

**Town of Kittery
 Planning Board Meeting
 May 12, 2022**

35 Badgers Island West – 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. 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	TBD	TBD
YES	Shoreland Development Plan Review Completeness/Acceptance	Scheduled for May 12, 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

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. Due to an unintended delay in communication, staff agreed to put the project on the May 12th agenda with the condition that it must be approved by the KPA prior to the Board’s meeting. Since the KPA only meet once a month, the KPA meeting during which this project will be heard is Thursday, May 5th. If the project is approved, staff will get any pertinent information to the Board on the KPA’s determination as soon as possible.

37 Revetment work as proposed is intended to stabilize the entire shoreline of the property (see photos in the
38 application). The total area of revetment work proposed is 7,978 square feet (of permanent impact), with a
39 linear measurement of 489 feet. Of the 7,978 square feet, 4,291 square feet and 309 linear feet are above
40 the HAT and therefore in the purview of the Planning Board. There is also 10,072 square feet of temporary
41 construction impact, most of which is above the HAT.
42

43 The revetment work proposed will:

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

51 **Development Stanadards**

52 The devegetation calculations on Sheet C-2 indicate that including the upland revetment work proposed,
53 the property will remain under the 60% devegetation area on the lot allowable in the MU-BI Zone. See
54 §16.4.28.E.
55

56
57 There are a number of existing trees outside the temporary construction area scattered across the lawn. One
58 existing tree and shrubs (many of which are invasive species according to the applicant's engineer) are
59 located within the temporary construction zone. That area must be replanted as required by shoreland
60 zoning regulations. The applicant will prepare a planting plan but as of this writing, staff does not yet have
61 it.
62

63 Along with ledge, a pile of stones and remnants of an old stone wall, there is a large area of salt marsh grass
64 in the intertidal area to the north which is noted and must be protected (although not in the Planning Board's
65 purview).
66

67 **Submissions**

68 *Submission content*

69 The shoreland development plan and application is nearly complete and includes the information as
70 required pursuant to §16.9.3.C with the following exception:

- 71 • Replanting plan

72 *Waivers*

73 The applicant is not requesting any waivers from any review or ordinance standards.
74
75

76 *Additional Permits*

77 The proposed revetment has received KPA approval (for that area below the HAT), Army Corps approval
78 (see application) and has a pending NRPA permit from the Department of Environmental Protection.
79

80 **Planning Board Procedural Steps**

81 After the Board has been presented with the application and had discussion, the following steps may be
82 considered:
83

- 84 1. Plan acceptance: Before the Board can move on the application, a vote must occur to accept the
85 plan.
86

- 87 2. If the Board accepts the plan, the Board should decide if a site visit, public hearing, or both need to
88 occur.
89
90 3. If a public hearing is not taking place, the Board should consider moving to continue the application
91 to a subsequent meeting.
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93 **Recommended Motions**

94 Below are recommended motions for the Board’s consideration:
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97 *Motion to accept the application*

98 Move to accept the plan for a shoreland development application from Owner/Applicant B.I.W. Group,
99 LLC which requests approval to construct a 7,978 square foot revetment (retaining wall), of which 4,291
100 square feet, will be located within the base zone setback of the Shoreland Overlay Zone and the Resource
101 Protection Zone located on real property with the address of 35 Badgers Island West, Tax Map 1, Lot 32,
102 in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-250) Overlay Zone and the
103 Resource Protection Zone (OZ-RP).
104

105 *Motion to schedule a site walk*

106 Move to schedule a site walk on _____, 2022, for a shoreland development application from
107 Owner/Applicant B.I.W. Group, LLC which requests approval to construct a 7,978 square foot revetment
108 (retaining wall), of which 4,291 square feet, will be located within the base zone setback of the Shoreland
109 Overlay Zone and the Resource Protection Zone located on real property with the address of 35 Badgers
110 Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-
111 250) Overlay Zone and the Resource Protection Zone (OZ-RP).
112

113 *Motion to schedule public hearing*

114 Move to schedule a public hearing on the _____, 2022 Planning Board meeting for a shoreland
115 development application from Owner/Applicant B.I.W. Group, LLC which requests approval to construct
116 a 7,978 square foot revetment (retaining wall), of which 4,291 square feet, will be located within the base
117 zone setback of the Shoreland Overlay Zone and the Resource Protection Zone located on real property
118 with the address of 35 Badgers Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone
119 (MU-BI), the Shoreland (SL-OZ-250) Overlay Zone and the Resource Protection Zone (OZ-RP).
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121 *Motion to continue application*

122 Move to continue the agenda item for a shoreland development application to May 26, 2022 from
123 Owner/Applicant B.I.W. Group, LLC which requests approval to construct a 7,978 square foot revetment
124 (retaining wall), of which 4,291 square feet, will be located within the base zone setback of the Shoreland
125 Overlay Zone and the Resource Protection Zone located on real property with the address of 35 Badgers
126 Island West, Tax Map 1, Lot 32, in the Mixed-Use Badgers Island Zone (MU-BI), the Shoreland (SL-OZ-
127 250) Overlay Zone and the Resource Protection Zone (OZ-RP).
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