

**KITTERY PLANNING BOARD
FINDINGS OF FACT**

**For
28 Mendum Avenue
Shoreland Development Plan Review**

WHEREAS: Oliver P. & Claire H. Gaudissart request approval of their Shoreland Development Plan to install rip rap shoreline stabilization along Mendum’s Creek on a 9.6000+- sf parcel located at 28 Mendum Avenue (Tax Map 3, Lot 52) in the Residential – Urban (R-U) and Shoreland Overlay Zones (OZ-SL-250’), hereinafter the “Development” and

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

Shoreland Development Plan Review	12/13/2018
Site Walk	
Public Hearing	
Approval	12/13/2018

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

1. Shoreland Development Plan Application, dated October 30, 2018.
2. Shoreland Development Plan, Ambit Engineering, Inc. and Riverside & Pickering Marine Contractors, October 30, 2018;

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

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

<p>16.3.2.17.D Shoreland Overlay Zone</p> <p><i>(1)(d)[3]. The total footprint of devegetated area must not exceed twenty (20) percent of the lot area, located within the Shoreland Overlay Zone, except in the following zones : Residential-Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum de-vegetated area is fifty (50) percent.</i></p> <p>Finding: The property is currently at 28% devegetated area and after the construction it will become 33.4%.</p>

(2) (a) [3] *The water body, tributary stream, or wetland setbacks do not apply to structures that require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor do they apply to other functionally water-dependent uses, as defined in 16.2.*

Finding: Though the retaining wall is considered a new structure in the Shoreland Overlay Zone closer to the water body than the principal structure, the proposed revetment doesn't need to meet the 100 foot setback requirement.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstain

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS FOR NATURAL ENVIRONMENT

Article II Retention of Open Spaces and Natural or Historic Features

16.9.2.2 Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection of Shoreland Overlay Zone.

A. In a 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.

Finding: A replanting plan conforming to 16.9.2.2 will need to be approved by the Code Enforcement Office prior to any excavation work. A site walk with the Shoreland Resource Officer and/or Code Enforcement Officer will be required prior to approval of the Replanting Plan.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstain

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article X 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:

1. Maintain safe and healthful conditions;

Finding: The rip rap shoreline stabilization will create an armored slope that will provide consistent braking action along the shoreline.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstain

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

<p><u>Finding:</u> Erosion control devices include silt-soxx at the toe of the slope. All work will be performed utilizing a crane barge and a spud barge at low tide eliminating erosion and potential for sedimentation into the resource area.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>3. <i>Adequately provide for the disposal of all wastewater;</i></p> <p><u>Finding:</u> The proposed project does not require disposal of wastewater.</p> <p><u>Conclusion:</u> This requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>4. <i>Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i></p> <p><u>Finding:</u> See conditions #2 and #3) above.</p> <p><u>Conclusion:</u> This standard appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>5. <i>Conserve shore cover and visual, as well as actual points of access to inland and coastal waters;</i></p> <p><u>Finding:</u> A Replanting Plan will be that will replace the seven (7) that will need to be removed where the proposed retaining wall will be constructed.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>6</u> in favor <u>0</u> against <u>0</u> abstain
<p>6. <i>Protect archaeological and historic resources;</i></p> <p><u>Finding:</u> There does not appear to be any resources impacted.</p> <p><u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</i></p> <p><u>Finding:</u> The proposed development is not located in a CFMU Zone.</p> <p><u>Conclusion:</u> This requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>8. <i>Avoid problems associated with floodplain development and use;</i></p> <p><u>Finding:</u> The parcel is adjacent to Mendum Creek, Special Flood Hazard Area Zone A2 (EL9) as shown on FIRM panel 230171 0007 C. Effective July 5, 1984.</p> <p><u>Conclusion:</u> The applicants will need to comply with FEMA permitting requirements which may include a flood hazard development permit being obtained from the Code Enforcement Officer.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
<p>9. <i>Is in conformance with the provisions of this code;</i></p> <p><u>Finding:</u> The proposed construction is in conformance with the provisions of this code.</p>

<u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain
10. <i>Be recorded with the York County Registry of Deeds.</i>
<u>Finding:</u> A plan suitable for recording has been prepared.
<u>Conclusion:</u> As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstain

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of owners/applicants Oliver P. & Claire H. Gaudissart to construct rip rap shoreline stabilization along Mendum Creek subject to the conditions as follows:

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 retaining wall construction to ensure adequate erosion control and slope stabilization. In additions, applicant/contractor must submit a copy of a MDEP permit by rule to staff for town records.
3. A replanting plan conforming to 16.9.2.2 will need to be approved by the Code Enforcement Office prior to any excavation work.
4. All Notices to Applicant contained herein (Findings of Fact dated 12/13/18).

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 presentation on final Mylar.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote: 5 in favor 0 against 0 abstain

APPROVED BY THE KITTELY PLANNING BOARD ON December 13, 2018

Ann H. Grinnell, Planning Board Chair

Notices to Applicant:

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 presentation of final Mylar.
2. 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.
3. One (1) Mylar copy 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.
4. 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.

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.