

Town of Kittery Planning Board Meeting March 8, 2018

21 Bond Road – Sketch Plan/Shoreland Development Plan Review

Action: Accept or deny application; approve or deny plan: Owner/Applicant, Victor Messier requests consideration of the reconstruction of a former bait shed turned boating equipment storage shed on property located at Tax Map 25 Lot 8, in the Residential - Kittery Point Village (R- KPV) and the Shoreland Overlay (OZ-SL) zones.

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|-------|--|-------------------|---------|
| NO | Sketch Plan | January 11, 2018 | PENDING |
| NO | Site Visit | February 21, 2018 | HELD |
| YES | Shoreland Development Plan Application Completeness Review | | TBD |
| NO | Public Hearing | | TBD |
| YES | Shoreland Development Plan Review Plan Approval | | TBD |

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.

Background

The shed in question was originally used as a bait shed for commercial fishing when first built about 45 years ago. In 2004, the shed was rebuilt with approval by the Board of Appeals (1-15-2004), Port Authority (5-2-2004) and the DEP (4-21-2004). The shed's recent use was for storage of boating/recreational fishing equipment. In March of 2017 more than 50% of the shed was destroyed (one wall and the floor remained) when a large pine tree fell on it during a storm. Because the shed was more than 50% destroyed and within 100 feet of the highest annual tide, the application must be approved by the Planning Board.

Update:

Site Walk – at the Site Walk held on February 21, 2018, the Applicant's agent, Brian Rodonets, staked the setbacks and staked out a proposed alternative location for the shed. A revised plan was submitted for consideration by the Board.

Staff Review

The application includes the information required under 16.10.4.2 for a sketch plan. The plan depicts the location of the shed as it used to exist and details of the entire property, including the house and lot line setbacks.

Staff has the following comments:

Land Use.

1. The proposed use is to reconstruct an accessory building – a shed – that was located, at least partially, over the high-water line. Per 16.11.1.D, only functionally water-dependent uses are allowed on, over or abutting a pier, wharf, or other structure beyond the normal high-water line. A recreational boat structure is not a water-dependent use per the definition found in Article II. Please see email from Michael Morse from DEP to Robert Marchi, CEO included.

2. Update. The owner is now proposing to relocate the shed upland to in front of the western portion of the residence. While this is farther from the water, it remains well within the 100-foot buffer and is still closer to the water than the principal structure. The proposed footprint of 6 feet x 16 feet differs from the shed's original footprint of 8 feet x 12 feet, though has the same 96 square feet of total area.

Nonconformity

1. Under 16.6.3.3.3.A (Nonconforming Structure Reconstruction), a nonconforming structure which is damaged or destroyed by any cause by more than 50% of the market value of the structure may be reconstructed or replaced within 18 months provided that the reconstruction is in compliance with the coastal setback to the greatest practical extent as determined by the Planning Board. The Board must consider the physical condition, the type of foundation (not really applicable here) and the criteria listed under 16.7.3.3.1.B (Nonconforming Structure Relocation). See below.
2. The criteria for the Board to consider under 16.7.3.3.1.B include the following:
 - a. Size of lot
 - b. Slope of land
 - c. Potential for soil erosion
 - d. Location of other structures on the property and adjacent properties
 - e. Location of septic system
 - f. Type and amount of vegetation to be removed to accomplish relocation
3. 16.7.3.3.3.E states that if the total footprint of the structure can be relocated beyond the required setback area, then none of the structure can be reconstructed at less than the setback required of a new structure.
4. According to the scale shown on the plan, it appears that the entire house is also within the 100-foot setback as is most of the lot. The lot itself is nonconforming at less than 19,000 sf (40,000 sf minimum requirement).
5. Although the hand-drawn plan does not have contour lines, the accompanying photographs show that the property slopes upward from the shore.
6. The applicant notes in the original submission letter that relocation options seem limited due to lot line setbacks, slopes, property lines and the driveway location.
7. Under 16.3.2.17.D.2.e (Shoreland Overlay Zone, Standards, Principal and Accessory Structures) on a nonconforming lot of record on which only a residential structure exists, where it is not possible to place an accessory structure and meet the required water body setbacks, the CEO may issue a permit to place a single accessory structure with no utilities. Such a structure must not exceed 80 square feet in size and must be located as far from the shoreline as practical and meet all other applicable standards such as lot coverage and vegetation clearing limitations. In no case is the accessory structure allowed to be closer to the water than the principal structure.
8. The pier on which the shed was originally located was rebuilt in 2004 along with the shed with DEP, KPA and BOA approvals. It will remain, even if the shed is rebuilt in another location.

Recommendations:

1. Staff recommends that the Board decide if any further information is required and if none is, vote to find the application complete.

Action:

Move to find the application for 21 Bond Road, (Tax Map 25, Lot 8) located in the Residential-Kittery Point Village and Shoreland Overlay Zone pursuant to the Shoreland Development Plan dated December 7, 2017 with a revised plan dated February 21, 2018 submitted by owner and applicant Victor Messier complete.

2. The Board will want to decide whether or not to hold a public hearing. If the Board decides to hold a public hearing, the motion is below.
3. Staff finds no support within Title 16 to allow the shed to be rebuilt in either its original location or in the proposed location further inland for the following reasons.
 - a. The shed is no longer a water dependent use.
 - b. The proposed location is closer to the water than the principal structure.
 - c. The proposed location does not seem to move the shed away from the water to the greatest extent practical since there appears to be at least one additional potential location between the parking area and the leach field on the plan.
 - d. While it appears that moving the shed beyond the shoreland setback requirements may not be possible because so little of the site is outside the Shoreland Overlay, there may be an alternative location that is further inland than the one currently proposed.
4. In addition, the shed as proposed is 96 sf, per 16.3.2.17.D.2.e, it cannot be more than 80 sf.

Action

Move to hold a public hearing on the Shoreland Development Plan dated December 7, 2017 with a revised plan dated February 21, 2018 from owner and applicant Victor Messier for 21 Bond Road (Tax Map 25 Lot 8) in the Residential-Kittery Point Village and Shoreland Overlay Zones for April 12, 2018.

OR

Action

Move to deny the application for 21 Bond Road, (Tax Map 25, Lot 8) located in the Residential-Kittery Point Village and Shoreland Overlay Zone pursuant to the Shoreland Development Plan dated December 7, 2017 with a revised plan dated February 21, 2018 submitted by owner and applicant Victor Messier.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
PERMIT BY RULE NOTIFICATION FORM**
(For use with DEP Regulation, Chapter 305)

PLEASE TYPE OR PRINT IN BLACK INK ONLY (3 COPIES, PLEASE BEAR DOWN)

| | | | |
|--|------------------------|--|---|
| Name of Applicant: BRIAN RUDONETS | | Name of Owner: VICTOR MESSIER | |
| Mailing Address: 42 PEPPERRELL RD. KITTERY PT. ME | | Town/City: 21 BOND RD KITTERY PT. ME | |
| State: ME | Zip Code: 03905 | Daytime Telephone No: 207.439.1500 (Include area code) | |
| Name of Wetland, Water Body or Stream: SPRUCE CREEK | | | |
| Detailed Directions to Site: TAKE #95 S. TO EXIT 2. & GO TO KITTERY TRAFFIC CIRCLE, TAKE EXIT TO RTE 236N, FOLLOW 1/2-3 MI. TO FT. McCLARY & GO L. ON CROCKETT NECK RD. GO 1/2 MI. & L. ON BOND RD. FOLLOW 1/2 MI TO END & BEAR L. TO 2ND DRIVEWAY. | | | |
| Town/City: KITTERY PT. | Map #: 25 | Lot #: 8 | County: YORK |
| Description of Project: SEE ATTACHED LETTER DATED MAY 26, 2000 FROM ALEX WONG, DEP MANAGER. | | | |
| Part of a larger project? | | | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

(CHECK ONE) This project: does does not involve work below mean low water.

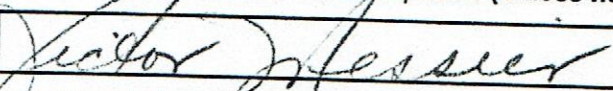
I am filing notice of my intent to carry out work which meets the requirements for Permit By Rule (PBR) under DEP Regulation, Chapter 305. I have a copy of PER Sections checked below. I have read and will comply with all of the standards.

- | | | |
|--|---|--|
| <input type="checkbox"/> Sec. (2) Soil Disturbance | <input type="checkbox"/> Sec. (8) Shoreline stabilization | <input checked="" type="checkbox"/> Sec. (14) Piers, Wharves & Pilings |
| <input type="checkbox"/> Sec. (3) Intake Pipes | <input type="checkbox"/> Sec. (9) Utility Crossing | <input type="checkbox"/> Sec. (15) Public Boat Ramps |
| <input checked="" type="checkbox"/> Sec. (4) Replacement of Structures | <input type="checkbox"/> Sec. (10) Stream Crossing | <input type="checkbox"/> Sec. (16) Coastal Sand Dune Projects |
| <input type="checkbox"/> Sec. (5) REPEALED | <input type="checkbox"/> Sec. (11) State Transportation Facilities | <input type="checkbox"/> Sec. (17) Transfers/Permit Extension |
| <input type="checkbox"/> Sec. (6) Movement of Rocks or Vegetation | <input type="checkbox"/> Sec. (12) Restoration of Natural Areas | <input type="checkbox"/> Sec. (18) Maintenance Dredging |
| <input type="checkbox"/> Sec. (7) Outfall Pipes | <input type="checkbox"/> Sec. (13) F&W Creation/Enhance/Water Quality Improvement | |

I authorize staff of the Departments of Environmental Protection, Inland Fisheries & Wildlife, and Marine Resources to access the project site for the purpose of determining compliance with the rules. I also understand that **this permit is not valid until approved by the Department or 14 days after receipt by the Department, whichever is less.**

I have attached all of the following required submittals. **NOTIFICATION FORMS CANNOT BE ACCEPTED WITHOUT THE NECESSARY ATTACHMENTS:**

- Attach** a check for \$50 (non-refundable) made payable to: "Treasurer, State of Maine".
- Attach** a U.S.G.S. topo map or Maine Atlas & Gazetteer map with the project site clearly marked.
- Attach** photographs showing existing site conditions (unless not required under standards).

| | |
|---|-------------------------|
| Signature of Applicant:  | Date: 18 AUG '00 |
|---|-------------------------|

Keep the bottom copy as a record of permit. Send the form with attachments via certified mail to the Maine Dept. of Environmental Protection at the appropriate regional office listed below. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Permits are valid for two years. **Work carried out in violation of any standard is subject to enforcement action.**

AUGUSTA DEP
STATE HOUSE STATION 17
AUGUSTA, ME 04333-0017
(207)287-2111

PORTLAND DEP
312 CANCO ROAD
PORTLAND, ME 04103
(207)822-6300

BANGOR DEP
106 HOGAN ROAD
BANGOR, ME 04401
(207)941-4570

PRESQUE ISLE DEP
1235 CENTRAL DRIVE
PRESQUE ISLE, ME 04769
(207)764-0477

| | | | | | |
|-----------------|------|------|-----------|-----------|--------------|
| OFFICE USE ONLY | Ck.# | Date | Staff | Staff | After Photos |
| PBR # | FP | | Acc. Date | Def. Date | |



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.

GOVERNOR

May 26, 2000

MARTHA KIRKPATRICK

COMMISSIONER

Mr. Brian Rodonets
Coastal Architecture
42 Pepperell Road
Kittery Point, ME 03905

RE: Replacement of structures

Dear Mr. Rodonets,

Thank you for your inquiry into the natural resource protection laws in the State of Maine. As I understand it, you propose to replace rotting decking of an existing pier. This pier is supported by a stone crib above the mean high tide, which will also require renovation. The pier will not increase in size and will not further intrude into the coastal wetland. You also propose to increase the dimensions of an existing shack on the pier in accordance with local shoreland zoning regulations.

The activity you describe is permissible under Chapter 305, Permit By Rule (PBR), Section 4, Replacement of Structures. I have enclosed the standards and an application form for you use. Please review the standards to ensure your eligibility for the PBR program. This opinion is based solely upon the information provided and is subject to chance if that information is found to be inaccurate or incomplete. If you have any further questions you may contact me at 822-6300. Please send you PBR application to the attention of Steve Arnold.

Regards,

Alexander Wong, Project Manager
Division of Land Resource Regulation
Bureau of Land and Water Quality

enclosures

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-1507



TOWN OF KITTEY PORT AUTHORITY
TOWN HALL
P.O. BOX 808, KITTEY, MAINE 03904

Mr. Brian Rodonets
Coastal Architecture
42 Pepperrell Road
Kittery Point, Me. 03905

May 2, 2003

Dear Mr. Rodonets:

Re: Request to repair and replace rotting deck and baitshed for Victor Messier, 21 Bond Road, Kittery Point, Me. 03905 (Map 25 Lot 8)
The subject application dated 4/21/03 for replacing a water dependent deck and baitshed was discussed at the Port Authority Meeting on May 1, 2003.

The Port Authority voted to accept your application as submitted. This Port Authority approval is contingent on the approval of any other governing bodies that may be required. Also a building permit from the Code Enforcement Officer is required before building baitshed.

Respectfully,

Milton Hall
Milton Hall (Chairman)

cc: Port Authority Members

Harbor Master

Code Enforcement Officer

File (2)



Town of Kittery, Maine

Conservation Commission

P.O. Box 808, Kittery, Maine 03904

DATE: February 24, 2018

TO: Kathy Connor, Interim Town Planner
Ann Grinnell, Planning Board Chair

FROM: Earldean Wells, Chair

RE: 21 Bond Road, owner Victor Messier, Map 25 Lot 8

The Kittery Conservation Commission has concerns regarding the proposal to construct a nonconforming storage shed in the Shoreland Overlay/Resource Protection Overlay Zone, to replace the nonconforming storage shed formerly located on the dock of the above mentioned property. The former shed was destroyed by a fallen tree last year. The applicant wishes to build a new storage shed elsewhere on the property within the Shoreland Overlay/Resource Protection Overlay Zone a few feet from the location of the former shed.

Members of the Conservation Commission attended the February 21, 2018 sitewalk of this property which lies entirely within Shoreland Overlay/Resource Protection Overlay Zone. No information has been received as to if this property is on town water and sewer or on septic and well, if so it is required that these be located on the plans so that the Planning Board can determine the impact the new structure will have on them 16.7.3.5.4.B.

There are concerns that while the proposed structure has been moved several feet further from the former location, which was in the high water area of Spruce Creek, where new construction is no longer allowed. The proposed location is several feet higher in elevation than the former location, making it more of an impact visually for the neighbor as well as the property owner.

The applicant proposes to maintain the 96 sq. feet of area that the former 8 ft. x 12 ft. shed occupied by constructing a 6 ft. x 16 ft. structure that is 7 ft. in height rather than the 8 ft. height of the former structure. This appears to KCC to be an increase of the footprint of the proposed structure which would make the proposed structure more nonconforming 16.7.3.5.6.C.E.

It was also mentioned at the sitewalk that the remaining floor/platform part of the former shed located just adjacent (but not physically connected) to the existing dock must be removed as it is a nonconforming structure in the Shoreland Overlay Zone.