

**Town of Kittery  
 Planning Board Meeting  
 March 24, 2016**

**Town Code Amendment – 16.3.2.17.D – Shoreland Overlay Zone Standard s**

Action: Review amendment and schedule a Public Hearing. The proposed amendment removes redundant language and improves consistency with regard to language and intention throughout the code.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Initial Planning Board Meeting	Scheduled for 3/24/2016	Scheduled for 3/24/2016
NO	Secondary Planning Board Meeting	At the Board’s discretion	TBD
YES	Public Hearing (special notice requirements)		TBD
YES	Review/Approval/ Recommendation to Town Council		TBD

**Review**

Attached for the Board’s consideration are amendments to Article II of Title 16.3. Amendments to the code include the following changes:

1. Lines 61 – 62; Rewording of Title 16.3.2.17.D.1.d.iii so it is consistent with previous language used in code.
2. Lines 67 – 68; Removal of Title 16.3.2.17.D.1.d.iv, redundant to Title 16.3.2.17.D.1.
3. Line 73 – Grammatical change
4. Lines 79 - 90; 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.
5. Lines 123 – 136; 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.

**Recommendation**

After considering staff edits and additional thoughts from board members the Board may direct staff with additional changes and

**...move to schedule a public hearing for the proposed Title 16 amendments to the April 28, 2016 Planning Board meeting**



- 48 d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must  
49 not exceed twenty (20) percent of the lot area, including existing development, except in the following  
50 zones:
- 51
- 52 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the  
53 maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous  
54 appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to  
55 seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to  
56 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 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 lot coverage 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.
- 71
- 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:
- 74
- 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}](#)~~  
140
- 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:  
143

- 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.

