



TOWN OF KITTERY

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

Planning Review Notes March 28, 2024

ITEM 3 – 38 Pepperrell Road– 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, George Derby 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 38 Pepperrell Road, Tax Map 18, Lot 29, in the Residential Kittery Point Village and Shoreland Overlay Zones.

PROCESS SUMMARY

REQUIRED	ACTION	COMMENTS	STATUS
Yes	Kittery Port Authority Review	2/11/24	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

OTHER POTENTIAL PERMITS AND REQUIREMENTS

- Building permit through Code Enforcement

PROJECT INTRODUCTION

38 Pepperrell Road is an existing lot of record partially covered by the Shoreland Overlay Zone and a flood hazard area. The property contains a single-family dwelling and a seawall damaged by recent storms. The applicant is requesting approval to repair the existing seawall 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 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.

30 **APPLICATION & PLAN REVIEW**

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

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

53 **DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS**

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

60 **RECOMMENDED MOTIONS**

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

62 ***Motion to accept the application***

63 Move to accept the plan for a shoreland development application from George Derby,

64 ***Motion to approve the application***

65 Move to approve the plan for a shoreland development application from George
66 Derby,

1
2 **Kittery Planning Board**
3 **Findings of Fact**
4 **For 38 Pepperrell Road**
5 **Shoreland Development Plan Review**

DRAFT
M 18 L 29

6
7
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:** George Derby requests approval for the replacement-in-kind of an
12 existing seawall within the base zone of the Highest Astronomical Tide Line on the
13 property of 38 Pepperrell Road, Tax Map 18, Lot 29, in the Residential Kittery Point
14 Village and Shoreland Overlay Zones.

15
16
17 Pursuant to the Plan Review meetings conducted by the Planning Board as noted in
18 the plan review notes prepared for 3/28/24

19

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

20
21 Pursuant to the application and plan and other documents considered to be a part
22 of a plan review decision by the Planning Board in this Finding of Fact consisting of
23 the following (hereinafter the "Plan"):

- 24
25 1. Shoreland development plan application received 3/18/24 from George Derby.

26
27 **NOW THEREFORE,** based on the entire record before the Planning Board and
28 pursuant to the applicable standards in the Land Use and Development Code, the
29 Planning Board makes the following factual findings and conclusions:

30
31 **FINDINGS OF FACT**

32
33 **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

34
35
36

--

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 the property.

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.

Conclusion: This requirement appears to be met.

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

37
38 Based on the foregoing Findings, the Planning Board finds the applicant has
39 satisfied each of the review standards for approval and, therefore, the Planning
40 Board approves the Shoreland Development Plan Application subject to any
41 conditions or waivers, as follows:

42
43 **Waivers:** None
44

45 **Conditions of Approval:**

- 46 1. Without prior approval, no changes, erasures, modifications or revisions may
- 47 be made to any Planning Board approved final plan per Title 16.9.3.I.
- 48
- 49 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all
- 50 work associated with site and construction to ensure adequate erosion control
- 51 and slope stabilization.
- 52 3. All Notices to Applicant contained herein (Findings of Fact dated 3/28/24

53

54 **Notices to Applicant:**

- 55
- 56 1. Incorporate any plan revisions on the final plan as required by Planning Board
- 57 and submit for Staff review prior to presentation of final plan.
- 58
- 59 2. Prior to the release of the signed plans, the applicant must pay all outstanding
- 60 fees associated with the permitting, including, but not limited to, Town Attorney
- 61 fees, peer review, newspaper advertisements and abutter notification.
- 62
- 63 3. This approval by the Town Planning Board constitutes an agreement between
- 64 the Town and the Developer, incorporating as elements the Development Plan
- 65 and supporting documentation, the Findings of Fact, and any Conditions of
- 66 Approval.
- 67
- 68 4. Prior to construction, applicant shall obtain any and all permits required by
- 69 the code enforcement office to complete proposed work.

70

71 The Planning Board authorizes the Planning Board Chair or Vice chair to sign the

72 Final Plan and the Findings of Fact upon confirmation of required plan changes.

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

74 APPROVED BY THE KITTERY PLANNING BOARD ON 3/28/24

75

76

77 _____

78 Dutch Dunkelberger, Planning Board Chair

79

80

81 Per Title 16.2.12. - An aggrieved party with legal standing may appeal a final decision

82 of the Planning Board to the York County Superior Court in accordance with Maine

83 Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the

84 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
www.kittery.org

February 21, 2024

Neila J. Arnold
38 Pepperrell Rd.
Kittery, ME 03904

Dear Neila Arnold,

Your request for an in-kind repair / replacement of a damaged seawall at 38 Pepperrell Rd. has been approved by the Kittery Port Authority. (Ref. Application KPA-24-2)

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

This Shoreland Development Plan Application is for the replacement in kind of a previously existing stone and mortar seawall destroyed by the storms that occurred on January 10 and January 13, 2024 at 38 Pepperrell Road Kittery Point, Maine.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
PERMIT BY RULE NOTIFICATION FORM**

(For use with DEP Regulation, Natural Resources Protection Act - Permit by Rule Standards, Chapter 305)

APPLICANT INFORMATION (Owner)				AGENT INFORMATION (If Applying on Behalf of Owner)			
Name:	George Derby			Name:			
Mailing Address:	POB 31			Mailing Address:			
Mailing Address:	38 Pepperrell Rd			Mailing Address:			
Town/State/Zip:	Kittery Point			Town/State/Zip:			
Daytime Phone #:	(207) 451-7637	Ext:		Daytime Phone #:		Ext:	
Email Address:	gderby@yahoo.com			Email Address:			
PROJECT INFORMATION							
Part of a larger project? (check 1):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	After the Fact? (check 1):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project involves work below mean low water? (check 1):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Name of waterbody:	Atlantic Ocean Pepperrell Cove
Project Town:	Kittery		Town Email Address:	2074751323 Planning Bd		Map and Lot Number:	Map 18 Lot 29
Brief Project Description:	Replace storm damaged seawall, approx 25 ft						
Project Location & Brief Directions to Site:	38 Pepperrell Rd Kittery Point, ME 03905 Take Route 103 from Kittery into Kittery Point - on right before Ft McClary						

PERMIT BY RULE (PBR) SECTIONS (Check at least one): I am filing notice of my intent to carry out work that meets the requirements for Permit-by-Rule (PBR) under DEP Rules, [Chapter 305](#). I and my agent(s), if any, have read and will comply with all of the standards in the Sections checked below.

- | | | |
|--|--|---|
| <input type="checkbox"/> Sec. (2) Act. Adj. to Prot. Natural Res. | <input type="checkbox"/> Sec. (9) Utility Crossing | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (16-A) Beach Nourishment |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (11) State Transportation Facilities | <input type="checkbox"/> Sec. (17) Transfer/Permit Extension |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Veg. | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (13) F&W Creat./Water Qual. Improv. | <input type="checkbox"/> Sec. (19) Act. Near SVP Habitat |
| <input type="checkbox"/> Sec. (8) Shoreline Stabilization | <input type="checkbox"/> Sec. (15) Public Boat Ramps | <input type="checkbox"/> Sec. (20) Act. Near Waterfowl/Bird Habitat |

NOTE: Municipal permits also may be required. Contact your local code enforcement office for information. Federal permits may be required for stream crossings and for projects involving wetland fill. Contact the Army Corps of Engineers at the Maine Project Office for information.

NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS AND FEE

- Attach** all required submissions for the PBR Section(s) checked above. The required submissions for each PBR Section are outlined in Chapter 305 and may differ depending on the Section you are submitting under.
- Attach** a location map that clearly identifies the site (U.S.G.S. topo map, Maine Atlas & Gazetteer, or similar).
- Attach Proof of Legal Name** if applicant is a corporation, LLC, or other legal entity. Provide a copy of Secretary of State's registration information (available at <http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x>). Individuals and municipalities are not required to provide any proof of identity.

FEE: Pay by credit card at the [Payment Portal](#). The Permit-by-Rule fee may be found here <https://www.maine.gov/dep/feeschedule.pdf> and is currently \$307.

- Attach** payment confirmation from the Payment Portal when filing this notification form.

Signature & Certification:

- I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules.
- I understand that this PBR becomes effective 14 calendar days after receipt by the Department of this completed form, the required submissions, and fee, *unless the Department approves or denies the PBR prior to that date.*

By signing this Notification Form, I represent that the project meets all applicability requirements and standards in Chapter 305 rule and that the applicant has sufficient title, right, or interest in the property where the activity takes place.

Signature of Agent or Applicant (may be typed):

George Derby

Date:

03/03/2024

Keep a copy as a record of permit. Email this completed form with attachments to DEP at: DEP.PBRNotification@maine.gov. DEP will send a copy to the Town Office as evidence of DEP's receipt of notification. No further authorization will be issued by DEP after receipt of notice. A PBR is valid for two years, except Section 4, "Replacement of Structures," are valid for three years. **Work carried out in violation of the Natural Resources Protection Act or any provision in Chapter 305 is subject to enforcement.**