

**Town of Kittery
 Planning Board Meeting
 April 28, 2016**

Town Code Amendment – 16.3.2.17.D – Shoreland Overlay Zone Standards; and 16.2.2 - Definitions
Action: Hold a public hearing; Recommend to Town Council. The proposed amendment removes redundancies and improves consistency with regard to language and intention throughout the code.

PROJECT TRACKING

| REQ'D | ACTION | COMMENTS | STATUS |
|-------|--|-----------|-------------------------|
| YES | Initial Planning Board Meeting | 3/24/2016 | HELD |
| NO | Secondary Planning Board Meeting | | |
| YES | Public Hearing (special notice requirements) | | Scheduled for 4/28/2016 |
| YES | Review/Approval/Recommendation to Town Council | | TBD |

Review

Attached for the Board’s consideration are amendments to Article II of Title 16.3. The current amendment reflects comments made from the initial Planning Board meeting held on 3/24/2016 (revisions from 3/24/2016 discussion are highlighted in yellow). Highlights in this amendment include:

1. The addition of definition of Devegetated Area in 16.2.2
2. The removal of “lot coverage” in 16.3.2.17.D.1.d. The phrase is replaced with “devegetated area” to avoid confusion with the term “building coverage”
3. Rewording of Title 16.3.2.17.D.1.d.iii so it is consistent with previous language used in code.
4. Removal of Title 16.3.2.17.D.1.d.iv, redundant to Title 16.3.2.17.D.1.
5. Grammatical changes
6. The intent of lessening the setback standards in the Commercial Fisheries/Maritime Uses zone is for functionally water-dependent uses. This exception is outlined in Title 16.3.2.17.D.2.a.ii. Per MDEP suggestion, language in paragraph ii was moved to the end of paragraph i.
7. Removal of Title 16.3.2.17.D.2.g, devegetated area standards in the Shoreland Overlay Zone is previously outlined in Title 16.3.2.17.D.1.d

MDEP has reviewed the proposed amendments, and confirmed they do not affect the intention of the code.

During the initial discussion, clarification regarding the 10,000 square foot threshold for the fifty-percent devegetated area allowance in the Residential – Urban Zone was sought. Staff confirmed with MDEP this standard was not derived from State provisions in Chapter 1000. Staff was unable to identify the precise origin or rationalization of the 10,000 square foot threshold, however it can be found in the 1996 printing of Town Code (16.32.490.N.2.f), as well as in all subsequent revisions and reprinting.

Recommendation

If the Planning Board is amenable to the proposed amendments and/or along with any revisions they find is warranted, the Board can...

...move to recommend to Town Council adoption of Town Code Amendments 16.3.2.17.D – Shoreland Overlay Zone Standard; and 16.2.2 – Definitions.

D. Standards. (Effective 2/28/15)

1. Minimum lot standards

a. Minimum lot size by base zone, within the

| | |
|---|---------------------|
| Residential–Village (R-V) zone | 8,000 square feet |
| Residential–Urban (R-U) zone | 20,000 square feet |
| Residential–Rural (R-RL), Residential–Suburban (R-S) and Residential–Kittery Point Village (R-KPV) zones | 40,000 square feet |
| Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) zones | 60,000 square feet |
| Residential-Rural Conservation (R-RLC) zone | 80,000 square feet |
| Business-Park (B-PK) zone | 120,000 square feet |
| Mixed-Use Badgers Island (MU-BI) zone | 6,000 square feet |
| Mixed-Use Kittery Foreside (MU-KF) zone | 10,000 square feet |

b. Minimum land area per dwelling unit by base zone, within the

| | |
|---|---------------------|
| Residential–Village (R-V) zone | 8,000 square feet |
| Business-Park (B-PK) zone | 10,000 square feet |
| Residential–Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) zones | 20,000 square feet |
| Mixed Use (M-U), Residential–Rural (R-RL), Residential–Suburban (R-S) and Residential–Kittery Point Village (R-KPV) zones | 40,000 square feet. |
| Residential-Rural Conservation (R-RLC) zone | 80,000 square feet. |
| Mixed-Use Badgers Island (MU-BI) zone | 6,000 square feet |
| *3,000 square feet for the first two dwelling units | |
| Mixed-Use Kittery Foreside (MU-KF) zone | 10,000 square feet |

c. Minimum Shore frontage by base zone per lot and dwelling unit

| | |
|---|----------|
| Mixed Use-Badgers Island (MU-BI) | 25 feet |
| Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery Foreside (MU-KF) zones | 50 feet |
| Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) zones (shore frontage per lot) | 150 feet |
| (shore frontage per dwelling unit) | 50 feet |
| Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) zones (shore frontage per lot) | 150 feet |
| (shore frontage per dwelling unit) | 100 feet |
| Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit) | 250 feet |

The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

48 d. The total footprint of areas devegetated area for structures, parking lots and other impervious surfaces,
49 must not exceed twenty (20) percent of the lot area located within the Shoreland Overlay Zone, including
50 existing development, except in the following zones:

- 51
- 52 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the
53 maximum lot coverage devegetated area is sixty (60) percent. The Board of Appeals may approve a
54 miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island
55 (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative
56 exists to accommodate a water-dependent use.
- 57
- 58 ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the
59 maximum lot coverage devegetated area is seventy (70) percent.
- 60
- 61 iii. Residential – Urban (R-U) Zone where the lot is equal to or less than ten thousand (10,000) square
62 feet, the maximum devegetated area is fifty (50) percent. Notwithstanding the above limits, vegetated
63 surfaces must exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten
64 thousand (10,000) square feet, is situated in both the Residential – Urban Zone (R-U) and the
65 Shoreland Overlay Zone.
- 66
- 67 iv. In the Shoreland Overlay zone within the Mixed Use (M-U) zone, the maximum lot coverage is
68 20%.
- 69

70 2. Principal and Accessory Structures – Setbacks and Development.

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72 a. All new principal and accessory structures (except certain patios and decks per Section
73 16.3.2.17.D.2.b.) must be set back as follows:

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75 i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water
76 bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
77 wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water
78 bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside
79 Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E, ~~except~~
80 ~~that in the Commercial Fisheries/ Maritime Uses Overlay Zone there is no minimum setback requirement.~~
81 In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except
82 for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which
83 case the setback requirements specified above apply. The water body, tributary stream, or wetland
84 setbacks do not apply to structures that require direct access to the water body or wetland as an
85 operational necessity, such as piers and retaining walls, nor does it apply to other functionally water-
86 dependent uses, as defined in 16.2.2.

87

88 ii. ~~The water body, tributary stream, or wetland setback provision does not apply to structures which~~
89 ~~require direct access to the water body or wetland as an operational necessity, such as piers and~~
90 ~~retaining walls, nor does it apply to other functionally water dependent uses.~~

91

92 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at
93 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the
94 upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks
95 must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

96

97 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken
98 from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or
99 “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published
100 on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement
101 as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located,
102 the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine
103 Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still
104 not reached, the applicant may appeal the matter to the Board of Appeals.

105

106 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing
107 and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer.
108 The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery
109 along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as
110 an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in
111 height immediately upon planting.

112

113 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to
114 place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the
115 Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for
116 the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80)
117 square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary
118 stream as practical and meet all other applicable standards, including lot coverage and vegetation
119 clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or
120 tributary stream than the existing principal structure.

121

122 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be
123 elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence
124 of these, the flood as defined by soil types identified as recent flood-plain soils.

125

126 ~~g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces,~~
127 ~~must not exceed twenty (20) percent of the lot area, including existing development, except in the~~
128 ~~following zones:~~

129

130 ~~i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent.~~
131 ~~The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot~~
132 ~~coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no~~
133 ~~practicable alternative exists to accommodate a water dependent use.~~

134

135 ~~ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND)~~
136 ~~Zones where the maximum lot coverage is seventy (70) percent.~~
137 ~~Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot~~
138 ~~area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the~~
139 ~~Residential – Urban Zone (R-U) and the Shoreland Overlay Zone [{See 16.3.2.17.D.1.d}](#)~~

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141 ~~h.g.~~ Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to
142 provide shoreline access in areas of steep slopes or unstable soils provided the:

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- 144 i. structure is limited to a maximum of four feet in width;
145
146 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of
147 a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural
148 Resources Protection Act, 38 M.R.S. §480-C); and
149
150 iii. applicant demonstrates that no reasonable access alternative exists on the property.
151
152 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure
153 or use, or combination thereof, is constructed or established on a single parcel in the Shoreland Overlay
154 zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or
155 use.
156

157
158 **16.2.2 Definitions**

159 **Devegetated Area** means all areas that have been devegetated for structures, parking lots and other
160 impervious surfaces.
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