



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT**

Port Authority Meeting Date: May 4, 2023

Item #: 1

STAFF REPORT – 42 PEPPERRELL ROAD

Project Name: 42 Pepperrell Road Pier, Gangway & Float

Applicant: Ryan McCarthy, Tidewater Engineering

Owner: Judith McKenna

Proposed Development: Installation of a 4' x 85' pile supported pier, a 3' x 35' ramp, and a 10' x 30' float.

Waivers: *KPA Rule 4.7.4 Height of pier deck*

Map & Lot Numbers: Map 18, Lot 27

Staff Recommendation: Approval of request, provided the waiver for height of pier is approved

Riparian Line Determination:

Riparian lines to the East (Map 18 Lot 25, owned by the State of Maine) were determined using the extension method. Riparian lines to the West (Map 18 Lot 28, owned by Bonnie Knickerbocker Gibson) were determined using the colonial method.

Site Description:

The property at 42 Pepperrell Road contains 35,270 square feet (0.81 acres) and is located in the Town's Residential – Kittery Point Village zone. This zone has a zero-foot setback from waterbodies for water dependent uses.

Description of Request:

The applicant requests the installation of a 4' wide x 85' long pile supported pier, a 3' wide x 35' long ramp, and a 10' wide x 30' long float. A Maine Natural Resource Protection Act application has been submitted, and a Army Corps of Engineering permit was granted on January 12, 2023 under permit #NAE-2022-02668.

Performance Standards:

For the purposes of this report, and the application before the Board, the normal high-water mark referenced in the KPA Rules is equivalent to the mean high-water mark referenced in the application and survey

- (1) *KPA Rules 4.7.2: The construction of any piers, docks, wharves, and other structures and uses extending over or beyond the normal high-water mark of a water body or within a wetland must comply with all applicable requirements of Town Code Title 16.*
 - **Town Code Title 16 incorporates by reference the 2015 International Residential Building Code. Compliance with this code will be ensured through the building permitting process.**
- (2) *KPA Rules 4.7.3: Non-commercial private piers may have a maximum width of 6 feet as measured parallel to the shoreline and be limited to the minimum size necessary to accomplish their purpose. Except for temporary ramps and floats, the total length of a ramp, pier and float structure may not extend more than 150 feet beyond the normal high-water mark and piers not extend more than 100 feet beyond the normal high-water mark nor extend below the mean low water mark, whichever is shorter.*
 - **Based on the application materials, the pier will have a maximum deck width of 4 feet. The total length of the pier, ramp, and float is 150 feet, although it only extends approximately 122 feet past the normal high-water mark. The pier extends 57 feet past the normal high-water mark and ends before the mean low water mark.**
- (3) *KPA Rules 4.7.4: The maximum height of the pier deck may not exceed six (6) feet above the normal high-water mark, and the handrails not exceed 42" without the specific approval of the Port Authority.*
 - **Based on the application materials, the pier has an overall height of 10.16 feet above the normal high-water mark. This is above the maximum of 6 feet as stated in the KPA Rules Performance Standards under 4.7.4. A waiver has been submitted.**
- (4) *KPA Rules 4.7.5: Commercial piers are limited to the minimum size necessary to accomplish their purpose. They may not extend beyond the mean low water mark except with credible proof by the applicant that the extension is necessary for the water-dependent use of the pier. The maximum height of the pier deck may not exceed six (6) feet above mean high water mark and the handrails not exceed 42", without a showing of necessity and specific approval of the Port Authority.*
 - **This application is for a residential use pier, this standard is not applicable.**
- (5) *KPA Rules Chapter 4.7.6: Piers, wharves, and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal*

high- water mark and not owned or controlled by the applicant unless a letter of permission is granted by abutting or other controlling property owner. If abutting property owners reach a mutual agreement regarding structures which have a lesser setback, which does not interfere with navigation, is practical and is consistent with the intent of these regulations, that setback may be authorized by the Port Authority if the applicant agrees to record any ensuing permit (which will have that agreement as a condition) and the abutters' letters of no objection, with the Registrar of Deeds, or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property in the Town.

- **The pier is roughly 105 feet from the Eastern riparian line and roughly 46 feet from the Western riparian line. There are no existing structures below the normal high-water mark within 100 feet.**

Surrounding Land Uses:

North: Residential – No waterfront, no marine structures.

South: Atlantic Ocean

East: Conservation – No marine structures.

West: Residential – Dock, pier & float.

Findings of Fact:

Section 16.9.2.E requires the Kittery Port Authority to use the following process when hearing requests:

Findings of fact. An application shall be approved or approved with conditions if the Port Authority makes a positive finding based on the information presented. The application must be demonstrated that the proposed use will shall:

(1) Maintain safe and healthful conditions;

- **Staff does not believe that any of the development proposed in this application will create any unsafe or unhealthy conditions.**

(2) Not result in water pollution, erosion or sedimentation to surface waters;

- **Staff does not believe that any of the development proposed in this application will result in water pollution, erosion or sedimentation. No open excavation is proposed below the highest annual tide line and installation of the fixed pier will primarily occur from a barge to minimize foot traffic on the intertidal substrate.**

(3) Adequately provide for the disposal of all wastewater;

- **No wastewater will be created from the use of the proposed development.**

(4) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

- **A United States Fish and Wildlife Service and IPaC endangered species list is**

attached to the application. This was submitted to the Maine Ecological Services Field Office for review on August 12, 2022. Based on the information provided and the review by the Maine Ecological Service, Staff does not believe that the proposed development will have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.

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

- **Staff does not believe that the proposed development will negatively impact shore cover, or existing points of access to coastal waters. Staff does not believe that the increased height of the pier will negatively impact views as the topography of the land at the shore access is much higher than the pier, as depicted in the profile view included on the survey in the application materials.**

(6) *Protect archaeological and historic resources;*

- **No known archaeological or historic resources are within the area of proposed development.**

(7) *Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;*

- **The proposed development is not located within a commercial fisheries or maritime activity district.**

(8) *Avoid problems associated with floodplain development and use; and*

- **The proposed development is not located within the floodplain shown in the current Q3 maps, however it is located in the 100 year-velocity with flood elevation zone in the FEMA Draft 2013 maps, which are slated to be adopted soon. A waiver has been submitted to the KPA Rule 4.7.4 to account for sea level rise and flood elevations.**

(9) *Is in conformance with the provisions of this title.*

- **The proposed development is in conformance with all of the provisions of Town Code Title 16 and the KPA Rules and Regulations Section 4.7, with the exception of KPA Rules Section 4.7.4, height of pier deck.**

Based on the material provided, and a review of Town Code Chapter 16.9 and KPA Rules Section 4.7, Staff recommends **APPROVAL** of the application, provided that the waiver for height of pier is approved.