Pollutants sought to be removed include suspended solids, nitrates,**  
139 **hydrocarbons and heavy metals. Such special treatment of the first flush of runoff may include**  
140 **detention, infiltration, filtering and trapping of pollutants.**

141  
142 **The Applicant is trying to meet (c) which includes [1] [2] [3] as follows:**

143 From the applicant's proposal letter:

144 " The Code allows for intrusions into the 75 foot setback, in this local, provided certain objectives of the  
145 Comprehensive Plan are met. Specifically, Section 16.3.2.14.E (copy of Code Section attached) allows a  
146 setback reduction to 25 feet from the HAT if the Planning Board finds that a development plan  
147 significantly contributes to the accomplishment of certain objectives. In the case of this application we  
148 hereby submit, and ask the Planning Board to concur, that the redevelopment satisfies Section (3) of  
149 Section 16.3.2.14.E. The proposal will remove existing surface parking areas which drain to the adjacent  
150 resource and replace them with covered underground parking. This reduces the discharge of vehicle drip  
151 pollutants to zero and is a significant benefit to the environment. The parking plan on Sheet C3 details the  
152 layout of the underground parking. In order to fully manage the parking expectations of the unit owners  
153 the plan show the creation of 20 parking spaces – 2 per unit. In order to provide adequate space for  
154 parking and maneuvering the north addition needs to intrude slightly into the HAT setback, to a point  
155 closer than 75 feet but well above 25 feet. This can't be avoided since *the location of the existing building*  
156 *is set already.....*

157  
158 In addition to this improvement the developer is willing to provide, at their expense and placement, a  
159 stormwater treatment device to deal with untreated storm water coming from the adjacent street and  
160 property area, including a boat storage yard. Also, the buffer plantings can be expanded along the south  
161 side of the lot waterfront to provide additional cover for birds as well as eliminating lawn areas running to  
162 the resource. Also, a review by the town's review engineer is welcomed; we are ready to cooperate with

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163 any additional recommendations where possible. We trust that these proposed improvements will begin a  
164 conversation with the Planning Board regarding this key component of the design; and we hope that the  
165 Board agrees that this project will be a benefit to the community and the environment.”

## 166 **Town Attorney’s Letter**

167 *“Based on what the attorney says, the Board may consider the Badger’s Island Zone-Specific shoreland*  
168 *setbacks and considerations as the take precedence over shoreland.”*

## 169 **Recommendations**

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171 *A detailed landscaping plan with a landscape architect specializing in a shoreland habitat*  
172 *restoration is highly recommended*  
173 *ADA compliant parking requirement should be addressed*  
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## 175 **Submission**

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### 176 *Waivers*

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178 The applicant is not requesting any waivers from any review or ordinance standards.  
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### 180 *Additional Permits*

181 None Required  
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## 183 **Planning Board Procedural Steps**

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185 The sketch plan phase allows the Board to 1) determine if sufficient information has been supplied, and if  
186 not request the information, 2) to ask questions and 3) give direction to the applicant. If the Board finds  
187 the application insufficient or requires additional information, the Board should request that information  
188 be provided for the next meeting.  
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## 190 **Recommended Motions**

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192 *Move to accept sketch plan site plan application as complete*  
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194 Move to accept sketch plan application from owner/applicant owner B.I.W. Group, LLC and agent Steven  
195 Riker with Ambit Engineering request approval to expand a legally non-conforming building and convert  
196 an existing office building to 10 residential units on a legally conforming lot located on real property with  
197 the address of 35 Badgers Island West, Tax Map 44, Lot 71, in the Mixed-Use Badgers Island Zone (MU-  
198 BI), Shoreland Overlay Zone (OZ-SL-250’), and Resource Protection Overlay Zone (OZ-RP).  
199

200 Move to set a site visit for the sketch plan site plan application  
201

202 Move to set a site visit for the sketch plan from owner/applicant owner B.I.W. Group, LLC and agent  
203 Steven Riker with Ambit Engineering request approval to expand a legally non-conforming building and  
204 convert an existing office building to 10 residential units on a legally conforming lot located on real  
205 property with the address of 35 Badgers Island West, Tax Map 44, Lot 71, in the Mixed-Use Badgers  
206 Island Zone (MU-BI), Shoreland Overlay Zone (OZ-SL-250’), and Resource Protection Overlay Zone  
207 (OZ-RP).

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208 *Move to continue the sketch plan site plan application*

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210 Move to continue sketch plan application from owner/applicant owner B.I.W. Group, LLC and agent  
211 Steven Riker with Ambit Engineering request approval to expand a legally non-conforming building and  
212 convert an existing office building to 10 residential units on a legally conforming lot located on real  
213 property with the address of 35 Badgers Island West, Tax Map 44, Lot 71, in the Mixed-Use Badgers  
214 Island Zone (MU-BI), Shoreland Overlay Zone (OZ-SL-250'), and Resource Protection Overlay Zone  
215 (OZ-RP).

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217 *Move to deny the sketch plan site plan application*

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219 Move to accept sketch plan application from owner/applicant owner B.I.W. Group, LLC and agent Steven  
220 Riker with Ambit Engineering request approval to expand a legally non-conforming building and convert  
221 an existing office building to 10 residential units on a legally conforming lot located on real property with  
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