

**Town of Kittery  
 Planning Board Meeting  
 June 9, 2022**

**134 Whipple Road – Shoreland Development Plan Review**

Action: Accept/deny plan as complete; If plan is accepted, continue the agenda item to a subsequent meeting, schedule a public hearing / site walk or approve. Owners/Applicants Nicolas and Amy Mercier request approval for a shoreland development plan on a legally non-conforming lot with a legally non-conforming structure which will be replaced per a Shoreland Development Plan approved by the Planning Board last year to construct a seawall located within the base zone setback of the Shoreland Overlay Zone located on real property with the address of 134 Whipple Road, Tax Map 10, Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland (SL-OZ-250) Overlay Zone

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	TBD	TBD
YES	Shoreland Development Plan Review Completeness/Acceptance	Scheduled for June 9, 2022	PENDING
NO	Public Hearing	TBD	TBD
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**

134 Whipple Road (“Property”) is located on the Back Channel of the Piscataqua River, a water body between mainland Kittery and the Portsmouth Naval Shipyard within the Residential-Urban (R-U) Zone, the Shoreland Overlay Zone (OZ-SL-250) and the Resource Protection Zone (OZ-RP). The property is legally nonconforming in size (13,381-sf so less than the 20,000 sf required) with 100-foot shoreland setbacks per §16.4.28.E. The existing building will be removed and replaced with another structure which was reviewed and approved by the Board in 2021. The proposed seawall will replace an existing wall which is failing and is designed with sea level rise considerations in mind.

In addition to the Piscataqua River, directly abutting 134 Whipple Road is a vacant lot owned by the Town of Kittery and a lot containing a single-family dwelling unit.

The applicant’s path to permit the seawall is two pronged: obtaining approval from the Kittery Port Authority (“KPA”) for any portion of the wall below the Highest Annual Tide (HAT) and the Planning Board (“Board”) approval for a shoreland development. Since the KPA only meet once a month, the KPA meeting during which this project will be heard for the second time is Thursday, June 2nd. If the project is approved, staff will get any pertinent information to the Board on the KPA’s determination as soon as possible, otherwise this application will be postponed to a July Planning Board meeting.

35 The seawall as proposed is intended to stabilize the entire shoreline of the property. It is 1,179 square feet  
36 (of permanent impact), with a linear measurement of 165 feet. The plans do not yet show the area of  
37 temporary construction impact, most of which will be above the HAT. Plan note #19 on Sheet C-1 states  
38 that seawall construction below the HAT will be performed at low tide which is the KPA's purview.  
39 Inquiries of the applicant's engineer revealed that the work above the HAT will be done from the property,  
40 not from a barge. The laydown/materials staging area will also need to be shown along with the temporary  
41 construction area on a future plan submission.

42  
43 The seawall work proposed will include the following tasks:

- 44 1. Remove the existing stone wall currently serving as a seawall.
- 45 2. Construct a new seawall of Redi-Rock (pre-formed concrete) in a gravity wall design.
- 46 3. Attach a turbidity curtain to each end of the property's shoreline to control erosion and  
47 sedimentation from both construction (of the new house) and stormwater runoff.

#### 48 49 **Development Standards**

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50 The devegetation calculations on Sheet C-1 indicate that including the upland seawall work proposed and  
51 the new house to be constructed, the property will come in under the existing conditions' devegetation  
52 percentage (24.6% existing vs 24.1% proposed) on the lot.

53  
54 It is presumed that the landscape plan (included with the building replacement plan) approved by the Board  
55 last year will be the plan followed to repair the damage caused by construction of both the seawall and the  
56 new building.

#### 57 58 **Staff Review**

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- 59  
60 1. The applicant's engineer has indicated that the wall's 1,179 square feet and 165 linear feet is inland of  
61 the HAT.
- 62 2. Staff was informed that the Redi-Rock product was chosen for the seawall because it is one of the most  
63 stable products for this type of application. The concrete is specially formulated to stand up to salt  
64 water. Sea level rise was the main impetus for rebuilding the seawall to the dimensions shown. What  
65 is the expected lifetime of such a wall barring a catastrophic event? How would that compare to a stone  
66 seawall?
- 67 3. The Redi-Rock Wall Design sheet's Note #22 says that unless the wall construction is observed by SFC  
68 (the maker), they will not certify it. It goes on to say that periodic site visits are necessary in order for  
69 SFC to prepare the certification. This certification seems desirable so staff recommends it in addition  
70 to the Town's peer review engineer's review of the plans. There may also need to be a site visit by the  
71 Town's peer review engineer. The applicant should be prepared to assume these costs.
- 72 4. The applicant's engineer told staff that the turbidity curtain will be anchored to the shore by either a  
73 post, tree or a pin driven into the ground. It will be as close to the seawall as it can be without hindering  
74 construction. It will serve to control erosion and sedimentation caused by construction activities and  
75 stormwater. Once construction and landscaping are completed, the curtain will be removed.
- 76 5. As mentioned earlier, the area of temporary construction above and below the HAT should be shown  
77 on the plans. In addition, temporary siting of the seawall materials should also be shown. It is presumed  
78 that the seawall will be built prior to demolition and re-construction of the residence. If not, the  
79 applicant/applicant's engineer should explain the sequence of construction events to the Board.

#### 80 81 **Submissions**

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##### 82 *Submission content*

83 The shoreland development plan and application is nearly complete and includes the information as  
84 required pursuant to §16.9.3.C with the following exceptions:

- 85 • Area of temporary construction and siting of construction materials

86 *Waivers*

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

88

89 *Additional Permits*

90 The proposed seawall will have received KPA approval (because the seawall touches the HAT and the dock  
91 adjustment) if the Board is hearing the application on June 9<sup>th</sup>. The USACE approval and NRPA permit  
92 from the Department of Environmental Protection is pending. The applicant will submit the applications  
93 for the next meeting.

94

95 **Planning Board Procedural Steps**

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97 After the Board has been presented with the application and had discussion, the following steps may be  
98 considered:

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- 100 1. Plan acceptance: Before the Board can move on the application, a vote must occur to accept the  
101 plan.
- 102 2. If the Board accepts the plan, the Board should decide if a site visit, public hearing, or both need to  
103 occur.
- 104 3. If a public hearing is not taking place, the Board should consider moving to continue the application  
105 to a subsequent meeting or if satisfied with the application, approving the plan.

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**Recommended Motions**

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Below are recommended motions for the Board's consideration:

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*Motion to accept the application*

113

Move to accept the plan for a shoreland development application from Owners/Applicants Nicolas and  
114 Amy Mercier to construct a 165-foot seawall totaling 1,179 square feet located within the base zone setback  
115 of the Shoreland Overlay Zone located on real property with the address of 134 Whipple Road, Tax Map  
116 10, Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland (SL-OZ-250) Overlay Zone

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118

*Motion to schedule a site walk*

119

Move to schedule a site walk on \_\_\_\_\_, 2022, for a shoreland development application from  
120 Owners/Applicants Nicolas and Amy Mercier to construct a 165-foot seawall totaling 1,179 square feet  
121 located within the base zone setback of the Shoreland Overlay Zone located on real property with the  
122 address of 134 Whipple Road, Tax Map 10, Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland  
123 (SL-OZ-250) Overlay Zone

124

125

*Motion to schedule public hearing*

126

Move to schedule a public hearing on the \_\_\_\_\_, 2022 Planning Board meeting for a shoreland  
127 development application from Owners/Applicants Nicolas and Amy Mercier to construct a 165-foot seawall  
128 totaling 1,179 square feet located within the base zone setback of the Shoreland Overlay Zone located on  
129 real property with the address of 134 Whipple Road, Tax Map 10, Lot 6A, in the Residential-Urban (R-U)  
130 Zone and the Shoreland (SL-OZ-250) Overlay Zone.

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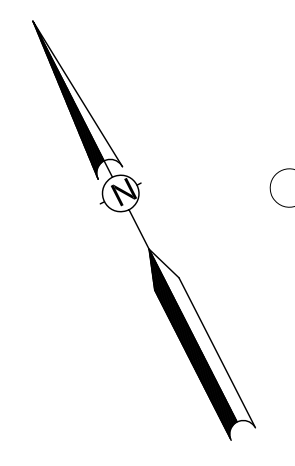
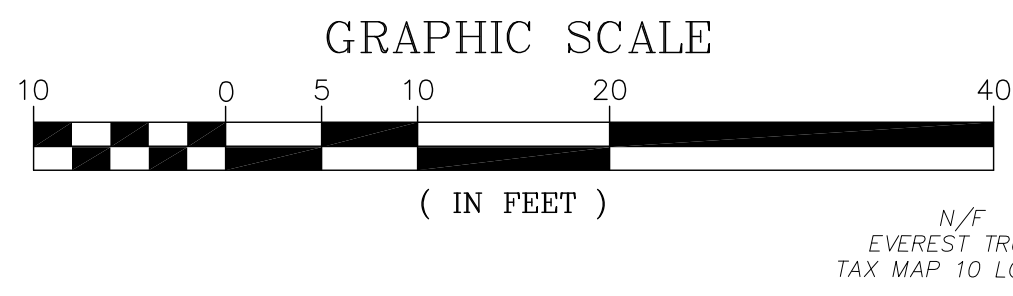
132

*Motion to continue application*

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Move to continue the shoreland development application to July 14, 2022 from Owners/Applicants Nicolas  
134 and Amy Mercier to construct a 165-foot seawall totaling 1,179 square feet located within the base zone  
135 setback of the Shoreland Overlay Zone located on real property with the address of 134 Whipple Road, Tax  
136 Map 10, Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland (SL-OZ-250) Overlay Zone.

137 *Motion to approve application (with or without conditions)*  
138 Move to approve the shoreland development application from Owners/Applicants Nicolas and Amy  
139 Mercier to construct a 165-foot seawall totaling 1,179 square feet located within the base zone setback of  
140 the Shoreland Overlay Zone located on real property with the address of 134 Whipple Road, Tax Map 10,  
141 Lot 6A, in the Residential-Urban (R-U) Zone and the Shoreland (SL-OZ-250) Overlay Zone *with*  
142 *[conditions as follows:]*  
143  
144



WHIPPLE ROAD

TOWN OF KITTERY  
CODE ENFORCEMENT OFFICER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

TOWN OF KITTERY, PLANNING BOARD

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OWNER/APPLICANT

\_\_\_\_\_  
DATE

N/F  
DUNCAN A. MCEACHERN  
TAX MAP 10 LOT 6B  
Y.C.R.D. BOOK 2026 PAGE 128

TAX MAP 10  
LOT 6A  
13,381± SQ. FT.  
0.31± AC.

N/F  
INHABITANTS OF KITTERY  
TAX MAP 10 LOT 5

SEE RETAINING WALL  
PLANS BY OTHERS

LIMIT OF WALL REMOVAL,  
MATCH EXISTING WALL  
AT CORNER

EXISTING WALL BEYOND  
PROPERTY LINE TO REMAIN

FEMA ZONE A2 (EL. 9)  
(SEE NOTE #9)

FIRST SECTION OF DOCK TO BE  
ADJUSTED TO ACCOMMODATE  
NEW WALL HEIGHT

EXISTING DOCK  
TO REMAIN

PISCATAQUA RIVER

YORK COUNTY REGISTRY OF DEEDS  
RECEIVED \_\_\_\_\_ 20\_\_\_\_  
AT \_\_\_\_\_ H \_\_\_\_\_ M \_\_\_\_\_ AND  
RECORDED IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
ATTEST:  
  
\_\_\_\_\_  
REGISTRAR

**SITE NOTES**

- DESIGN INTENT – THIS PLAN SET IS INTENDED TO DEPICT THE REPLACEMENT OF AN EXISTING RETAINING WALL.
- PLAN REFERENCE: "EXISTING CONDITIONS PLAN FOR PROPERTY AT 134 WHIPPLE ROAD, KITTERY, YORK COUNTY, MAINE", DATED FEBRUARY 27, 2020, PREPARED BY NORTH EASTERLY SURVEY, INC.
- APPROXIMATE LOT AREA: 0.31 AC.± (13,381 S.F.±)
- ZONE: RESIDENTIAL-URBAN (R-U)  
OVERLAY ZONE: SHORELAND (OZ-SL-250')
- DIMENSIONAL REQUIREMENTS PER TOWN OF KITTERY CODE TITLE 16 (SEC. 16.3.2.4):
 

MIN. LAND AREA	20,000 S.F.
PER DWELLING UNIT:	20,000 S.F.
MIN. LOT SIZE:	20,000 S.F.
MIN. STREET FRONTAGE:	100'
FRONT SETBACK:	30'
SIDE SETBACK:	15'
REAR SETBACK:	15'
MAX. BUILDING HEIGHT:	23.0' (EXISTING) PROPOSED = 23.0'
MAX. BLDG. COVERAGE:	EXIST. COVERAGE (1,358 SF) + 30% = 1,765 SF
MIN. SHORE FRONTAGE:	50'
SHORELAND SETBACK:	100'
MAX. DEVEGETATED AREA:	20%
- ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE TOWN OF KITTERY.
- ALL EROSION CONTROL MEASURES SHALL COMPLY WITH STATE (DEP) AND LOCAL ORDINANCES.
- HIGHEST ANNUAL TIDE (H.A.T.) IS TAKEN FROM MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION DATA.
- THE ENTIRE PARCEL IS LOCATED WITHIN THE OZ-SL-250 ZONE.
- A PORTION OF THE PARCEL IS WITHIN A SPECIAL FLOOD HAZARD AREA (SFHA) PER FEMA FIRM 230171 0005 D. LATEST REVISION JULY 3, 1986.
- ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL WALL DIMENSIONS WITH THE STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ENGINEER FOR RESOLUTION.
- ALL PERIMETER SEDIMENT AND EROSION CONTROL MEASURES (I.E. SILTFENCE, SILT/SOXX OR FILTER BERM) MUST BE INSTALLED PRIOR TO THE COMMENCEMENT OF ANY EARTHWORK ACTIVITIES.
- ALL AREAS DISTURBED BY CONSTRUCTION SHALL BE STABILIZED WITH 6" OF COMPACTED LOAM AND SEED. COORDINATE WITH LANDSCAPE PLANS.
- ALL SEAWALL CONSTRUCTION BELOW THE H.A.T. (ELEVATION 6.6') SHALL BE PERFORMED AT LOW TIDE.
- DEMOLITION OF EXISTING SEAWALL AND CONSTRUCTION OF NEW SEAWALL TO BE DONE IN PHASES IN ORDER TO MINIMIZE AREAS OF EXPOSED UNSTABILIZED SHORELINE. PHASES SHALL BE LIMITED TO THE AMOUNT OF WORK THAT CAN BE REASONABLY ACCOMPLISHED DURING A SINGLE INTERTIDAL PERIOD.
- ALL PLAN ELEMENTS AND CONDITIONS OF APPROVAL SHOWN ON THE PREVIOUSLY-APPROVED SHORELAND DEVELOPMENT PLAN DATED MARCH 7, 2022 REMAIN APPLICABLE TO THIS PLAN. CONTRACTOR SHALL REVIEW BOTH PLANS PRIOR TO INITIATING WORK.

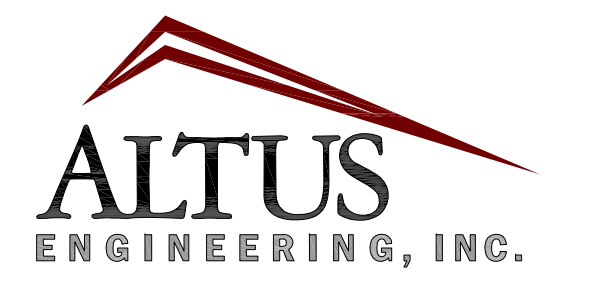
**BUILDING COVERAGE/DEVEGETATION CALCULATIONS**

	0 - 100'	100' - 250'	ENTIRE LOT
EXISTING BUILDING COVERAGE:	±1,358 SF	±0 SF	±1,358 SF (10.1%)
PROPOSED BUILDING COVERAGE	±1,608 SF	±0 SF	±1,608 SF (12.0%)
EXISTING DEVEGETATION CALC:	±3,292 SF	±0 SF	±3,292 SF (24.6%)
PROPOSED DEVEGETATION CALC:	±3,219 SF	±0 SF	±3,219 SF (24.1%)

\* AREAS AND HEIGHT LIMITATIONS ARE PER KITTERY LAND USE AND DEVELOPMENT CODE (TITLE 16) SECTION 16.7.3.3.B(3)(e)[5][a] / SECTION 16.3.2.17.D(1)(d)

EXISTING DEVEGETATION CALC.: HOUSE, PORCH, DECK & STAIRS (1,434 SF) + PAVED DRIVEWAY (1,059 SF) + PAVED WALKWAY (164 SF) + FLAGSTONE WALKWAY (50 SF) + GRAVEL ADJ. TO HOUSE (67 SF) + GRAVEL AT SEAWALL (218 SF) + WOOD STEPS AND GRAVEL (124 SF) + FRONT RETAINING WALL (16 SF) + SEAWALL (126 SF) + WOOD RETAINING WALLS (16 SF) + RETAINING WALL AT NE (19 SF) + RR TIES (9 SF) = ±3,292 SF (24.6%)

PROPOSED DEVEGETATION CALC (REVISED): PROPOSED HOUSE (1,524) + DECK & STAIRS (82 SF) + STEPS TO DOCK (46 SF) + EX. SEAWALL (1 SF) + PROP. SEAWALL (80 SF) + FRONT WALKWAY (32 SF) + PATIO (64 SF) + PAVED DRIVE (1,099 SF) + TOP OF CURB (32 SF) + TOP OF RETAINING WALL (21 SF) + DRIP EDGE (222 SF) + MECH. PADS (16 SF) = ±3,219 SF (24.1% OF LOT, 73 SF LESS THAN EXISTING AREA)



133 Court Street  
(603) 433-2335

Portsmouth, NH 03801  
www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:  
**SEAWALL REPLACEMENT**

ISSUE DATE:  
**MARCH 31, 2022**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	PLANNING BOARD	EBS	07/22/21
1	PLANNING BOARD	EBS	10/28/21
2	REV. PER COA	EBS	03/07/22
3	SEAWALL REPLACEMENT	EBS	03/31/22

DRAWN BY: \_\_\_\_\_ RLH  
APPROVED BY: \_\_\_\_\_ EBS  
DRAWING FILE: \_\_\_\_\_ 5186.dwg

SCALE:  
22" x 34" - 1" = 10'  
11" x 17" - 1" = 20'

OWNER/APPLICANT:  
**AMY L.  
& NICHOLAS E. MERCIER**  
**35 GOFFSTOWN ROAD  
HOOKSETT, NH 03106-2400**

PROJECT:  
**MERCIER  
RESIDENCE  
SHORELAND  
DEVELOPMENT  
PLAN**

TAX MAP 10, LOT 6A  
**134 WHIPPLE ROAD  
KITTERY, MAINE**

TITLE:  
**SHORELAND  
DEVELOPMENT PLAN**

SHEET NUMBER:  
**C-1**

