

**Town of Kittery  
 Planning Board Meeting  
 October 26, 2017**

**Wood Island Life Saving Station – Shoreland Development Plan - Sketch Plan Review**

Action: Review concept. Owner, Town of Kittery, and Applicant, Wood Island Life Saving Station Association, requests consideration of the reconstruction of the existing historic building, marine seawalls and railway to be used as a museum located on Wood Island, Tax Map 51 Lot 14, in the Residential – Rural Conservation (R-RLC) and the Shoreland and Resource Protection Overlay (OZ-SL-250’ / OZ-RP) zones.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	Scheduled for September 28, 2017, continued to 10/26/17	PENDING
NO	Site Visit	Scheduled for October 18, 2017	HELD
YES	Shoreland Development Plan Review Completeness/Acceptance		TBD
NO	Public Hearing		TBD
YES	Shoreland Development Plan Review Plan Approval		TBD

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.

**Background**

In July of last year the Town entered into a concession agreement (submitted by the applicant and attached) with the Wood Island Life Saving Station Association (WILSA) to provide for a marine museum facility and related services, as described in the attached agreement. Last summer the existing life saving station underwent rehabilitation of its exterior and remediation of hazardous material, the latter funded by an EPA brownfield grant and supplemental funds through the state’s Department of Economic Community Development revolving fund program. In October of last year WILSA obtained approval from the Port Authority for the reconstruction of the existing marine railway and the construction of a new pier, approval extended by one year. WILSA has recently confirmed assistance from the Maine National Guard to reconstruct the seawalls next summer and the spring of 2019 as part of their training exercises. The reconstruction of the marine railway is also planned for spring of 2019. WILSA submitted a sketch plan to provide an opportunity for the Board to become familiar with the project and the progress to date and schedule a site visit before amenable weather ends. Subsequent to this review they plan to submit a shoreland development plan that identifies conformance with the specific requirements including the devegetated area restrictions.

**UPDATE:** Board members visited the site and had an opportunity to see firsthand the erosion adjacent to the degraded seawall and marine rail, the vegetative areas and the progress made to restoration of the Life Saving Station. The review comments that follow have been updated where highlighted.

**Staff Review**

The sketch plan includes most of the information required under 16.10.4.2.2 with the exception of a high intensity Class A soil survey, which is likely not necessary for proposed development. With the use of an aerial map the plan depicts the location of the existing life saving station and the seawalls. Delineated in

yellow is the proposed pier and marine railway, limits of proposed rock fill associated with the new seawalls, proposed sanitary disposal field, proposed ADA walkway and vegetation to remain.

Staff has the following comments:

1. Wood Island is in the Shoreland and Resource Protection Overlay zones, and is in the Residential –Rural Conservation Base zone.
2. The proposed development (above the highest annual tide) must be reviewed and approved by the Planning Board per 16.10.3.2 (Other Development Review) and 16.10.3.4 (Shoreland Development Review).
3. Land Use. The proposed use is a marine museum and recreational area open to the public. *Public recreation* is permitted in the Resource Protection (RP) Overlay Zone, 16.3.2.19.B.6. *Museum* is not defined in the ordinance and only is referenced in the Business Park zone. The Wood Island Life Saving Station, however, is a historic building and it is not uncommon to have a public recreational area include museums and interpretation of the historic structures and sites.

Staff spoke to the state shoreland zoning coordinator with regard to permitted use designations. Mr. Morse emphasized that ultimately it is the Planning Board's decision as to interpreting the code and determining the land use designation, though he considered *museum* more aligned with *institutional* rather than *public recreation*. He added that the MDEP would likely support a zone change of this area from OZ-RP to simply OZ-SL-250 (Shoreland Overlay Zone) allowing for institutional uses if the Board determined that was more appropriate. The RP zone aims to include predominantly undeveloped areas where development would have adverse effects, while Wood Island has a history of development and can be appropriately regulated in a less restrictive zone.

There is a docents program listed in the concession agreement. It is not clear if there is an expectation for docents to live on the island within the facility or not. Dwellings are not permitted in the RP zone, however, single family dwellings are allowed as a special exception. Regarding the latter, it is not likely all the conditions identified 16.8.28.1 can be met.

**UPDATE:** If the resource protection overlay zone remains in place for Wood Island (no amendment to the map considered and approved) the applicant must demonstrate the provision for a docent to be housed on the island is not considered a dwelling. The applicant's attorney should provide a rationale as to how the definition of *dwelling unit (in the Shoreland and Resource Protection Overlay Zones)* as part of the shoreland development plan application.

4. The existing structure is listed by the Maine Historic Preservation Commission (MHPC) as being eligible for listing on the National Register of Historic Places and is listed on the state's historic resource inventory. This is one of the criteria in the definition for *historic structure* in 16.2.2.
5. For shoreland development review, 16.10.10.2.D.6 requires the Board to make a positive finding on protecting archeological and historic resources. The recent efforts in stabilizing the existing building and the proposed development includes close coordination with the MHPC. In addition, as a requirement for the National Maritime Heritage grant WILSA received, there is a preservation easement granted to MHPC to insure that the historic value of the premises will not be destroyed or impaired.
6. It appears all existing structures are nonconforming since they are located within the required 100-foot setback from the Highest Annual Tide (HAT) elevation, in which the entire island is included. Though there are no plans to expand the building footprint as allowed in 16.7.3.3.2, expansion would not be allowed since such expansions would extend closer to the protected resource in all directions, making the building more nonconforming.

7. New structures, other than functionally water-dependent uses (as defined in 16.2.2), are not allowed in the 100-foot required setback. The reconstructed marine railway and the reconstructed seawalls are a functionally water-dependent uses, and therefore are allowed within the setback. It is not clear if the portion of the proposed pier above the HAT is eligible, though clearly necessary to negotiate from and to the pier and the building. It does not appear the Port Authority discussed this portion of the pier as “convenience of access” that they can approve per 16.11.1.B. Minutes are attached from the Port Authority’s public hearing and approval of the pier for reference. The pedestrian walkway and the drill pole are considered new structures and are not allowed, unless a variance is granted by the Board of Appeals (BOA).
8. The proposal includes the reconstruction of a former shed. Per 16.7.3.3.3 *Nonconforming Structure Reconstruction* there is an 18-month window to reconstruct structures that are within the setback and have more than 50% of the market value removed. The shed appears not to meet the standards and would not be allowed to be reconstructed without a variance from the BOA. **UPDATE:** Staff asked the state shoreland zoning coordinator if historic preservation designation has any applicability as to the provision 16.7.3.3.3, and Mr. Morse stated no and explained the structure would need to be remaining today to in order to have legal non-conforming status, which the provision pertains to.
9. For shoreland development review, 16.10.10.2.D.6 requires the Board to make a positive finding on the adequate disposal of all wastewater. The Code Enforcement Officer has received a subsurface wastewater system application and has forwarded it to appropriate state agencies for their review. **UPDATE:** The applicant should provide the subsurface wastewater disposal system information in their upcoming shoreland development plan application submittal for the Board’s review.
10. The devegetated area, as defined in 16.2.2, appears to be extensive, especially when considering the island is predominantly non-vegetated with exposed ledge. In addition, when considering 16.9.2.2 any trees or large shrubs cannot be removed since it appears that more than 25 percent of the island has been cleared. The proposed rock fill will need to be located in a manner not to replace any existing vegetation.
11. It appears there are no parking requirements for *public recreation* per the table in 16.8.9.4.D. Though the proposed development includes elements of a *water-oriented recreational facility* with a mooring and slips, the facility is on an island and therefore not directly accessible by motor vehicles, unlike a marina on the mainland. The Board, under 16.8.9.4.C has the authority to determine parking requirements for those areas not specifically addressed in the table.
12. WILSA obtained a MDEP Natural Resources Protection Act (NRPA) permit in late 2015 that is attached for your reference.
13. As part of the shoreland development plan review application, a scaled plan with applicable information outlined in 16.10.5.2.B and suitable for recording at the York County Registry of Deeds needs to be prepared and include the following:
  - a) Identify the HAT on the entire parcel and determine the lot/parcel area (total land area above the HAT) to be used in determining devegetated area coverage. The town has some LIDAR contour data that the applicant may be able to use to supplement in preparing the site plan.
  - b) Devegetated areas. Existing and proposed devegetated areas need to be identified on the plan and demonstrate that no more than 20% of the lot/parcel is devegetated per 16.3.2.17.D.1.d, or no more than exists if the area currently exceeds the standard.
  - c) Delineate the location of the principal building and seawalls on the plan.

- d) The application needs to address how the proposed development meets the shoreland development requirements, specifically the eight standards in 16.10.10.2.D as well as conformance to applicable design and performance standards in 16.8 and 16.9.

### **Recommendation**

The sketch plan review is an opportunity to consider a concept and make specific suggestions to the applicant. The sketch plan application appears sufficiently complete. The Board should determine if they concur with staff comments and discuss, along with any additional comments they may have, with the applicant, especially the use designation. If the Board does not concur with the proposed use can be considered *public recreation*, then an amendment to the zoning map would be required. The Board should identify what additional information, if any, they need before considering approving the concept.

**UPDATE:** If the Board has comments in addition to staff's plan review notes they should provide their feedback and input so the applicant can address them in the submission of the shoreland development plan application.

And if the Board needs no additional information prior to the applicant preparing and submitting a shoreland development plan suitable for board review and recording at the York County Registry of Deeds, the Board may consider...

***Move to approve with consideration of staff plan review notes and board member comments, the concept plan presented by applicant, Wood Island Life Saving Station Association, Wood Island, Tax Map 51 Lot 14, in the Residential – Rural Conservation (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-250' / OZ-RP) zones***

229 The following changes to the proposed document were agreed upon:

- 230 • Lines 147 - 151 will be taken out;
- 231 • Keep the number of guest rooms to 12 with no more than 30;
- 232 • Line 125 - take out “reasonably”;
- 233 • Addition under number 5 prohibiting destroying a structure for parking lots in certain
- 234 areas. agreement that the addition to a new number 5
- 235 • Line 129 - use and/or in place of “or”.
- 236 • Line 678 - add would have a manager available 24/7.

237

238 **Mr. Dunkelberger moved to continue the adoption of the proposed amendments to Title 16**  
239 **regarding Inns within sections: 16.2.2 Definitions and 16.3.215 Mixed Use Kittery Foreside**  
240 **Zone, to November 9, 2017 and make a final decision at that meeting.**

241 **Mr. Alessi seconded the motion.**

242

243 **The motion carried 5-1-0.**

244

245 **Item 2- Wood Island Life Savings Station - Shoreland Development Plan - Sketch Plan**  
246 **Review**

247 Action: Accept or deny application: approve or deny concept plan. Owner, Town of Kittery,  
248 and Applicant, Wood Island Life Saving Station Association (WILSA), requests consideration of  
249 the reconstruction of the existing Historic building marine seawalls and railway to be used as a  
250 museum located on Wood Island, Tax Map 51, Lot 14, in the Residential - Rural Conservation  
251 (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-250'/OZ-RP) zones. Agent  
252 is Sam Reid, WILSA and Tristan Donovan, Tighe & Bond.

253

254 Chair Grinnell explained in 2009 she worked to negotiate the agreement with WILSA and was  
255 on the Wood Island Advisory Committee. The group was disbanded and she feels she can  
256 review this item objectively. The Board agreed.

257

258 Sam Reid thanked the Town for helping with their application. He reported the Maine National  
259 Guard is planning to come this spring with 50 men and women to help with the project for 30  
260 days. Mr. Reid introduced the team who included members of their Board of Directors, Butch  
261 Rickey, project manager, Jim White, videographer, Duncan Malore and Tristen Donovan from  
262 Tighe & Bond, Attorney Alan Shepherd and Captain Doan and Captain Howard of the National  
263 Guard.

264

265 Mr. Reid gave a history of the island and the creation of WILSA. He pointed out the concession  
266 agreements that are included in the board packet and gave an update on the project.

267

268 A waiver for the high intensity class A soil survey will be submitted because there is adequate  
269 information about the soil for the septic system. The subservice wastewater system will be  
270 explained in future documents.

271

272 The following staff comments were addressed:

273

- 274 • The Board decided the museum be designated as public recreation.

- 275       • Comment 3 - Contract specifies a docent program be created which would allow for  
276       volunteers and visitors to spend the night and only occur during the summer season. The  
277       purpose is to help and is free labor. There is no dwelling only an accommodation for the  
278       docent program. This will be further looked at.
- 279       • Comment 7 - The applicant will go to the Board of Appeals for a variance for the  
280       pedestrian walk and drill pole. Mr. Reid explained the drill pole is a tradition of the U. S.  
281       Lifesaving Service.
- 282       • Comment 8 - The applicant will go to the Board of Appeals for a variance for the shed,  
283       which the applicant pointed out, is part of the historic designation of the whole site.
- 284       • Comment 10 - The upland edge of the proposed rockfill will be marked for the site walk.
- 285       • Comment 11 - the applicant is working with the charter boat companies from Portsmouth  
286       to cut down on parking.

287

288       Mr. Dunkelberger asked the National Guard present if the volunteering comes out of their  
289       training budget. Capt. Doan and Capt. Howard replied it will come out from their state AT  
290       funds. Mr. Dunkelberger asked because funds are stretched due to disasters. He urged Mr. Reid  
291       to have a plan B.

292

293       Earldean Wells asked if is there is a mitigation plan for wetland impacts and do they require a  
294       stormwater plan. Mr. Reid responded they have the Maine DEP permit for a mitigation plan and  
295       there is no requirement for a stormwater plan.

296

297       **Mr. Dunkelberger moved to accept the sketch plan application dated September 7, 2017**  
298       **from owner, Town of Kittery, and Applicant, Wood Island Life Saving Station Association**  
299       **for the reconstruction of the existing building as a museum located on Wood Island, Tax**  
300       **Map 51, Lot 14, in the Residential - Rural Conservation (R-RC) and the Shoreland and**  
301       **Resource Protection Overlay (OZ-SL-250'/OZ-RP) zones.**

302       **Mr. Alessi seconded the motion.**

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304       **The motion carried 6-0-0.**

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306       **Vice Chair Kalmar move to continue the sketch plan presented by applicant, Wood island**  
307       **Life Savings Station Association, Wood Island, Tax Map 51, Lot 14, in the Residential -**  
308       **Rural Conservation (R-RC) and the Shoreland and Resource Protection Overlay (OZ-SL-**  
309       **250'/OZ-RP) zones, not to exceed 90 days and schedule a site walk for October 18<sup>th</sup> at 4:30**  
310       **p.m.**

311       **Mr. Dunkelberger seconded the motion.**

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313       **The motion carried 6-0-0.**

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315       **ITEM 3 - Board Member Updates**

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317       Vice Chair Kalmar reported the KOSAC (Kittery Open Space Advisory Committee) will have  
318       the product of the business park discussion soon.

319

320       **ITEM 4 - Town Planner Items**