

Town of Kittery

Planning Board Meeting

January 13, 2022

ITEM 1—134 Whipple Road—Shoreland Development Plan Review

Action: Continue the agenda item to a subsequent meeting, or approve or deny plan: Pursuant to §16.10.3.2 Shoreland Development Review and Article III Nonconformance of §16.7 *General Development Requirements* of the Town of Kittery Land Use and Development Code, owners Nicolas and Amy Mercier and agent Altus Engineering, Inc. requests approval to reconstruct, relocate and expand a legally non-conforming structure on a legally non-conforming lot 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 Overlay Zone (OZ-SL-250).

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	October 1, 2020; August 26, 2021	HELD
YES	Completeness/Acceptance	August 12, 2021	HELD
NO	Public Hearing	Not pursued by the Board	NOT PURSUED
YES	Final Plan Approval	May occur on January, 13 2022	PENDING

Applicant: 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 along the bank of the Piscataqua River within the Residential- Urban (R-U) zoning district and Shoreland Overlay Zone (OZ-SL-250). The property is a legally non- conforming lot, containing a legally non-conforming dwelling unit as the lot's area is 13,381-sf (0.30-ac), whereas the Residential-Urban's dimensional standard calls for 20,000-sf (0.45-ac) and the dwelling unit (1,358-sf; 10.2% devegetation) is positioned within the base zone setback (100-ft.) of the Shoreland Overlay Zone along with other accessory structures and impervious surfaces.

At the August 12, 2021, Planning Board meeting, the Board was introduced to the new shoreland development plan that sought to reconstruct and relocate a single-family dwelling unit to become less nonconforming. While there were no major concerns jeopardizing the application, there were a few secondary aspects of the plan that appeared not to comply with Title 16 standards. Specifically, the Board had reservations over the direct approach of the proposed stairway leading from the backyard to the existing pier. The Board requested that the applicant look for alternative routes that would run more parallel to the existing contours. The applicant objected, stating that the proposed layout was the best approach to the pier and made the most sense from a topography perspective. The code provision governing this issue falls under §16.9.1.3.E where, "...development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible..." The issue remained unresolved and there was consensus between the Board and applicant to schedule another site walk for the purpose of gaining a better understanding of the proposed plan and, more specifically, to evaluate the best configuration and approach of the new stairway to the water dependent use in a manner that satisfies the criteria under §16.9.1.3.E.

Staying within the backyard, the Board also questioned the permissibility of the proposed patio. At first, it was unclear of the patio's constitution, which was revealed ultimately by the applicant to comprise of permeable stone-like pavers. Considering this information, the Board dismissed the proposal, citing the code provision under §16.3.2.17.D(2)(b). The issue too remained outstanding, compelling the Board to request from the applicant an alternative plan to resolve the code deviation.

The Board also asked staff to clarify that the proposed expansion was under the permissible rate, as set forth under §16.7.3.3.B(3)(3)[5][a]. After further examination by staff, the existing footprint of the dwelling unit plus other structures totaled 1,611-sf. With a proposed expansion to 1,853-sf, using the parameters under the aforementioned code standard, the maximum expansion that may occur is 483.3-sf. Whereas the proposed relocation/expansion yielded an increase footprint of only 242-sf, which is a 15% footprint expansion, appearing to comply with the standard. As for the relocation provisions under §16.7.3.3.A(2), it is staff's opinion, given the site's physical and zoning conditions, that the proposed relocation appears to be in best position possible and satisfies the criteria under §16.7.3.3.A(2) and §16.7.3.3.C(1).

On August 26, 202, the Planning Board conducted a site walk with the applicant and engineer. At the site walk the Planning Board became reacquainted with the property and was guided around to observe the proposed locations of the planned development. Of primary concern was the proposed path to the pier, stormwater management methods and the revegetation plan. Concerning the path, after a lengthy discussion, there appeared to be general consensus that the proposed path would be the best way to the water dependent use. Reusing the existing path would have potentially cause both more erosion and disturbance to soil. Staying with the proposed walkway, the proposed plan has the existing hickory to the southwest of the dwelling unit removed from the property in order to make space. The applicant provided an opinion from an ISA certified arborist declaring the tree to be at risk of falling onto targets nearby. Planning Board will need to decide whether or not it agrees with the opinion.

In an updated application, a robust landscaping plan was submitted based on the direction the Planning Board gave the applicant at the August 12, 2021 meeting and the August 26, 2021 site walk. The Planning Board should review the plan and provide comments to the applicant. The last concern the Planning Board had was stormwater runoff. It appears that the combination of drip edge, riprap, and a new vegetation layout will help mitigate any stormwater that falls onto the lot or trespasses from Whipple Road. The Planning Board should discuss the adequacy of the revised plan and whether or not any additional measures should be incorporated into the plan to assist in further stormwater mitigation.

At the November 18, 2021 Planning Board meeting, the applicant presented the updated plan. There was concern over the status of the tree to the south of the existing house. The applicant proposed to cut it down but did not provide an appropriate replanting plan pursuant to §16.9.2.2. The applicant agreed that a new plan design to conform with that standard would be provided. The other issue that was identified pertained to the height of the proposed structure. The Planning Board was of the opinion that the proposed cupola was not an appurtenant structure rather an integral portion thereof, ergo, the design was required to comply with the applicable height standard under §16.7.3.3.B(3)[e][5][a]. Staff was of the opinion that the height did qualify for an exemption pursuant to the ‘Height of Structure’ and ‘Floor Area’ definitions. Nonetheless, a resolution at that time could not be reached. The Planning Board decided to request an opinion from the Town Attorney on the issue and continued the application to the December 9, 2021 meeting. At the time of this review, the Town Attorney written opinion has yet to be submitted, but it is anticipate it will be filed before the meeting.

According to the Town Attorney and Maine Department of Environment Protect (“Maine DEP”), the proposed cupola would not be permitted in that location of the Shoreland Overlay Zone. Moreover, according to Chapter 1000 and confirmed by Maine DEP, a cupola provision would have to be adopted by the Town in order for it to be permissible within the Shoreland Overlay Zone. The applicant submitted a revised architectural elevation plan on December 30, 2021 depicting a smaller cupola on the roof of the house. It appears that the cupola is still an integral part of the roofline as the floor plans have a cathedral ceiling planned underneath the cupola. The applicant should clarify the redesign so that the Board can get a better understanding of its details.

Application Review

Code Ref.	§16.3 Article II Zone Définitions, Uses and Standards	
	Standard	Comment
§16.3.2.4D(2)(b)	Minimum lot size: 20,000-sf.	Lot is 13,381-sf, making it legally nonconforming
§16.3.2.4D(2)(c)	Minimum street frontage: 100-ft.	It appears the standard is satisfied.
§16.3.2.4D(2)(d)	Minimum front setback: 30-ft.	It appears the standard is satisfied.
§16.3.2.4D(2)(e)	Minimum rear and side setbacks: 15-ft.	It appears the standard is satisfied.
§16.3.2.4D(2)(f)	Maximum building height: 35-ft.	It appears there is still a cupola in the proposed plan, which is not permitted in the Shoreland Overlay Zone. The Board should direct the applicant to redesign the house to be in conformance with Chapter 1000 and the Town Code.
§16.3.2.4D(2)(g)	Maximum building coverage: 20%	It appears the standard is satisfied.
§16.3.2.17D(1)(d)	<p>The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:</p> <p>[1] Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use – Badgers Island (MU-B1) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.</p> <p>[2] Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.</p> <p>[3] Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum devegetated area is 50%.</p>	Lot has an existing 24.6% devegetation count with a proposed decrease of .2%. Given the lot is above 10,000-sf, the lot is subject to a 20% devegetation rate, or, if higher, the preexisting rate. It appears the standard is satisfied.
§16.3.2.17D(2)(b)	Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge	It appears the standard is satisfied.

Code Ref.	§16.7 Article III Nonconformance	
	Standard	Comment
§16.7.3.3.A(3)	<p>When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The Planning Board or Board of Appeals may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Tree removal and vegetation replanting is required as follows, effective 2-28-15:</p> <p>(a) Prior to the commencement of on-site construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all on-site work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.</p> <p>(b) Trees removed to relocate a structure must be replanted with at least one native tree, six feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.</p> <p>(c) Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.</p> <p>(d) Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.</p>	<p>The proposed landscape plan still does not have a replacement tree near the vicinity of the existing tree (24" Hickory near proposed stairs to dock). The Board should request the applicant to provide a revised landscaping plan depicting compliance with this standard.</p>
§16.7.3.3.B(3)[e][5][a]	<p>For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater.</p>	<p>The proposed expansion (242-sf; 15%) falls well under the 30% percent threshold permitted. Accordingly, it appears the standard is satisfied. However, it is unclear if the proposed height meets this standard. The Planning Board is awaiting an opinion from the Town Attorney on this matter.</p>
§16.7.3.3.C(1)	<p>In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in § 16.7.3.3A(2), Nonconforming structure relocation, the physical condition and type of foundation present, if any.</p>	<p>It appears the standard is satisfied given that the proposed dwelling unit is moving further away from the highest annual tide and that there appears to be, considering the topography of the lot, no other viable location better positioned to host the new dwelling unit.</p>
§16.7.3.3.C(5)	<p>In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. If the reconstructed or replacement structure is less than the required setback, it may not be any larger than the original structure, except as allowed in § 16.7.3.3.B, Nonconforming structure repair and expansion.</p>	<p>It appears the standard is satisfied.</p>
	<p>of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.</p>	

Code Ref.	§ 16.10 Article V Preliminary Plan Application Review and Approval Process Phase	
	Standard	Comment
§16.10.5.2.B(2)	With scale of the drawings no greater than one-inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;	It appears the standard is satisfied.
§16.10.5.2.B(3)	Code block in the lower right-hand corner. The block must contain: (a) Name(s) and address(es) of the applicant and owner; (b) Name of the project; (c) Name and address of the preparer of the plan, with professional seal, if applicable; (d) Date of plan preparation/revision, and a unique ID number for the plan and any revisions;	It appears the standard is satisfied.
§16.10.5.2.B(4)	Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;	It appears the standard is satisfied.
§16.10.5.2.B(5)	An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;	It appears the standard is satisfied.
§16.10.5.2.B(6)	Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;	It appears the standard is satisfied.
§16.10.5.2.B(7)	Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;	It appears the standard is satisfied.
§16.10.5.2.B(8)	Names and addresses of all owners of record of property abutting the development, including those across a street;	It appears the standard is satisfied.
§16.10.5.2.B(9)	Locations of essential physical features such as watercourses, forest cover, and outcroppings;	It appears the standard is satisfied.
§16.10.5.2.B(10)	Proposed development area conditions including, but not limited to: (a) Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line; (b) Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways; (c) Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown; (d) Domestic water source; (e) Parks, open space, or conservation easement locations; (f) Lot lines, interior and exterior, right-of-way, and street alignments; (g) Road and other paved ways plans, profiles and typical sections including all relevant data; (h) Setbacks existing and proposed; (i) Machinery permanently installed locations likely to cause appreciable noise at the lot lines; (j) Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature; (k) Topographic contours of existing contours and finished grade elevations within the development; (l) Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed; (m) Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development; (n) Land proposed to be dedicated to public use and the conditions of such dedication; (o) Natural features or site elements to be preserved.	It appears these standards are satisfied

Code Ref.	§16.9.2.2 Clearing or removal of Vegetation for uses other than timber harvesting in the Resource Protection or Shoreland Overlay Zone.	
	Standard	Comment
	In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.	The proposed landscape plan still does not have a replacement tree near the vicinity of the existing tree (24" Hickory near proposed stairs to dock). The Board should request the applicant to provide a revised landscaping plan depicting compliance with this standard.

Discussion, Next Steps, and Recommendations

Overall, the application appears to conform with the standards outlined in §16.3, §16.7, and §16.10 with two outstanding issues—the building height of the proposed dwelling unit and the replanting plan. According to both the Town Attorney and MDEP, a cupola is not permitted in this Shoreland Overlay Zone. The Planning Board should ask how the applicant wants to proceed (either a continuance so as to redesign the house and landscaping plan, or for the Board to make a final vote).

Recommended motions

Below are recommended motions for the Board's use and consideration:

Motion to continue application

Move to continue the agenda item to the August 26, 2021 Planning Board meeting for a shoreland development application from owners/applicants Nicolas and Amy Mercier and agent Altus Engineering Inc. requesting approval relocate, reconstruct and expand a legally non-conforming structure on a legally non-conforming lot 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 Overlay Zone.

Motion to approve

Move to approve the shoreland development application from owners/applicants Nicolas and Amy Mercier and agent Altus Engineering Inc. requesting approval to relocate, reconstruct and expand a legally non-conforming structure on a legally non-conforming lot 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 Overlay Zone .

Kittery Planning Board
Findings of Fact
For 134 Whipple Road
Shoreland Development Plan Review

WHEREAS: Owners Nicolas and Amy Mercier and agent Altus Engineering, Inc. requests approval to reconstruct, relocate and expand a legally non-conforming structure on a legally non-conforming lot 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 Overlay Zone (OZ-SL-250).

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	None	NOT APPLICABLE
NO	Site Visit	October 1, 2020; August 26, 2021	HELD
YES	Completeness/Acceptance	August 12, 2021	HELD
NO	Public Hearing	Not pursued by the Board	NOT PURSUED
YES	Final Plan Approval	TBD; may occur on November 18, 2021	PENDING

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the “Plan”):

1. Shoreland Development Plan Application, dated 7/22/21
2. Existing Conditions Plan, Easterly Surveying, Inc., dated 9/29/20, last revised 11/1/21
3. Shoreland Development Plan, Altus Engineering, Inc., dated 7/22/21, last revised 10/28/2021
4. Architectural Elevations, Brendan McNamara, Residential Architecture, dated 4/20/21, 6/20/21& 12/20,21
5. Landscaping Plan, Woodburn & Company, dated November 4, 2021

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

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17.D(1)(D)
<p>Standard: <i>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...</i></p> <p>Finding: 134 Whipple Road had a pre-existing, legally non-conforming devegetation rate of 24.6% and proposes to reduce the rate to 24.4%.</p> <p>Conclusion: The standard appears to be met.</p>
Vote: ___ in favor ___ against ___ abstaining
16.3.2.17.D(2)(b)
<p>Standard: <i>Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.</i></p> <p>Finding: The proposed patio is outside the 75-ft setback and will have a gross footprint of 64-sf.</p> <p>Conclusion: The standard appears to be met.</p>

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS FOR NATURAL ENVIRONMENT

§16.9.1.3.B(1)

Standard: *The developer must:*

- (a) *Select a site with the right soil properties, including natural drainage and topography, for the intended use;*
- (b) *Utilize for open space uses those areas with soil unsuitable for construction;*
- (c) *Preserve trees and other vegetation wherever possible;*
- (d) *Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;*
- (e) *Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;*
- (f) *Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;*
- (g) *Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;*
- (h) *Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;*

Finding: It appears that the proposed design and methods to construct the dwelling unit and other permitted structures will not adversely impact the surrounding landscape and soils, nor increase runoff and soil erosion.

Conclusion: This standard appears to be met.

Vote: ___ in favor ___ against ___ abstaining

§16.9.1.4.B

Standard: *All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction.*

Finding: It appears that the proposed development may be supported by the existing and proposed soils nor will adversely impact the surrounding natural features.

Conclusion: The requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

Standard: *A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming*

Finding: The proposed dwelling unit is becoming more conforming as the distance from the highest annual tide is no closer than previously existed (16.7.3.3.C), the proposed height is not increasing rather is maintaining its preexisting height of 23-ft. (16.7.3.3.B(3)(e)[5][a]), and the expansion (16.7.3.3.B(3)(e)[5][a]), of the dwelling unit (242-ft; or 15%) is under the 30% permitted threshold.

Conclusion: The requirement appears to be met.

Vote: ___ in favor ___ against ___ abstaining

§16.7.3.3.C(1)

Standard: *In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in § 16.7.3.3A(2), Nonconforming structure relocation, the physical condition and type of foundation present, if any.*

Finding: Considering the topography and zoning conditions of the lot, the proposed dwelling unit appears to be relocated in the most ideal location practicable and is not becoming more nonconforming.

Conclusion: The requirement appears to be met.

Vote: in favor against abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. 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:

Standard: 1. Maintain safe and healthful conditions;

Finding: The proposed development as represented in the plans and application does not appear to have an adverse impact.

Conclusion: This requirement appears to be met

Vote: in favor against abstaining

Standard: 2. Not result in water pollution, erosion or sedimentation to surface waters;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters. An existing eroded slope will be revegetated.

Conclusion: This requirement appears to be met

Vote: in favor against abstaining

Standard: 3. Adequately provide for the disposal of all wastewater;

Finding: The proposed development includes a sewer connection.

Conclusion: This requirement appears to be met.

Vote: in favor against abstaining

Standard: 4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: The proposed development does not appear to have an adverse impact on those resources.

Conclusion: This requirement appears to be met.

Vote: in favor against abstaining

Standard: 5. Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;

Finding: The proposed development incorporates a landscaping plan the appears to retain and add more appropriate

vegetation for a coastal setting that will help with soil stabilization and promote native habitat.		
Conclusion: This requirement appears to be met.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining)		
Standard: 6. <i>Protect archaeological and historic resources;</i>		
Finding: There appears to be no archaeological and historical resources on the lot, thereby nothing to protect.		
Conclusion: This requirement appears to be met.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining		
Standard: 7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i>		
Finding: The proposed development does not include any activities that would adversely impact existing commercial fishing or maritime activities.		
Conclusion: This requirement appears to be met.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining		
Standard: 8. <i>Avoid problems associated with floodplain development and use;</i>		
Finding: The property is designated Zone A2 by FEMA Flood Zone standards and is defined as a Special Flood Hazard Area (SFHA) along the small portions of the lot abutting the highest annual tide. The proposed development is located outside the SFHA, yet future monitoring should take place as climate change affects the waterway and surrounding environment. In short, the proposed application does not appear to have an impact on the current floodplain or flood-prone area.		
Conclusion: This requirement appears to be met.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining		
Standard: 9. <i>Is in conformance with the provisions of this code;</i>		
Finding: The proposed development complies with the applicable standards of Title 16.		
Conclusion: This requirement appears to be met.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining		
Standard: 10. <i>Be recorded with the York county Registry of Deeds.</i>		
Finding: A plan suitable for recording will be prepared.		
Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds within 90 days of approval prior to the issuance of a building permit.		
Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining		

NOW THEREFORE, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: None.

Conditions of Approval (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization
3. With the exception of the vegetation identified on the plan for removal, no vegetation will be removed without prior approval by the Code Enforcement Officer or the Shoreland Resource Officer. Efforts to protect existing vegetation must be in place prior to grading or construction. The rock fill shall not replace existing vegetation.
4. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all onsite work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.
5. All Notices to Applicant contained herein (Findings of Fact dated 1/13/2022).

Conditions of Approval (not to be depicted on final plan):

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to endorsement by the Planning Board Chair.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote: ___in favor___against___abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____

Dutch Dunkelberger, Planning Board Chair

Notices to Applicant:

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. Three (3) paper copies of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
3. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Appeal of Decision:

1. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the

York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.