

Town of Kittery
Planning Board Meeting
July 14, 2022

35 Badgers Island West – Shoreland Development Plan Review

Action: close public hearing; continue, approve, or deny plan. Owner/Applicant B.I.W. Group, LLC request approval for a shoreland development plan on a lot with a three-story commercial building and associated parking and utilities proposing to construct a 7,978 square foot revetment (retaining wall), of which 4,291 square feet, will be located within the base zone setback of the Shoreland Overlay Zone and the Resource Protection Zone located on real property with the address of 35 Badgers Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-250) Overlay Zone and the Resource Protection Zone (OZ-RP).

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	June 28, 2022	HELD
YES	Shoreland Development Plan Review Completeness/Acceptance	June 9, 2022	ACCEPTED
NO	Public Hearing	July 14, 2022	PENDING
YES	Shoreland Development Plan Review Plan Approval	TBD	PENDING

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.

Project Introduction

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). The property is legally conforming – there are 75-foot shoreland setbacks in this zone per §16.4.28.E which the building conforms to and the lot is 54,883 square feet in size - well over the 6,000 square foot minimum lot size.

In addition to the Piscataqua River, directly abutting 35 Badgers Island West to the north is a condominium building and to the south is an industrial/commercial building. This side of Badgers Island is a mix of residential and commercial uses with the commercial uses mostly located at the western and eastern ends of this portion. Route 1 bisects the island.

The applicant’s path to permit the revetment is two pronged: obtaining approval from the Kittery Port Authority (“KPA”) for the portion of the revetment below the Highest Annual Tide (HAT) and the Planning Board (“Board”) approval for a shoreland development. The KPA approved the plan at their June 2, 2022 meeting.

Revetment work as proposed is intended to stabilize the entire shoreline of the property (see photos in the application). The total area of revetment work proposed is 7,978 square feet (of permanent impact), with a linear measurement of 489 feet. Of the 7,978 square feet, 4,291 square feet and 309 linear feet are above

36 the HAT and therefore in the purview of the Planning Board. There is also 10,072 square feet of temporary
37 construction impact, most of which is above the HAT.

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39 The revetment work proposed will:

- 40 1. Repair and/or replace existing revetment in the southern portion of the property’s shoreline and in
41 the process of this repair/replacement, move the revetment landward to combat erosional forces
42 currently at work and to provide future protection from predicted sea level rise. Some existing
43 revetment located seaward will be removed – about 720 square feet/40 linear feet, the result of
44 moving the revetment 4-5 feet landward.
- 45 2. Construct additional revetment above the HAT along the more northern portion of the property’s
46 shoreline.

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48 **Development Stanadards**

49 The devegetation calculations on Sheet C-2 indicate that including the upland revetment work proposed,
50 the property will remain under the 60% devegetation area on the lot allowable in the MU-BI Zone. See
51 §16.4.28.E.

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53 There are a number of existing trees outside the temporary construction area scattered across the lawn. One
54 existing tree and shrubs (many of which are invasive species according to the applicant’s engineer) are
55 located within the temporary construction zone. That area must be replanted as required by shoreland
56 zoning regulations. The applicant has prepared a buffer planting plan included in this packet that indicates
57 he placement of five proposed maple trees, among other plantings.

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59 Along with ledge, a pile of stones and remnants of an old stone wall, there is a large area of salt marsh grass
60 in the intertidal area to the north which is noted and must be protected (although not in the Planning Board’s
61 purview).

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63 **Submissions**

64 *Submission content*

65 The shoreland development plan and application is complete and now includes the buffer planting plan as
66 requested at the June 9, 2022 Planning Board meeting.

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68 *Waivers*

69 The applicant is not requesting any waivers from any review or ordinance standards.

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71 *Additional Permits*

72 The proposed revetment has received KPA approval (for that area below the HAT), Army Corps approval
73 (see application) and has a pending NRPA permit from the Department of Environmental Protection.

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75 **Planning Board Procedural Steps**

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77 The Board initially reviewed this plan at their June 9, 2022 meeting, where a site walk was scheduled for
78 June 28, 2022, a public hearing was scheduled for July 14, 2022, and the plan was continued to that date.

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80 The site walk was held on June 28 with the full Planning Board, the property owner and agents, and several
81 abutters. The owner outlined the proposed revetment plans and led the group around the shoreline of the
82 property. The owner’s agent indicated where work below and above the highest annual tide would occur,
83 what impacts to existing vegetation would be, and that the project would remove invasive species and
84 replant with native species. The owner indicated that a subsequent phase may be submitted to the Planning
85 Board later this year, which would entail expanding the building and changing the existing office use to
86 residential units. That phase is not part of this review.

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At the July 14, 2022 Planning Board meeting, the following steps should occur:

1. Hold the public hearing. The Board may then choose to close or continue the public hearing.
2. If the Board closes the public hearing, the Board can either continue the application to a subsequent meeting, approve the plan if satisfied with the application, or deny the plan if not satisfied.

Recommended Motions

Below are recommended motions for the Board’s consideration:

Motion to continue application

Move to continue the shoreland development application to July 14, 2022 from Owner/Applicant B.I.W. Group, LLC which requests approval to construct a 7,978 square foot revetment (retaining wall), of which 4,291 square feet, will be located within the base zone setback of the Shoreland Overlay Zone and the Resource Protection Zone located on real property with the address of 35 Badgers Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-250) Overlay Zone and the Resource Protection Zone (OZ-RP).

Motion to approve application

Move to approve the shoreland development application from Owner/Applicant B.I.W. Group, LLC which requests approval to construct a 7,978 square foot revetment (retaining wall), of which 4,291 square feet, will be located within the base zone setback of the Shoreland Overlay Zone and the Resource Protection Zone located on real property with the address of 35 Badgers Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-250) Overlay Zone and the Resource Protection Zone (OZ-RP).