



TOWN OF KITTERY

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Visit us: www.kitteryme.gov/land-issues-committee

Land Issues Committee Meeting Agenda April 1, 2024 | 4:00 PM | Hybrid Meeting: Conference Rm. A & Zoom

Zoom Link (to register):

https://us02web.zoom.us/webinar/register/WN_hW6KNSs9Tc-11BKmeUkrQg

Agenda

Item 1 – Draft Working Waterfront Amendments to Town Code

See attached for amendments to Title 16 proposed by staff as requested by Council and Town Manager.

Item 2 – FEMA flood map updates

Summary of data provided by FEMA and partners and pending zoning map amendments.

Item 3 – Committee Member items



TOWN OF KITTERY
Planning and Development
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: Kittery Land Use Committee
FROM: Kathy Connor, Project Planner
SUBJECT: Working Waterfront Amendments
DATE: April 1, 2024
CC: Jason Garnham, Directory of Planning & Development

Protecting working waterfront has long been the desire of Kittery's residents and was featured as a goal in several iterations of the Town's Comprehensive Plan, including the most recent Plan which states:

To protect the Town's coastline, the working waterfront and ensure appropriate access and enjoyment of the water while protecting it from environmental impacts.

Within the last year or two, properties that have long been part of Kittery's working waterfront have been placed on the market and the functionally water-dependent uses on these properties threatened. To protect working waterfront in the way that Kittery wants, it was determined that some amendments to 16.3.2 Definitions, 16.1.8 General Development and 16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone were needed.

These amendments do the following:

- Define functionally water-dependent uses more narrowly, particularly as regards certain recreational marinas.
- Strengthen the prohibitions to replacing or removing a conforming functionally water-dependent use and its structures with a non-conforming use and accompanying structures.
- Clarify the purpose, intent and uses allowed/not allowed in this overlay zone.

TITLE 16
WORKING WATERFRONT

1 **1. AMEND 16.3.2 DEFINITIONS as follows:**

2 **AQUACULTURE**

3 The breeding, rearing and harvesting of fish, shellfish, aquatic plants and algae in all
4 types of water environments for the purpose of human use. The term includes all
5 processing and storage facilities on land that may be required to engage in such water-
6 based farming.

7 **FUNCTIONALLY WATER-DEPENDENT USES**

8 Those principal uses that can only occur when in, on, or adjacent to ~~require, for their~~
9 ~~primary purpose, location on submerged lands or that require direct access to, or~~
10 ~~location in,~~ coastal and inland waters and which cannot be located away from
11 these waters. The uses include, but are not limited to, commercial and recreational
12 fishing and boating facilities, finfish and shellfish processing, aquaculture, fish
13 storage and retail and wholesale fish marketing facilities, waterfront dock and port
14 facilities, ~~excluding recreational boat storage buildings,~~ shipyards and boat-
15 building facilities, marinas, navigation aids, basins and channels, industrial uses
16 dependent upon waterborne transportation or requiring large volumes of cooling
17 or processing water and which cannot reasonably be located or operated at an
18 inland site, and uses which primarily provide general public access to marine or
19 tidal waters. Recreational boat storage buildings and accessory marinas intended
20 for recreational boats owned by residents of dwelling units located on the site, even
21 if additional vessels may lease slips or moorings, are not functionally water-
22 dependent uses.

23 **2. AMEND 16.1.8 GENERAL DEVELOPMENT REQUIREMENTS as they relate to**
24 **commercial fishing and working waterfront as follows:**

25 § 16.1.8 **General development requirements.**

- 26 A. This chapter outlines requirements for conformity; discusses nonconformance and
27 waivers; and defines various development review thresholds and requirements to
28 further the safe and orderly development of the Town.
- 29 B. Conformity.
 - 30 (1) Conformity required. No building, structure or land may hereafter be used or
31 occupied, and no building or structure or part thereof may hereafter be erected,
32 constructed, expanded, moved or altered, and no new lot may be created except in
33 conformity with all of the regulations herein specified for the zone where it is
34 located, unless such structure or use exists as a legally nonconforming use or a
35 variance is granted. See § **16.7.11B** and § **16.8.10D** for specific requirements related to
36 septic waste disposal systems.

- 37 (2) Minimums and uniformity. The regulations specified by this title for each class of
38 district are minimum requirements and apply uniformly to each class or kind of
39 structure or land.
- 40 (3) Land within street lines. Land within the lines of a street on which a lot abuts is not
41 considered as part of such lot for the purposes of meeting the area/frontage
42 requirements of Chapter **16.4**, notwithstanding the fact that the fee to such land
43 may be in the owner of such lot.
- 44 (4) Yard, parking or loading space. No part of a yard or other space or off-street parking
45 or loading space about or in connection with any building and required for the
46 purpose of complying with this title may be included as part of a yard, open space
47 or off-street parking or loading space similarly required for any other building,
48 except as authorized in § **16.7.11F**.
- 49 (5) Zone boundary line extension. Where a zoning district boundary line divides a lot,
50 the regulations applicable to either zone of such lot may extend not more than 50
51 feet into the portion in the other zone(s), except when a less restrictive portion
52 abuts the Resource Protection Zone.
- 53 (a) Before granting any such extension, the Planning Board must determine that the
54 proposed use of the extended portion will:
- 55 [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
- 56 [2] Be in harmony with the character of the adjacent zone;
- 57 [3] Not adversely affect the property values of adjacent zone's immediate
58 neighborhoods;
- 59 [4] Not create any traffic hazards or undue traffic congestion on streets in the adjacent
60 zone;
- 61 [5] Not give off obnoxious gases, odors, smoke or soot;
- 62 [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or noise;
63 and
- 64 [7] Be adequately screened from the adjacent zone.
- 65 [\[8\] Not replace, diminish or adversely impact any existing functionally water-](#)
66 [dependent uses.](#)
- 67 (b) The Planning Board may require a study to be performed or commissioned by the
68 applicant to ensure compliance with the above requirements.
- 69 (6) Averaging building setbacks. Building setback from the street line need not be
70 greater than the average of the setback distances of the buildings on the lots next
71 thereto on either side.

72 C. Nonconformance.

73 (1) Purpose. The purpose of this title is to promote land use conformities and to
74 regulate nonconforming structures, uses, and lots, and to promote the following
75 objectives.

76 (2) Prohibitions and allowances.

77 (a) Except as otherwise provided in this title, a nonconforming condition must not be
78 permitted to become more nonconforming.

79 (b) Nonconforming vacant lots of record may be developed, maintained or repaired.

80 (c) Nonconforming uses may continue, may be changed to an equal or more
81 appropriate nonconforming use, or be changed to a conforming use.

82 (3) General.

83 (a) Transfer of ownership. Legally nonconforming structures, lots, and uses may be
84 transferred, and the new owner may continue the nonconforming use or continue
85 to use the nonconforming structure and/or lot, subject to the provisions of this title.

86 (b) Repair and maintenance. This title allows the normal upkeep and maintenance of
87 nonconforming uses and structures including repairs or renovations that do not
88 involve expansion of the nonconforming use or structure that is not otherwise
89 permitted by this title, and such other changes in a nonconforming use or
90 structure as federal, state, or local building and safety codes may require.

91 (c) Nonconforming parking or loading space. A structure and/or use which is
92 nonconforming as to the requirements for off-street loading and/or parking spaces
93 may not be enlarged or added to unless off-street space is provided sufficient to
94 satisfy the requirements of this title for both the original and addition or
95 enlargement of the structure or use.

96 (4) Nonconforming structures.

97 (a) Nonconforming structure relocation. Except where otherwise permitted in this title,
98 relocation of a nonconforming structure must be approved by the Board of
99 Appeals. In cases where the structure is located in the Shoreland ~~or~~ Resource
100 Protection Overlay ~~Zone~~, [or Commercial Fisheries/Maritime Activities Overlay](#)
101 [Zone\(s\)](#) the relocation must be approved by the Planning Board.

102 [1] A nonconforming structure may be relocated within the boundaries of the parcel
103 on which the structure is located provided the site of relocation conforms to all
104 dimensional requirements, to the greatest practical extent, as determined by the
105 Planning Board or Board of Appeals, and provided the applicant demonstrates the
106 present subsurface sewage disposal system meets the requirements of state law
107 and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can
108 be installed in compliance with the law and said rules. In no case may the

109 relocation of a structure be permitted that causes the structure to be more
110 nonconforming. See § **16.7.11B** and § **16.8.10D**, for other specific requirements
111 related to septic waste disposal systems.

112 [2] In determining whether the structure relocation meets the setback to the greatest
113 practical extent, the Planning Board or Board of Appeals must consider the
114 following conditions:

115 [a] The size of the lot;

116 [b] The slope of the land;

117 [c] The potential for soil erosion;

118 [d] The location of other structures on the property and on adjacent properties;

119 [e] The location of the septic system and other on-site soils suitable for septic systems;

120 [f] The type and amount of vegetation to be removed to accomplish the relocation.

121 [\[g\] Relocation of structures in the Commercial Fisheries/Maritime Activities Overlay](#)
122 [Zone cannot replace, diminish or adversely impact existing functionally water-](#)
123 [dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities Overlay](#)
124 [Zone.](#)

125 [3] When it is necessary to remove vegetation within the water or wetland setback
126 area to relocate a structure, replanting of native vegetation to compensate for the
127 destroyed vegetation is required. The Planning Board or Board of Appeals may
128 restrict mowing around and pruning of the replanted native vegetation to
129 encourage a more natural state of growth. Tree removal and vegetation replanting
130 is required as follows, effective February 28, 2015:

131 [a] Prior to the commencement of on-site construction, areas to remain undisturbed
132 must be clearly marked with stakes and caution tape. All stakes, caution tape, silt
133 fences, and other materials used during construction must remain until all on-site
134 work is completed. Prior to removal, written permission to remove such materials
135 must be given by the Code Enforcement Officer.

136 [b] Trees removed to relocate a structure must be replanted with at least one native
137 tree, six feet in height, for every tree removed. If more than five trees are planted, no
138 one species of tree can be used to make up more than 50% of the number of trees
139 planted. Replaced trees must be planted no farther from the water or wetland than
140 the trees removed.

141 [c] Other woody and herbaceous vegetation and ground cover that is removed, or
142 destroyed, to relocate a structure must be reestablished. An area at least the same
143 size as the area where vegetation and/or ground cover was disturbed, damaged, or
144 removed must be reestablished within the setback area. The vegetation and/or
145 ground cover must consist of native vegetation and/or ground cover similar to that

146 disturbed, destroyed or removed.

147 [d] Where feasible, when a structure is relocated on a parcel, the original location of
148 the structure must be replanted with vegetation consisting of grasses, shrubs, trees
149 or a combination thereof.

150 [4] If the total footprint of the original structure can be relocated beyond the required
151 setback area, no portion of the relocated structure may be constructed at less than
152 the setback requirement for a new structure.

153 (b) Nonconforming structure repair and/or expansion.

154 [1] The Code Enforcement Officer may approve the repair and/or expansion of a
155 nonconforming structure provided the proposed expansion is not located in the
156 base zone setback of the Shoreland Overlay Zone or at any location and meets
157 either of the following criteria:

158 [a] A vertical expansion that follows the existing building footprint;

159 [b] Will not result in setbacks less than those existing.

160 [c] Installation or replacement of solar energy systems and energy storage systems.

161 [2] Except where otherwise permitted in this title, repair and/or expansion of a
162 nonconforming structure must be approved by the Board of Appeals. In cases
163 where the structure is located in the base zone setback of the Shoreland ~~Overlay~~
164 ~~or Resource Protection, or Commercial Fisheries/Maritime Activities~~ Overlay
165 Zone(s), the repair and/or expansion must be approved by the Planning Board.

166 [3] This subsection does not apply to any proposed vertical expansion of a patio, deck
167 or accessory structure permitted to be closer to a water body or to a principal
168 structure in accordance with Table 16.5.30, Minimum Setbacks from Wetlands and
169 Water Bodies.

170 [a] A nonconforming structure may be repaired or maintained and may be expanded
171 in conformity with the dimensional requirements, such as setback, height, etc., as
172 contained in this title. If the proposed expansion of a nonconforming structure
173 cannot meet the dimensional requirements of this title, the Board of Appeals or the
174 Planning Board will review such expansion application and may approve proposed
175 changes provided the changes are no more nonconforming than the existing
176 condition and the Board of Appeals or the Planning Board makes its decision per
177 § **16.2.12F(2)**.

178 [b] Except in the Residential - Village (R-V) Zone, minimum setbacks of residential
179 storage sheds that are less than 121 square feet, one-story residential garages that
180 are less than 577 square feet, and decks less than 251 square feet may be one-half
181 the minimum rear and side yard setbacks, providing the lots are legally
182 nonconforming.

- 183 [c] Where the expansion of the residential use within the commercial zones involves
184 an expansion of a structure, the structure must be expanded in conformity with the
185 dimensional requirements contained in this title. If the proposed structure
186 expansion cannot meet the dimensional requirements of this title, the application
187 may be submitted to the Board of Appeals for review as a miscellaneous variation
188 request. In reviewing all such applications, the Board of Appeals must use the
189 criteria established in this section, and then may approve the proposed variations
190 to the dimensional requirements.
- 191 [d] The addition of steps and landings, exterior to the structure, does not constitute
192 expansion. Such steps are not to be considered part of the structure for such
193 determination. Step landings may not exceed three feet by three feet in size.
- 194 [e] In addition to the standards in the above § 16.1.8C(4)(b)[3][a] through [d], the
195 expansion of nonconforming and the construction of new, enlarged, or
196 replacement foundation beneath a nonconforming structure located in the
197 Shoreland or Resource Protection Overlay Zone must meet the following:
- 198 [i] Wherever a new, enlarged, or replacement foundation is constructed under an
199 existing nonconforming structure the structure and new foundation must be
200 placed such that setback requirements are met to the greatest practical extent as
201 determined by the Planning Board, basing its decision on the criteria specified in
202 § **16.1.8C(4)(a)**, Nonconforming structure relocation.
- 203 [ii] All new principal and accessory structures, excluding functionally water-dependent
204 uses, must meet the water body, tributary stream, or wetland setback
205 requirements contained in § **16.4.28E**. A nonconforming structure may be added to
206 or expanded after obtaining a permit from the same permitting authority as that
207 for a new structure, if such addition or expansion does not increase the
208 nonconformity of the structure and is in accordance with § 16.1.8C(4)(b)[3][e][iv] and
209 [v] below.
- 210 [iii] If a legally nonconforming principal structure is located partially within 25 feet from
211 the normal high-water line of a water body, tributary stream, or upland edge of a
212 coastal or freshwater wetland, expansion of the footprint and/or height of any
213 portion of the structure that is located within 25 feet of the normal high-water line
214 of a water body, tributary stream, or upland edge of a coastal or freshwater wetland
215 is prohibited even if the expansion will not increase nonconformity with the water
216 body, tributary stream, or wetland setback requirement. Expansion of an accessory
217 structure that is located closer to the normal high-water line of a water body,
218 tributary stream, or upland edge of a coastal or freshwater wetland than the
219 principal structure is prohibited, even if the expansion will not increase
220 nonconformity with the water body, tributary stream, or coastal or freshwater
221 wetland setback requirement.
- 222 [iv] Notwithstanding § 16.1.8C(4)(b)[3][e][ii], if a legally existing nonconforming principal
223 structure is entirely located less than 25 feet from the normal high-water line of a
224 water body, tributary stream, or upland edge of a coastal or freshwater wetland,

225 that structure may be expanded as follows, as long as all other applicable municipal
226 land use standards are met and the expansion is not prohibited by
227 § 16.1.8C(4)(b)[3][e][ii]:

228 [A] The maximum total footprint for the principal structure may not be expanded to a
229 size greater than 800 square feet or 30% larger than the footprint that existed on
230 January 1, 1989, whichever is greater. The maximum height of the principal
231 structure may not be made greater than 15 feet or the height of the existing
232 structure, whichever is greater.

233 [v] All other legally existing nonconforming principal and accessory structures that do
234 not meet the water body, tributary stream, or coastal or freshwater wetland
235 setback requirements may be expanded or altered as follows, as long as other
236 applicable municipal land use standards are met and the expansion is not
237 prohibited by § 16.1.8C(4)(b)[3][e][ii] and [iii], above:

238 [A] For structures located less than the base zone setback from the normal high-water
239 line of a water body, tributary stream, or upland edge of a coastal or freshwater
240 wetland, the maximum combined total footprint for all structures may not be
241 expanded to a size greater than 1,000 square feet, or 30% larger than the footprint
242 that existed on January 1, 1989, whichever is greater. The maximum height of any
243 portion of a structure that is located within the base zone setback may not be
244 made greater than 20 feet, or the height of the existing structure, whichever is
245 greater.

246 [B] In addition to the limitations in § 16.1.8C(4)(b)[3][e][v] above, for structures that are
247 legally nonconforming due to their location within the Resource Protection Overlay
248 Zone when located at less than 250 feet from the normal high-water line of a water
249 body or the upland edge of a coastal or freshwater wetland, the maximum
250 combined total footprint for all structures may not be expanded to a size greater
251 than 1,500 square feet, or 30% larger than the footprint that existed at the time the
252 Resource Protection Overlay Zone was established on the lot, whichever is greater.
253 The maximum height of any structure may not be greater than 25 feet, or the
254 height of the existing structure, whichever is greater, except that any portion of
255 those structures located less than the base zone setback from the normal high-
256 water line of a water body, tributary stream, or upland edge of a coastal or
257 freshwater wetland must meet the footprint and height limits in
258 § 16.1.8C(4)(b)[3][e][iv][A] and [v][A], above.

259 [vi] An approved plan for expansion of a nonconforming structure must be recorded by
260 the applicant with the York County Registry of Deeds within 90 days of approval.
261 The recorded plan must show the existing and proposed footprint of the
262 nonconforming structure, the existing and proposed structure height, the footprint
263 of any other structures on the parcel, the Shoreland Overlay Zone and/or the
264 Resource Protection Overlay Zone boundary and evidence of approval by the
265 municipal review authority.

266 [\[f\] Expansion or changes in structures in the Commercial Fisheries/Maritime Activities](#)

267 [Overlay Zone cannot replace, diminish or adversely impact existing functionally](#)
268 [water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities](#)
269 [Overlay Zone.](#)

- 270 (c) Nonconforming structure reconstruction.
- 271 [1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
272 structure which is located less than the required setback from a water body,
273 tributary stream, or coastal or freshwater wetland and which is removed, damaged
274 or destroyed, by any cause, by more than 50% of the assessed value of the structure
275 before such damage, destruction or removal, may be reconstructed or replaced,
276 provided that a permit is obtained within 18 months of the date of said damage,
277 destruction, or removal, and provided that such reconstruction or replacement is in
278 compliance with the water body, tributary stream or coastal or freshwater wetland
279 setback requirement to the greatest practical extent as determined by the
280 Planning Board. In determining whether the structure reconstruction meets the
281 setback to the greatest practical extent the Planning Board must consider, in
282 addition to the criteria in § **16.1.8C(4)(a)**, Nonconforming structure relocation, the
283 physical condition and type of foundation present, if any.
- 284 [2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
285 structure which is located less than the required setback from a water body,
286 tributary stream, or coastal or freshwater wetland and removed, damaged or
287 destroyed by any cause by 50% or less of the assessed value of the structure before
288 such damage, destruction or removal, may be reconstructed in place if a permit is
289 obtained from the Code Enforcement Officer within 12 months of the established
290 date of damage or destruction.
- 291 [3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any
292 nonconforming structure which is removed, damaged or destroyed by any cause
293 may be restored or reconstructed in place if a permit is obtained from the Code
294 Enforcement Officer within 18 months of the date of said removal, damage or
295 destruction. Such restoration or reconstruction must not make the structure more
296 nonconforming than the prior nonconforming structure.
- 297 [4] Nothing in this section prevents the demolition of the remains of any structure
298 damaged or destroyed. Application for a demolition permit for any structure that
299 has been partially damaged or destroyed must be made to the Code Enforcement
300 Officer.
- 301 [5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the
302 original structure can be reconstructed beyond the required setback area, no
303 portion of the reconstructed structure may be reconstructed at less than the
304 setback requirement for a new structure. If the reconstructed or replacement
305 structure is less than the required setback, it may not be any larger than the
306 original structure, except as allowed in § **16.1.8C(4)(b)**, Nonconforming structure
307 repair and expansion.

- 308 [6] When it is necessary to remove vegetation to reconstruct a structure, vegetation
309 must be replanted in accordance with § **16.1.8C(4)(a)[3]**, Nonconforming structure
310 relocation.
- 311 [7] Except where expressly permitted in this title, in no case may a structure be
312 reconstructed or replaced so as to increase its nonconformity.
- 313 [\[8\] Reconstruction of structures in the Commercial Fisheries/Maritime Activities
314 Overlay Zone cannot replace, diminish or adversely impact existing functionally
315 water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities
316 Overlay Zone.](#)
- 317 (5) Nonconforming uses.
- 318 (a) Nonconforming use continuance. The use of land, or structure, lawful at the time
319 such use began, may continue although such use may not meet the provisions of
320 this title.
- 321 (b) Resumption of discontinued use prohibited. A nonconforming use discontinued for
322 a period exceeding one year, or which is superseded by a conforming use, loses its
323 status as a permitted nonconforming use. The uses of the land or structure must
324 thereafter meet the provisions of this title. This provision does not apply to the
325 resumption of a use of a residential structure where it can be demonstrated that
326 the structure has been used or maintained for residential occupancy during the
327 preceding five-year period.
- 328 (c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited,
329 except nonconforming residential uses may be expanded within existing
330 residential structures. Where the expansion of a nonconforming residential use
331 involves the expansion of a structure, the structure must be expanded in
332 conformity with all requirements as outlined in § **16.1.8C(4)**, Nonconforming
333 structures.
- 334 [\[1\] Expansion or changes in uses, including any pertinent structures, in the
335 Commercial Fisheries/Maritime Activities Overlay Zone cannot replace, diminish or
336 adversely impact existing functionally water-dependent uses. See §16.4.30,
337 Commercial Fisheries/Maritime Activities Overlay Zone.](#)
- 338 (d) Nonconforming use change: review authority and evaluations. The reviewing
339 authority may require evaluations be prepared by a person certified and/or
340 qualified to perform the required evaluation. It is the burden and responsibility of
341 the applicant to bear the costs for such evaluations. In the event there are existing
342 official maps, data and/or reports for general use, the applicant is encouraged to
343 submit copies of these documents to the reviewing authority. In determining that
344 no greater adverse impact will occur, the applicant may be required to submit an
345 evaluation in writing regarding the probable effects on public health and safety,
346 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover,
347 visual and actual points of public access to waters, natural beauty, floodplain

348 management, archaeological and historic resources, and commercial fishing and
349 maritime activities, and other functionally water-dependent uses.

350 [1] The Town Planner and the Code Enforcement Officer may approve the change of
351 use of a nonconforming structure where it can be deemed the proposed use is a
352 conforming use and the proposed use does not impact a water body, tributary
353 stream, or wetland.

354 [2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
355 Overlay Zone, an existing nonconforming use may be changed to another
356 nonconforming use with approval of the Board of Appeals.

357 [3] Within areas regulated by Shoreland Overlay, ~~Zone or~~ Resource Protection, or
358 Commercial Fisheries/Maritime Activities Overlay Zone(s), an existing
359 nonconforming use may be changed to another nonconforming use with the
360 approval of the Planning Board.

361 **3. AMEND 16.4.30 COMMERCIAL FISHERIES/MARITIME ACTIVITIES OVERLAY ZONE**
362 **as follows:**

363 § 16.4.30 **Commercial Fisheries/Maritime Activities Overlay Zone (OZ-CFMU).**

364 A. Purpose. The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is
365 to provide ~~the protection and expansion of existing for the development and~~
366 ~~expansion of functionally~~ water-dependent ~~commercial fisheries/maritime~~
367 ~~activities uses while encouraging additional development or working waterfront~~
368 ~~associated with functionally water-dependent uses. The Commercial-Commercial~~
369 ~~fisheries Fisheries/maritime-Maritime activities-Activities Zone and other includes~~
370 ~~both areas where the existing pattern of development is consistent with uses~~
371 ~~described in §16.4.30 D and other~~ areas suitable for functionally water-dependent
372 uses, taking the following factors into considerations:

- 373 (1) Shelter from prevailing winds and waves;
- 374 (2) Slope of the land within 250 feet, horizontal distance, of the normal high-water line;
- 375 (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- 376 (4) Available support facilities, including utilities and transportation facilities; and
- 377 (5) Compatibility with adjacent upland uses.

378 B. Authority. These provisions have been prepared in accordance with the provisions
379 of 38 M.R.S.A. §§ 435 to 449.

380 C. Applicability and boundaries. The provisions of this section apply to all uses, lots
381 and structures within applicable areas as shown on the Zoning Map where:

382 (1) where ~~†~~The existing predominant pattern of development on the property is
383 consistent with the allowed uses for this overlay zone,

384 ~~(2) where consistent~~The uses, lots and structures are consistent with dimensional
385 requirements of the underlying base zone, and

386 ~~(3) where t~~The active use of lands, buildingsstructures, wharves, piers, floats or
387 landings with the principal intent of such activity isare principally intended for the
388 production of income by an individual or legal business entity through the
389 operation of a vessel(s) ~~as shown on the Zoning Map~~. The activity may be either a
390 principal or accessory use, as defined in this title.

391 D. Permitted uses. Functionally water-dependent ~~commercial fisheries/marine~~
392 ~~activities~~ uses as defined in §16.3.2.

393 E. Special exception uses: none

394 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

395 G. Prohibited uses. ~~All permitted uses in the base zones, including R-KPV, R-U, R-S,~~
396 ~~IND and MU-KF, except as permitted herein.~~A use that is not functionally water-
397 dependent as defined in §16.3.2 is considered non-conforming and is prohibited.
398 Such a non-conforming use, along with any requisite structures, cannot replace a
399 functionally water-dependent use on a lot in this overlay zone, either as a new use
400 or as a change of use.

401 (1) Any additional use(s) and/or structure(s) that is not functionally water-dependent
402 proposed on the same lot as the functionally water-dependent use, must be
403 located outside the Commercial Fisheries/Maritime Activities Overlay Zone on the
404 lot. In addition, it is incumbent upon the applicant proposing such a use(s) and/or
405 structure(s) to demonstrate to the Planning Board's satisfaction that any adverse
406 impacts to the existing functionally water-dependent use will be minimized. The
407 Planning Board may seek professional opinion(s) when making such a
408 determination and such fees as may be incurred must be paid by the applicant.

409 (2) Expansions of non-functionally water-dependent uses or structures in the
410 Commercial Fisheries/Maritime Activities Overlay Zone are prohibited except as
411 allowed in §16.1.8.C (4)(b).

412 H. Lots in two or more overlay zones. In cases where the Commercial
413 Fisheries/Maritime Activities Overlay Zone is one of two or more overlay zones pertinent
414 to a lot, this overlay zone's requirements and standards are not subordinate to
415 Shoreland and/or Resource Protection Overlay Zone's requirements. No changes of use
416 from functionally water-dependent uses to non-functionally water-dependent uses on
417 a lot within the Commercial Fisheries/Maritime Activities Overlay Zone are allowed
418 except as described in §16.4.30.G (1) above.



TOWN OF KITTERY
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TO: Kittery Land Use Committee
FROM: Kathy Connor, Project Planner
SUBJECT: Floodplain Management Amendments
DATE: April 1, 2024
CC: Jason Garnham, Directory of Planning & Development

Kittery's new flood maps (FIRMs for Flood Insurance Rate Maps) have finally arrived. There has not been an updated adopted map since 1986. If you are curious about the process and why it took some time, you will find an attached FAQ that was prepared by the attorney who worked on behalf of Kittery with FEMA. The short version is that FEMA issued maps in 2013 which were contested by Kittery and other York County communities, and it took until now to get the dispute settled and the maps issued.

To support the new maps, the floodplain management ordinance in 16.5.11 needed quite a few updates. These updates have been completed and reviewed by the State Floodplain Management Program. The staff there produce a FEMA-approved model ordinance so that towns can use it to make necessary updates which are subsequently reviewed by the State.

The Town has paper maps and most of the GIS data has been sent to CAI, our GIS consultant, to be put on the Town's on-line GIS system for use by the public. We are working on obtaining the rest of the data. The Town has had the 2013 Preliminary data available on the Town website for years now as an informational tool. As with all ordinance adoptions, the floodplain management changes will go to Planning Board and Town Council and have public hearings. The timeline and outreach to the public is still being planned but the date of adoption is not later than July 17th.

Some of the features of the new FIRMs are:

- The area of revision (essentially the area that was under appeal) is delineated.
- There is a new area depicted called the Limit of Moderate Wave Action (LiMWA) which is the area where waves can reach between 1.5 and 3 feet during storm events.
- There are several special hazard flood areas, Zones, A, AE and VE.
- There are more base flood elevations shown.

Changes to the Floodplain Management Ordinance include:

- More clarity on permitting and submission requirements.
- More performance standards for each type of structure.
- More structures are regulated (for example RVs, bridges, containment walls).
- More stringent requirements for structures in the special flood hazard areas.
- Stricter standards than FEMA's (like higher freeboard) are not proposed at this time.

Frequently Asked Questions

1. What is a floodplain management program?

Floods can happen everywhere, but most insurance policies do not cover flood damage. Since 1968, the National Flood Insurance Program (NFIP) has made subsidized flood insurance available to property owners, renters, and businesses in flood-prone areas—but only in communities that have adopted land use ordinances and flood maps that identify and regulate development in flood-prone areas. The Town of Kittery floodplain management ordinance and flood map form its floodplain management program.

2. What is a flood map?

Flood maps—known as Flood Insurance Rate Maps (FIRMs)—show how likely it is that an area will flood. These maps are a tool that communities use to identify which areas have the highest risk of flooding and are an integral part of the Town’s floodplain management program. Flood maps are also used by mortgage lenders to determine flood insurance rates and requirements.

3. Who updates flood maps?

The Federal Emergency Management Agency (FEMA) is responsible for maintaining and updating flood maps for the 20,000 communities nationwide that participate in the National Flood Insurance Program. Each year, FEMA conducts studies of flood hazards and selects certain communities for FEMA-initiated mapping updates.

4. How are flood maps updated?

Typically, flood maps are updated through a FEMA-initiated mapping update. After conducting flood hazard studies, FEMA issues proposed new flood maps—known as Preliminary Maps. Two key steps must happen for FEMA’s Preliminary Maps to become final:

- **Letter of Final Determination:** After FEMA issues its Preliminary Maps, a 90-day appeal period starts. During this appeal period, a community may file a written objection to FEMA and propose an alternative engineering analysis of flood hazards and alternative flood maps. The community must prove to FEMA that its alternative analysis and maps are scientifically and technically more accurate than the Preliminary Maps. If no appeals are filed, or once all appeals are resolved, FEMA issues a Letter of Final Determination (LFD) that establishes an effective date for the updated flood maps. The effective date is typically six months after the LFD date.
- **Community Adoption:** Once FEMA issues the LFD, affected communities have six months to adopt or amend their floodplain management program, including the updated flood maps, through their usual ordinance adoption process. This is known as community adoption.

The Preliminary Maps become effective on the date listed in the LFD. After the effective date, the flood maps are referred to as Flood Insurance Rate Maps or FIRMs.

Community Adoption -

The process by which a municipality adopts or amends its floodplain management program.

FEMA - The Federal Emergency Management Agency.

FIRM - The official Flood Insurance Rate Map, or flood map, for a community.

Floodplain Management Program - A municipality’s floodplain management rules and flood map that allows property owners, renters, and businesses to buy subsidized flood insurance through the NFIP.

LFD - Letter of Final Determination, which is issued by FEMA after all appeals of its Preliminary Maps are resolved.

LOMR - Letter of Map Revision, generally initiated by a landowner by which FEMA can officially revise specific portions of a flood map.

NFIP - The National Flood Insurance Program managed by FEMA and delivered to the public by private insurance companies and the federal government.

Preliminary Map - A flood map proposed by FEMA as part of a FEMA-initiated mapping update.

5. Is FEMA proposing flood map updates for the Town of Kittery?

Yes. The flood maps for the Town have not been updated by FEMA since 1986. FEMA initiated map updates for the communities in York County many times over the past fifteen years, starting in 2009 and continuing through 2023.

6. Why have the Preliminary Maps for York County not been finalized yet?

FEMA's Preliminary Maps for York County exaggerate the flood risks in certain coastal areas and, if adopted without revision, would cause some property owners to need to purchase costly flood insurance even though flood risks on their properties may be low. For this reason, in October 2018, a handful of municipalities, including the Town of Kittery, appealed FEMA's Preliminary Maps. The municipalities hired an environmental engineering firm to develop an alternative hydrogeological model and analysis that identifies, with greater scientific accuracy than FEMA's Preliminary Maps, the likely flood hazard areas along the coast. In August 2019, FEMA determined that the alternative model contained a unit conversion error—specifically, a part of the model was left in meters and not converted to feet. Despite requests to allow the engineering firm to correct this minor error, FEMA denied all of the municipal appeals.

Two municipalities challenged the denial, which delayed FEMA's issuance of the Letter of Final Determination (LFD) for several years. The appeals have now been resolved and FEMA issued its LFD for York County on January 17, 2024. Affected municipalities now have six months from the LFD issue date—until July 17, 2024—to incorporate FEMA's updated flood maps into their floodplain management program.

7. What is a LOMR and how will it affect community adoption of FEMA's Preliminary Maps?

Town officials considered challenging FEMA's denial, but ultimately concluded that a legal challenge would be costly and risky. Instead, the Town pursued a community-initiated flood map revision process—known as the Letter of Map Revision (LOMR)—to surgically correct the exaggerated flood risks on FEMA's Preliminary Maps.

A LOMR does not replace a flood map or the process by which FEMA updates its flood maps. Rather, the LOMR process allows a community to petition FEMA to revise flood hazard information on a specific part of a flood map, known as a panel. A revised panel, once approved by FEMA, is automatically incorporated into the flood map. No community adoption process is required.

Using the LOMR process, the Town is working with FEMA to ensure that appropriate adjustments to the exaggerated flood risks on FEMA's Preliminary Maps are incorporated into the updated flood maps on or shortly after July 17, 2024—the FIRM effective date.

8. What happens if the Town does not timely update floodplain management program?

A community that fails to adopt the updated flood maps within the six-month community adoption period will be suspended from the National Flood Insurance Program (NFIP). Suspension from the NFIP will have immediate adverse effects: flood insurance policies cannot be renewed and new policies cannot be written. In addition, mortgage loans and disaster assistance are severely limited in communities that are suspended from the NFIP.

9. How do I determine how the updated floodplain management program will affect my property and development plans?

FEMA's Preliminary Maps, as well as the Town-initiated LOMRs, can be reviewed at the Kittery Town Hall at 200 Rogers Road, Kittery, Maine 03904. If you have any questions about the floodplain management program update or its effect on your property, please contact Kathy Connor, Project planner, at (207) 475-1325 or KConnor@kitteryme.org.