



KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kittery.org

AGENDA for Thursday, October 23, 2014

6:00 P.M. to 10:00 P.M.

WORKSHOP (6:00 PM TO 7:00 PM)

ITEM 1 – (60 MIN) – Sign Ordinance – Discussion signage in the Town as it relates to the Town Code and future amendments. Kenneth Peskin with the International Sign Association.

REGULAR MEETING (7:00 PM TO 10:00 PM)

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 10/09/2014

PUBLIC COMMENTS - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

PUBLIC HEARING

ITEM 1– (20 MIN) – Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements. Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment removes a reference to Light-emitting diode (LED) lighting in Title 16.8.10.2.C.

OLD BUSINESS

ITEM 2 – (15 min) – Town Code Amendment – Title 16.8.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions. Action: review amendment and make recommendation to Town Council for adoption. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development standards. Amendments also address regulations for sewer, subsurface wastewater disposal systems and holding tanks, and changes in form, format and language to address clarity.

ITEM 3 – (15 minutes) – Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code. Action: review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

ITEM 4 – (15 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development. Action: review amendment and make recommendation to Town Council for adoption. An amendment to the Town Code to address the applicability of the Soil Suitability Guide for Land Use Planning in the State of Maine referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions, Title 16.2.2.

ITEM 5 – (15 minutes) - Board Member Items / Discussion

- | | |
|--|--|
| A. Action List | D. Quality Improvement Overlay Zone (Kittery Crossing and Coastal Route 1 Malls) |
| B. Proposed Amendments to Town Council– 11/10/14 MTG | E. TPB Kittery Foreside Committee per Title 16 |
| C. Route 1 – BP District Quality Improvement Plan TPB Advisory Committee | F. Committee Updates |

ITEM 6 – (15 minutes) - Town Planner Items:

A Memorial Circle Improvement Plan; B. Kittery Foreside Committee; C. KACTS Grant for Route One By-Pass locale; D. Public Works Town related projects; E. Title 5.10 Use of the Public Way Ordinance; and F. Other.

ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)

NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION. DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING. TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING CONTACT STAFF AT (207) 475-1323.

4
5 Meeting called to order at 6:00 p.m.
6 Board Members Present: Tom Emerson, Karen Kalmar, Mark Alesse, Deborah Driscoll Davis
7 Members absent: Ann Grinnell
8 Staff: Chris DiMatteo, Interim Planner

9
10 Pledge of Allegiance

11
12 Minutes: September 25, 2014

13 Ms. Kalmar moved to approve the minutes as amended

14 Mr. Alesse seconded

15 Motion carried unanimously by all members present

16
17 PUBLIC COMMENT: There was no public comment.

18
19 **ITEM 1 – Brave Boat Conservation at Sawyer Lane – Cluster Subdivision —Preliminary and Final**
20 **Plan Review** Action: Hold a public hearing, review and grant or deny preliminary and final plan
21 approval. Owner and Applicant Jonathon & Kathleen Watts are requesting consideration of their plans
22 for a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural
23 Zone, with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc.

24 **Ken Markley** briefly summarized the project:

- 25 • 11.75 acre parcel; 8.89 acre open space; project area is 3 acres;
26 • Would like a Board decision on requested dimensional modifications and approval of special
27 exception use and grant preliminary approval.

28 Mr. Emerson noted there is a quorum of four Board members and any approvals would require four
29 affirmative votes. Mr. Markley asked that if they felt there was not a like vote during the process, they
30 would like the opportunity to postpone until there is a full Board present.

31 Public Hearing opened at 6:07 p.m.

32 Daniel Moran/Gabrielle Burke, Brave Boat Harbor Road: Supports the cluster concept, but is not in favor
33 of this project. Asks the Board to consider the proposed addition of 3 homes in a tight area, directly
34 behind existing homes; there should be a limit to the extent of modifications allowed in cluster
35 developments.

36 Public Hearing closed at 6:10 p.m.

37
38 Ken Markley:

- 39 • Clustering requires a buffer; applicant proposes a 40-foot buffer along the abutters property with a 20-
40 foot no-cut, no-disturb natural buffer, and fencing.
41 • Requests lots 2-4 have a front setback modification of 20-feet to allow moving structures further
42 away from protected areas and abutters. Without modification, structure envelope would be closer to
43 abutter properties.

44 Response to staff review:

- 45 • Plan sets: S-2 replaced with existing conditions plan; S-1 has all details and are now included
46 (distributed to Board);
47 • Aerial photos do not adequately illustrate the tree line, however a 40-foot setback, with fencing and a
48 20-foot vegetated, natural buffer is now included on the plans;
49 • Restriction on removing vegetated areas will be included in the homeowners association documents.
50 Because of the small size of the parcel, a 20% clearance for structures and driveways would not
51 provide enough open area around the structures for safety and use of the parcel by the homeowners.

- 52 Additionally, there is already a 100-foot buffer in place. Discussion followed regarding the size of
53 the building envelope and de-vegetation areas.
- 54 • Tree removal and clearing restrictions, per code, will be included in the homeowner documents.
 - 55 • Plan changes: Staff recommendations and notes requested will be included on project plans.
 - 56 • The referenced survey will be included as an existing conditions plan.
 - 57 • Plan note 8 included as requested.
 - 58 • Plan note 11 included as requested.
 - 59 • Plan note 12 included as requested, except for lot 1 which has an existing system, not designed for a
60 pre-treatment system. If that system fails, it could be included in the pre-treatment system.
 - 61 • Dimensional Standards: Lots 2-4 retain the 20 foot side and rear standard; only existing lot 1 does
62 not. Other calculations are correct. Requests allowance for greater de-vegetation areas due to small
63 lot (2-4) sizes.
 - 64 • Note 14 reflects no-mow maintenance.
 - 65 • Note 19: Vegetative buffer/cedar fencing/landscape materials included.
 - 66 • Note 15: Addresses reference to C-1 and C-2 plans.
 - 67 • Note 16 included as requested.
 - 68 • Notes 2 and 3 from Sheet C-1 included as Notes 17 and 18 on subdivision plan.
 - 69 • Maintenance of open space will be addressed in homeowner documents.

70
71 Scott Anderson, Attorney: will include recommendations for changes and inclusions in homeowner
72 documents.

73 Mr. Alesse: Developer must provide capital for maintenance until homeowner association is operational.
74 Who will maintain vegetated buffers in stormwater areas and provide for plowing if some lots remain
75 vacant?

76 Ms. Kalmar: Requested Mr. Anderson confirm adherence with code requirements for homeowner
77 associations (16.8.11.7).

78 Ms. Davis: Include in lot 1 deed that a pre-treatment sewage system be required for lot 1 if replacement
79 is needed in the future.

80 Mr. Anderson: These issues will be addressed.

81 Mr. Alesse: Has consideration been given to selling lot 2?

82 John Watts: This was discussed with abutters, but a monetary agreement could not be reached.

83 Mr. Anderson: Special Exception Use criteria: Normally this is not applicable to residential use, but are
84 reviewed for impact. Standard subdivision requires a special exception use review, whereas cluster
85 development does not. Because this cluster development is in the shoreland zone, the special exception
86 use review is required, specifically in regard to environmental impact. The plan is consistent with
87 shoreland zone development requirements, does not negatively impact the environment and reduces the
88 stormwater runoff from what currently exists. The density proposed is less than what currently exists
89 along Brave Boat Harbor Road, while meeting the standards of cluster development. The addition of
90 three new residences in an existing residential neighborhood does not negatively impact the area as would
91 a commercial development, where special exception use criteria standards would apply.

92 Ms. Kalmar: Finds the argument is without fault and the development meets cluster development
93 objectives, and the proposed use would meet the special exception use criteria standards.

94 Mr. DiMatteo: Met with police and public works regarding plowing of road and driveways for
95 emergency access. It should be made clearer that this road will not be accepted as a public street.

96 Suggested discussing with Town Attorney for specific language in this regard.

97 Ms. Davis: Is there a snow storage area?

98 Mr. Watts: Will be providing snow plowing services. Snow will be moved to the right along the ROW
99 and will be removed if needed.

100 Ms. Kalmar: Will frozen snow banks increase water runoff?

101 Mr. Watts: Does not anticipate this to be a problem with the stormwater runoff design; additional
102 compost will be added which holds 20-times its weight in water (Note 7).

- 103 Ms. Kalmar moved to approve the Special Exception Criteria
104 Ms. Davis seconded
105 Motion carried by all members present
106
107 Ms. Davis moved to waive the dimensional standards
108 Mr. Alesse seconded
109 Ms. Kalmar: Concerned with the proposed de-vegetation request as it is not allowed as it is a dimensional
110 standard.
111 Mr. Anderson: The cluster provisions allow this modification and flexibility.
112 Mr. DiMatteo: Local shoreland zoning is approved by the state and modification of de-vegetation
113 standard appears outside of the Board's authority.
114 Mr. Anderson: This modification can be reviewed further in an attempt to satisfy the minimum standard.
115
116 Ms. Davis withdrew her motion
117 Mr. Alesse seconded
118 Motion carried by all members present
119
120 Ms. Davis moved to approve the modification requests, excluding the request for modification of de-
121 vegetated areas.
122 Ms. Kalmar seconded
123 Motion carried by all members present
124
125 Ms. Kalmar moved to grant Preliminary Plan approval
126 Mr. Alesse seconded
127 Motion carried by all members present
128
129 Mr. Emerson: Requests language from the Town Attorney regarding retaining the ROW as a private road
130 in perpetuity.
131 The Town Attorney will also review the homeowner documents, and financial guarantees must be
132 provided prior to final review.
133
134 **BREAK**
135
136 **ITEM 2 – Board Member Items / Discussion:**
137 A. Debrief on Joint TC/PB 10/6 workshop
138 Members discussed edits to amendments discussed at the joint workshop.
139 Board members asked for an Executive Summary. Drafts will be provided at the next meeting for
140 Planning Board review. Discussion followed regarding Holding Tanks. Mr. DiMatteo will follow up
141 with design engineer, Barney Baker.
142 Discussion regarding workshop with Council to discuss minimum acreage, addressing Comprehensive
143 Plan.
144 Ms. Kalmar: The Action List needs to be prioritized so the Board has a direction.
145 Ms. Davis: Board members should personally prioritize the list for discussion at 10/23 meeting.
146 Site walk minutes needed for Betty Welch Road by November 13 meeting.
147
148 B. Other - Board Officers
149
150 Ms. Kalmar nominated Debbie Driscoll Davis as interim Vice Chair
151 Mr. Alesse seconded
152 Motion carried by all members present
153
154

155 Mr. Alesse nominated Karen Kalmar as Secretary

156 Ms. Davis seconded

157 Motion carried by all members present

158

159 Mr. Emerson nominated Ann Grinnell as Planning Board representative to the Kittery Port Authority

160 Ms. Davis seconded

161 Motion carried by all members present

162

163 Mr. Alesse asked if property owners, but not residents, can serve on the Planning Board.

164 Ms. Kalmar: You have to be a registered voter in Kittery.

165

166 Mr. Emerson: Build Maine Conference sponsored by the Maine Municipal Association on November 6 in

167 Lewiston.

168

169 Growth Smart conference October 21.

170

171 Ms. Kalmar: It would be helpful if the Board provides staff their policy regarding applications and what the

172 Board requires, i.e. site plans and public hearings and combining preliminary and final plan approval at one

173 meeting. The final plan should be reviewed for compliance by the full Board prior to signature by the

174 Chairman, unless conditions or changes are minor.

175 Discussion followed regarding discretionary decisions by the Board regarding site walks and public

176 hearings. There is potential to combine preliminary and final review in one meeting, following a public

177 hearing. At this time, there is no separate final plan application for subdivisions.

178

179

180 **ITEM 3 – Town Planner Items**

181 • Regarding site walk minutes: Minutes can be shared with the applicant prior to Board approval of the

182 minutes.

183 • Planning Board meeting for 10/23/14:

184 Signage workshop from 6:00-7:00; regular meeting will begin at 7:00. Any specific concerns the

185 Board has for the workshop's guest speaker (Kenneth Peskin) should be shared ahead of time.

186 • Summarized amendments for consideration at 10/23/14 meeting.

187

188

189 **NEW BUSINESS**

190

191 **ITEM 4 – 84 Pepperrell LLC – Shoreland Development Plan Review** Action: Accept or deny plan

192 application and schedule site walk and/or public hearing. Owner 84 Pepperrell LLC and applicant

193 Jonathan MacDougal are requesting approval of their plans to reconstruct and expand an existing non-

194 conforming building located at 84 Pepperrell Rd., Tax Map 27, Lot 51, in the Kittery Point Village and

195 Shoreland Overlay zones.

196 Beth Seegers: 84 Pepperrell known as Frisbee house. Fence is proposed for safety.

197 Mr. MacDougal: Proposal summary:

198 • Continue existing fence between properties for safety;

199 • Install a guardrail along seawall for safety and visibility;

200 • Add a patio or deck to existing building;

201 • Install a privacy fence, similar to property line fence, less than 8 feet high.

202 • Impervious surface significantly less than the 70% allowed.

203

204 Mr. DiMatteo: Plan needs to reflect 72 sf maximum surface of the proposed addition.

205 The majority of the parcel is in the B-L zone, including the structure to be expanded.

206 Board members concurred a site walk is not needed.

207

208 Ms. Kalmar moved to accept the application and schedule to a Public Hearing

209 Ms. Driscoll seconded

210 Motion carried by all members present

211

212

213 **ITEM 5 – 62 Pepperrell Cove LLC – Shoreland Development Plan Review** Action: Accept or deny
214 plan application and schedule site walk and/or public hearing. Owner Pepperrell Cove LLC and
215 Applicant Michael McCuddy is requesting approval of their plans to expand an existing non-conforming
216 building located at 62 Pepperrell Rd., Tax Map 18, Lot 46, in the Kittery Point Village and Shoreland
217 Overlay zones.

218 Michael McCuddy: Summarized proposal to lift the roof area, increasing the volume of the structure and
219 a small increase in area. Impervious area will not be further impacted.

220 Discussion followed regarding volume expansion creating increase in square footage.

221 Board requested photos of the existing home to compare with proposed improvements and that staff work
222 with the applicant to prepare a final site plan for recording.

223 Board members concurred a site walk is not needed as long as additional materials are provided at the
224 next review.

225

226 Ms. Davis moved to accept the application and schedule to a Public Hearing

227 Ms. Kalmar seconded

228 Motion carried by all members present

229

230

231 **ITEM 6 –Deuell Revocable Trust – Shoreland Development Plan Review** Action: Accept or deny
232 plan application and schedule site walk and/or public hearing. Owner Deuell Revocable Trust and
233 Applicant Peter Whitman are requesting approval of their plans to expand an existing non-conforming
234 building located at 70 Chauncey Creek Rd., Tax Map 45, Lot 70, in the Kittery Point Village and
235 Shoreland Overlay zones.

236 Peter Whitman, Gerrish Island: Requested the Board waive the site walk and public hearing and approve
237 the application. Plan summary:

238 · Replace existing house and existing overboard septic system;

239 · Requesting waiver of plan recordation and site plan.

240 · Volume confirmed by staff; height of building will be within maximum height allowed of 35 feet.

241 · Summarized the findings of fact noting no impact on shore cover, proposal is not more non-
242 conforming, volume and area increases are within code allowance.

243 Mr. DiMatteo: Since packets were distributed, an email from an abutter was received requesting a public
244 hearing.

245 Mr. Whitman: The abutter requesting a public hearing is present and could address their concerns. Other
246 abutters had no concerns. Proposed recording the findings of fact rather than recording a site plan.

247 Ms. Kalmar: Septic easement.

248 Mr. Whitman: He spoke with the Holzer's who were concerned with a septic system near their property.
249 The leach field will be moved further away from the Holzer property requiring fill extensions within the
250 ROW. If this cannot be accomplished via an easement, they will be grandfathered with the existing
251 overboard system.

252 Discussion followed regarding locations of proposed leach field and septic system. Area of leach field in
253 ROW is approximately 10 sf.

254 Mr. Emerson: Concerned about retention of an overboard discharge system.

255 Rich Holzer, 72 Chauncey Creek Road: Have only recently seen plans. Proposed plan increases the size
256 of the house mass within 8 feet of their property line; suggested increase be done on opposite side to
257 preserve their light and privacy, where there's more room.

258 Mr. DiMatteo: Changing the footprint from what is existing on a narrow area will impact existing
259 setbacks.

260 Mr. Whitman: The foundation exists where they wish to expand, but does not exist on the opposite side
261 of the existing structure and would not be allowed. They will minimize any light impact on the adjacent
262 properties. This is a tight lot with limited area. The Holzer's home is 14 feet from the shared property
263 line. The proposal is in conformance with the code.

264 Mr. Holzer: A plan and site walk will benefit everybody.

265 Mr. Emerson: Why the rush?

266 Mr. Whitman: The septic system needs to be installed within 6 months of the purchase of the property
267 and coordinate with the demolition of the existing structure.

268 Mr. DiMatteo: A shoreland development plan needs to be recorded as part of plan review.

269 Ms. Kalmar: There is a level of public confidence, and the Board must review applications in the same
270 manner for all applicants. An abutter has a legal right to voice their concerns at a public hearing.

271 Mr. Whitman: The only change with the footprint is the addition of an 8x12-foot entry to the front of the
272 new structure, away from the shore line.

273 Ms. Davis: Concerned with the septic system issue.

274 Mr. Whitman: Would be agreeable to a site walk and a public hearing.

275 Mr. DiMatteo: Title 16.7.3.5.6.A needs to be reviewed.

276

277 Ms. Kalmar moved to accept the application and schedule a site walk and public hearing,

278 Mr. Alesse seconded

279 Motion carried by all members present

280

281 A site walk was scheduled for Thursday, October 30 at 8:00 a.m.

282

283 A site plan is needed prior to final approval.

284

285 Ms. Kalmar moved to adjourn

286 Mr. Alesse seconded

287 Motion carried by all members present

288

289

290 The Kittery Planning Board meeting of October 9, 2014 adjourned at 9:10 p.m.

291 Submitted by Jan Fisk, Recorder, October 16, 2014

292

293

Town of Kittery Maine Town Planning Board Meeting October 23, 2014

ITEM 1–Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements. Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment removes a reference to Light-emitting diode (LED) lighting in Title 16.8.10.2.C.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	6/26/2014 – 9/25/2014	
YES	Schedule Public Hearing	Scheduled 9/25/14	DONE
YES	Public Hearing		10/23/14
YES	Review/Recommendation to Town Council		PENDING

Background

Town Code amendments in 2010 included language prohibiting LED lit signs. When considered in the context of the entire provision of 16.8.10.2.C it appears the intent was to eliminate flashing or “intermittent” lighting that is associated with digital message board signs.

With the modernization and increased use of LED lights, the prohibition of this type of lighting is a burden on applicants in pursuit of permitting signage where sign manufacturers provide no other alternative to LED lighting, coupled with the reduced long-term cost of utilizing LED lighting.

Review

The proposed amendment removes the reference to LED lighting and returns to the language adopted as part of the May 24, 2010 Title 16 Code (an excerpt is attached). This would allow the use of LED lights in illumination of signs subject to Article X Signs.

Recommendation

Hold a public hearing and approve removal of language relating to LED lighting.

Move to recommend to Town Council the amendment to Title 16.8.10.2.C relative to LED lighting in signage, as dated October 23, 2014.

1 **16.8.10.2 General Requirements.**
2

3 A. No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the
4 Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section
5 16.8.10.9 provides otherwise.
6 (Ordained 9/26/11, effective 10/27/11)
7

8 B. No exterior sign may be artificially illuminated except where hooded or shielded or otherwise
9 designed to prevent direct light spilling onto traveled ways or neighboring property.
10

11 C. No sign may contain a moving message board, **LED lighting** or intermittent illumination, except where
12 necessary in time/temperature/date signs.
13

14 D. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.
15

16 E. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the
17 normal day-to-day transportation operations of the business. All trailer signs are prohibited.
18

19 F. Any changeable message signs must be integrated into a permanently-mounted sign. Such a
20 changeable message Board is to be mounted a minimum of three and one-half feet above ground level.
21

22 G. All signs must be maintained in a safe and sound structural condition.
23

24 H. Advertising. No advertising or signage is permitted on wireless communication services facilities.
25

26 I. Any sign not expressly permitted herein is prohibited.

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Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014	Title: Signs – General Requirements (LED lighting)
Town code section: Title 16.8.10.2.C	History: Amendment

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ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW

PURPOSE OF PROPOSAL:

LED lit signage is currently prohibited. However, the prohibition of this type of lighting appears to be a burden on applicants requesting sign permits when sign manufacturers (i.e. for gas signage) provide no other alternative. Additionally, the reduced long-term cost of LED lighting is appealing to business owners.

SUMMARY OF PROPOSAL/AMENDMENT:

Remove reference to LED lighting in Title 16.8.10.2.C. as follows:

C. No sign may contain a moving message board, ~~LED lighting~~ or intermittent illumination, except where necessary in time/temperature/date signs.

JUSTIFICATION:

Allows the use of the more long-term economical, environmentally sensitive LED lights and, in some instances, the only available lighting method for signage.

FISCAL IMPACT:

NONE

32 CODE AMENDMENT
33 CHAPTER 16.8 – DESIGN AND PERFORMANCE STANDARDS-BUILT ENVIRONMENT
34 ARTICLE X-SIGNS

35 **16.8.10.2 General Requirements.**
36

37 A. No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the
38 Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section
39 16.8.10.9 provides otherwise.
40 (Ordained 9/26/11; effective 10/27/11)
41

42 B. No exterior sign may be artificially illuminated except where hooded or shielded or otherwise
43 designed to prevent direct light spilling onto traveled ways or neighboring property.
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45 C. No sign may contain a moving message board, ~~LED lighting~~ or intermittent illumination, except where
46 necessary in time/temperature/date signs.
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48 D. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.
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50 E. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the
51 normal day-to-day transportation operations of the business. All trailer signs are prohibited.
52

53 F. Any changeable message signs must be integrated into a permanently-mounted sign. Such a
54 changeable message Board is to be mounted a minimum of three and one-half feet above ground level.
55

56 G. All signs must be maintained in a safe and sound structural condition.
57

58 H. Advertising. No advertising or signage is permitted on wireless communication services facilities.
59

60 I. Any sign not expressly permitted herein is prohibited.
61

**Town of Kittery Maine
Town Planning Board Meeting
October 23, 2014**

Town Code Amendment – Title 16.8.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions. Action: review amendment and make recommendation to Town Council for adoption. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development standards. Amendments also address regulations for sewer, subsurface wastewater disposal systems and holding tanks, and changes in form, format and language to address clarity.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion/	1/9/14 deferred to 1/23/14, issued to Subcommittee.	-
	Workshop	December 3, 2013	HELD
YES	Schedule Public Hearing	July 24, 2014; Advertised 7/11 and 7/16	COMPLETE
	Town Council/Planning Board Joint Workshop	9/8 & 10/6/14	HELD
YES	Review/Recommendation to Town Council		PENDING

BACKGROUND

On October 6th a Joint Council/Planning Board Workshop was held and changes were recommended that included removal of the proposed provision to limit subdivisions in parts of town without sewer to three dwelling units; removal of the proposal to adopt the MDEP's model holding tank ordinance; and using the current name 'Wastewater Treatment Department' rather than the future name 'Wastewater Services Department' for references made in the sewer section of the proposed amendment.

RECOMMENDATION

Staff spoke to the Town Manager and confirmed that the Town is not obligated to any current grants that would require the use of a holding tank, though there are future grant opportunities where having such a provision in place would be required.

Attached are the proposed amendments revised per the recommendations at the Joint Workshop. Unless there are new concerns staff recommends the Planning Board make a recommendation to Town Council to adopt the proposed amendments.

Move to recommend to Town Council the adoption of the proposed amendments to Title 16 received October 23, 2014 including: 16.8.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014 Joint Workshop Meeting: 9/08/14 and 10/6/14	Title: Sewage Disposal (Sewer only)
Town code section: Title 16, §16.8.7 (Sewer only, proposed as 16.8.7.1)	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5) AND ENACTMENT ORDINANCE (FORTHCOMING)

1 **PURPOSE OF PROPOSAL:**

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3 The proposal would amend 16.8.7.1, currently titled Sanitary Sewer and Septic Disposal to comply with
4 Kittery Town Charter Section 2.14. The charter requires that there be only one topic per ordinance.
5 Items related to sewer would be consolidated in 16.8.7.1. Subsurface wastewater disposal regulations
6 would become 16.8.7.2. (See separate memorandum)

7
8 Revisions align Town Code Title 16 with Title 13 (Public Services/Sewer) and clarify the waiver process.
9

10 **SUMMARY OF PROPOSAL/AMENDMENT:**

11
12 Section 16.8.7.1.A (line 115). This provision would define sewer hook-up requirements for individual
13 structures, as well as for subdivisions, in order to clarify and codify what is current practice.

14
15 Section 16.8.7.1.E (line 135). This provision would permit a developer to request a waiver from the
16 mandatory sewer hook-up requirement should conditions make it infeasible to do. Guidelines for the
17 request and for the Board's deliberations are described.

18
19 **JUSTIFICATION:**

- 20
21
- These amendments would make sewer hook-up guidelines clearer and easier to find for both developers and owners of single structures with sanitary facilities.
 - Rules governing sewer hook-ups for individual structures would be added to Title 16. The additions would align with and refer readers to Title 13 requirements.
 - Clarifying the process by which a developer may request a waiver from the requirement to hook-up to the Town sewer system would ensure that all requests are treated equitably.
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30 **FISCAL IMPACT:** None

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Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014 Joint Workshop Meeting: 9/08/14 and 10/6/14	Title: Sewage Disposal (Subsurface wastewater disposal only)
Town code section: Title 16, §16.8.7 (Subsurface Wastewater Disposal System, proposed as 16.8.7.2)	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5) AND ENACTMENT ORDINANCE {FORTHCOMING}.

33 PURPOSE OF PROPOSAL:

34

35 MRS 30-A §4352 requires that "a zoning ordinance must be pursuant to and consistent with a
36 comprehensive plan". This proposal contains amendments that would implement Kittery's
37 Comprehensive Plan in many significant ways.

38

39 It would also eliminate a reference to an outdated soil manual that restricts the siting of subsurface
40 wastewater disposal (SWD) systems in a manner that does not reflect modern soil science or best
41 practices.

42

43 The proposal would bring this section into compliance with Town Charter section 2.14, which requires a
44 single topic per ordinance.

45

46 SUMMARY OF PROPOSAL/AMENDMENT:

47

48 Section 16.8.7.1.C (line 151) would be deleted. This subsection limits septic use based on the outdated
49 *Soil Suitability Guide*.

50

51 Section 16.8.7.2.A (line 166) is modified and moved from Section 16.8.7.2.

52

53 Section 16.8.7.2.D.1 (line 207) would permit current soil-depth requirements to be followed where a
54 replacement SWD system, with the same capacity as the original, cannot meet the newer standards.

55

56 Section 16.8.7.2.D.3 (line 216) would increase the depth of soil required for passing test pits by six (6)
57 inches, instead of mandating prohibitively-expensive advanced pretreatment for all new SWD systems.

58

59 Section 16.8.7.2.E (line 224) would require advanced pretreatment in new construction that is within
60 100 ft. of porous sand-and-gravel aquifers. There are only two small sand-and-gravel aquifers in Kittery,
61 both are in the vicinity of Cutts Ridge.

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JUSTIFICATION:

- Proposed amendments are pursuant to and consistent with the Kittery Comprehensive Plan. They would:
- Steer development to areas with Town services. (Comp. Plan p.25, p.125, p.126, p.127)
- Discourage intensive development in areas not served by public water and sewerage. (Comp. Plan p.127)
- Help prevent overbuilding in any single year, thereby managing growth in a manner consistent with the Town's ability to absorb it. (Comp. Plan p.25, p.125)
- Prevent overbuilding in areas designated for low growth while helping to preserve rural character and open space. (Comp. Plan p.125, p.209)
- Protect sensitive environmental resources such as groundwater, wetlands, watersheds and sand-and-gravel aquifers (Comp. Plan pp.43-44, pp.62-64, p.125)

In addition:

- These amendments would help manage density without decreasing the value of currently divisible parcels.
- Requiring deeper soil for passing test pits ensures greater separation between a SWD system and the water table or bedrock. This improves the filtering of effluents. Although no current SWD system can filter excreted pharmaceuticals or all household chemicals, better soil filtration would provide greater protection from nitrogen and phosphorous contamination, called "nutrient pollution", of our groundwater, watersheds and wetlands. Soil scientists confirmed the value of this strategy.
- The proposal would not create a disincentive for the routine replacement of old or failing SWD systems. Such routine replacements would be held to less-stringent standards than those for new systems and systems being enlarged due to expanded use.
- Removing the outdated soil manual reference allows current best practices to be employed when siting SWD systems. This protects the Town's interests and the applicant's.
- Removing other topics from this subsection would make SWD regulations less confusing.

FISCAL IMPACT:

None

109 CODE AMENDMENT

110 Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

111 Article VII. Sewage Disposal

112 16.8.7.1 Sanitary Sewer System and Septic Disposal.

113

114 A. An existing or new dwelling unit or structure that requires wastewater disposal must connect to town sewer
115 where sewer is within 100 feet of the property line per Town Code Title 13, Chapter 13.1 Public Sewer System.
116 Individual dwellings and structures in approved and recorded developments where town sewer becomes available
117 as described in this paragraph must connect per the requirements of Title 13, Chapter 13.1. {NEW}

118

119 B. Where town sewer is located within one thousand (1,000) feet of the property line of a commercial or industrial
120 development or a residential subdivision, the developer shall connect to town sewer per the town Wastewater
121 Treatment Department (WTD) specifications. The developer shall provide written certification to the Planning
122 Board from the WSD that the proposed addition to town sewer is within the capacity of the collection and
123 wastewater treatment system. {MOVED FROM 16.8.7.3}

124

125 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service
126 lines must extend to each lot's boundary line. Connections to town sewer must be installed in accordance to this
127 Article and Title 13 Public Services in the Kittery Town Code.
128 {MOVED FROM 16.8.7.1.E}

129

130 D. Proposal and construction drawings must be approved in writing by the town WTD. All required approvals
131 must be secured before the start of final plan review.
132 {MOVED FROM 16.8.7.1.A & F}

133

134 E. When town sewer connection to the parcel and/or proposed lots is not feasible, the Planning Board may allow
135 individual or common subsurface wastewater disposal systems to be used in accordance with Section 16.8.7.2.
136 To determine feasibility, the developer shall submit information that considers the unique physical circumstances
137 of the property and sewer connection alternatives to conventional construction/installation techniques such as, but
138 not limited to, horizontal/directional boring and low pressure sewer. The developer's information must be
139 accompanied by findings and recommendations of the town Peer-Review Engineer. In determining feasibility, the
140 Board may not base its decision solely on additional costs associated with a sewer connection. {MODIFIED &
141 MOVED FROM 16.8.7.1.B}

142

143 ~~A. Public sanitary sewer disposal system connections must be installed, in accordance to Article VII o Chapter~~
144 ~~16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer~~
145 ~~agency. {Moved and Modified, SEE 16.8.7.1.D}~~

146

147 ~~B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may~~
148 ~~allow individual subsurface waste disposal, or a separate central sewage collection system to be used in~~
149 ~~accordance with Section 16.8.7.4. {Moved and Modified, SEE 16.8.7.1.E}~~

150

151 ~~C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for~~
152 ~~such purpose by the Soil Suitability Guide for Land Use Planning in Maine. {DELETED}~~

153

154 ~~D. If the developer proposes individual subsurface waste disposal or central collection system and waste~~
155 ~~generated is of a "significant" nature, or if waste is to be discharged, treated or untreated, into any body of water,~~
156 ~~approval must be obtained in writing from the Maine Department of Environmental Protection. {DELETED}~~

157

158 ~~E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot~~
159 ~~boundary line. {Moved and Modified, SEE 16.8.7.1.C}~~

160

161 ~~F. All required approvals of a sewage disposal system must be secured before official submission of a final plan.~~
162 ~~{Moved and Modified, SEE 16.8.7.1.D}~~

163

164 **16.8.7.2 Subsurface Wastewater Disposal System**

165

166 A. The developer shall submit plans for subsurface wasterwater disposal designed by a Maine Licensed Site
167 Evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater

168 Disposal Rules, and this Code. Subsurface wastewater disposal systems must be constructed according to the
169 approved plan. {MODIFIED & MOVED FROM 16.8.7.2}
170

171 B.G. All first-time subsurface wastewater subsurface-sewage disposal systems must be installed in
172 conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. The Maine
173 Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less
174 than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The
175 minimum setback distance for a new subsurface disposal system may not be reduced by variance. {Moved to item
176 1 below} The following also apply:

177 1. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.
178 {MODIFIED & MOVED FROM 16.8.7.1.G above}

179 42. Clearing or removal of woody vegetation necessary to site a first-time system and any associated fill
180 extensions, must may not extend closer than one hundred (100) feet, horizontal distance, from the normal high
181 water line of a water body or the upland edge of a wetland. {MODIFIED & MOVED FROM 16.8.7.1.G.1}

182 2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone. {MOVED &
183 MODIFIED, SEE 16.8.7.3.B.2}

184
185 C. Replacement of subsurface wastewater disposal systems for existing legal uses:

186 1. Where no expansion of use is proposed, must comply with 16.8.7.2 and Table 16.9 to the extent practicable
187 and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

188 2. Where expansion of use is proposed, must comply with 16.8.7.2 and Table 16.9.

189 {NEW}
190

191 **16.8.7.2 — Design and Standards.**

192 A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full
193 compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal
194 Rules. {MOVED AND MODIFIED, SEE 16.8.7.2.B}

195
196 **16.8.7.3 — Public Sewer Connection Required.**

197 Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its
198 nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer
199 department, and provide written certification to the Board from the department that the proposed addition to
200 service is within the capacity of the system's collection and treatment system. {MOVED AND MODIFIED, SEE
201 16.8.7.1.B}

202
203 **D. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26,**
204 **1990.**

205
206 A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for
207 subsurface sewage wastewater disposal systems, i.e. test pit data and other information as required by the State
208 of Maine Subsurface Wastewater Disposal Rules and this Code. In addition:

209 1. Additionally, on lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a
210 second site with suitable soils must be shown as a reserve area for future replacement should the primary site
211 fail. Such reserve area is to be shown on the plan, not be built upon; and, must comply with all the setback
212 requirements of the Subsurface Wastewater Disposal Rules and this Code. {MODIFIED FROM 16.8.7.4.A }
213

214 2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires
215 requiring a First-Time System Variance Request from per the State of Maine Subsurface Wastewater Disposal
216 Rules.

217
218 3.C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within
219 the each disposal area (primary and reserve sites) to assure ensure that the proposed disposal area system can
220 be located on soils and slopes which that meet the criteria of the State of Maine Subsurface Wastewater Disposal
221 Rules and the State Plumbing Code. Passing test pits must have a minimum of fifteen (15) inches of existing
222 natural mineral soil above the limiting factor, except in the Shoreland and Resource Protection Overlay Zones
223 where passing test pits must have a minimum of twenty-one (21) inches of natural mineral soil above the limiting
224 factor. All passing and failing test pits must be shown on plan.

225
226 E. The developer shall install advanced pre-treatment to subsurface wastewater disposal systems that are located
227 inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of
228 Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
229 {NEW}

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16.8.7.3 Holding Tanks

A. Holding tanks are not allowed for a first-time residential use. {MODIFIED & MOVED FROM 16.8.7.1.G.2}

Chapter 16.2 DEFINITIONS

16.2.2 Definitions

~~**Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer. The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S. §13.1.~~

Subsurface wastewater disposal system means any system designed to dispose of waste or wastewater on or beneath the surface of the earth. These include but are not limited to septic tanks, disposal fields, holding tanks, pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition does not include any discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.

Wastewater means any domestic wastewater, or other wastewater from commercial, industrial or residential sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or toxic wastes and materials.

Domestic wastewater means any wastewater produced by ordinary living uses, including liquid waste containing animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human origin.

ENACTMENT ORDINANCE {FORTHCOMING}

**Town of Kittery Maine
 Town Planning Board Meeting
 October 23, 2014**

ITEM 3 – Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code. Action: review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town’s Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Scheduled 3/27, 4/24 & 5/22/14	HELD
YES	Schedule Public Hearing	Scheduled 4/24; ran in legal section in the Portsmouth Herald for Friday 4/11 and again for Wednesday 4/16	COMPLETE
YES	Public Hearing	Scheduled for 4/24/14	HELD
	Town Council/Planning Board Joint Workshop	Scheduled for 6/2/14	HELD
YES	Review/Recommendation to Town Council	5/22/14 to TC for Joint Workshop; 7/24-recommend adoption by TC	APPROVED
	Final Review/Recommendation to Town Council	Address remaining condition per DEP order.	10/23/14

Staff Comments

Background

At the July 24 2014 meeting, the Board voted to recommend to Town Council the draft amendments that included the MDEP conditional approval orders #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010). Subsequently the State found that a condition was overlooked and has requested the Town address it in this amendment, specific to the Shoreland Overlay Zone.

Review

Staff has incorporated the following changes to address the comments from Michael Morse, MDEP:

Following 16.7.3.5.10.C (line 402 in Ordinance Review Memo):

This subsection does not apply:

1. to any Planning Board approved subdivision located outside the Shoreland Overlay Zone which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
- 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and

- i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

Recommendation

With the latest changes proposed herein, the MDEP conditional approval orders have been satisfied, and the Board can recommend adoption by the Town Council:

Move to recommend to Town Council Title 16 Land Use and Development Code amendment changes received October 23, 2014, including:

Title 16.2.1 Definitions; Title 16.3, Land Use Zone Regulations; Title 16.3.2.17 Shoreland Overlay Zone; Title 16.7.3 Nonconformance; and Title 16.8.28.1 Design & Performance Standards.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair,	Council Sponsor(s): J. Thomson, Chair
Council meeting date: Workshop: 9/8/14 Meeting: November 10, 2014	Title: various provisions related to Shoreland Zoning
Town code section: Title 16, §16.3.2.17, 16.7.3.5.6 through 16.7.3.6.1, 16.8.28, and 16.2	History: amended proposal

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW NOTES

1 **PURPOSE OF PROPOSAL:**

2
3 The proposal allows for compliance with the State's Mandatory Shoreland Zoning Act.
4
5

6 **SUMMARY OF PROPOSAL/AMENDMENT:**

7
8 It became evident while working with Michael Morse with the Maine Department of Environmental
9 Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance
10 with the State's Mandatory Shoreland Zoning Act, specifically to MDEP conditional approvals, orders
11 #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-
12 99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C.
13 The conditions of approval noted in the 1999 and 2010 orders were never fully implemented.
14
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16

17 **JUSTIFICATION:**

18
19 The Town, per 38 M.R.S.A. SECTION 438-A(4), is obligated to adopt "zoning and land use ordinances
20 that are consistent with or are no less stringent than the minimum guidelines adopted by the
21 {Environmental Protection} Board".
22
23

24 **FISCAL IMPACT:**

25
26 None

27 **CODE AMENDMENT**

28 **Chapter 16.2 DEFINITIONS**

29 **16.2.2 Definitions.**

30 **Dwelling** means a building designed or used as the living quarters for one or more families. The term does not
31 include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight
32 occupancy.

33
34 **Dwelling unit** means a room or group of rooms forming a habitable unit for one family with facilities used or
35 intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred
36 fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a
37 temporary, intra-family dwelling unit. The term does not include a trailer.

38
39 Dwelling unit (in the Shoreland and Resource Protection Overlay Zones) means a room or group of rooms
40 designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one
41 family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and
42 rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational
43 vehicles are not dwelling units.

44
45 **Easement** means the authorization of a property owner for the use by another, and for a specified purpose, of
46 any designated part of the owner's property.

48 **Chapter 16.3 LAND USE ZONE REGULATIONS**

49 **Article II. Zone Definitions, Uses, Standards**

50 **16.3.2.13 Mixed Use MU.**

51 **D. Standards.**

52
53 1. All development and the use of land in the MU zone must meet the following standards. Kittery's Design
54 Handbook illustrates how these standards can be met. In addition, the design and performance standards of
55 Chapters 16.8 and 16.9 must be met.

56
57 2. Minimum Dimensional Standards.
58 The following apply:

59
60 Minimum lot size:

61	lots with frontage on Route 1	200,000 square feet
62	lots without frontage on Route 1	80,000 square feet

63	Minimum street frontage on road with access along	
64	U.S. Route 1, Haley Road, Lewis Road, or Cutts Road	250 feet
65	other streets or approved ways	150 feet

66	Minimum front yard	60 feet
67	Minimum rear and side yards	30 feet
68	Maximum building height	40 feet
69	Maximum height above grade of building-mounted signs	40 feet

70
71 Minimum setback from water body and wetland water dependent uses 0 feet

72
73 Minimum setback from streams, water bodies and wetlands in accordance with
74 Table 16.9, Section 16.3.2.17
75 and Appendix A, Fee

76	Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:	
77	dwelling unit with two or more bedrooms	5,000 square feet
78	dwelling unit with less than two bedrooms	4,000 square feet
79	residential care unit	2,500 square feet

85	Minimum land area per bed for nursing care and convalescent	
86	care facilities that are connected to the public sewerage system	2,000 square feet
87		
88	Buffer to I-95 ROW	40 feet
89	Buffer to neighboring lot with an existing residence	
90	within 100 feet of the lot line	40 feet
91	Vegetated buffer to be maintained between the MU and R-RL zones	40 feet
92		

93 **NOTE 1:** For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000)
 94 square feet of land area. A lot of record having a land area of more than two hundred thousand (200,000) square
 95 feet that was improved with a single-family dwelling as of April 1, 2004 may be divided into two lots with a single-
 96 family dwelling on each lot provided that each of the lots contains at least forty thousand (40,000) square feet of
 97 land area and meets the other dimensional standards of the zone. Sections 16.3.2.1 D.1 and D.2 as set forth in
 98 the Residential - Rural zone apply and no further subdivision is allowed.
 99

100 **NOTE 2:** ~~For dwelling units that are part of a mixed-use building and are connected to the public sewerage-~~
 101 ~~system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the~~
 102 ~~parking for the residential units is integrated into the building, the minimum required buildable land area per~~
 103 ~~dwelling unit is reduced to fifteen thousand (15,000) square feet. For dwelling units that are part of a mixed-use~~
 104 ~~building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty~~
 105 ~~thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay~~
 106 ~~zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones.~~
 107 ~~If the parking for the residential units is encompassed within the building, the minimum required buildable land~~
 108 ~~area per dwelling unit is reduced to fifteen thousand (15,000) square feet, except in the Resource Protection and~~
 109 ~~Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.~~
 110

111 **NOTE 3:** For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit
 112 is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection
 113 and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land
 114 within these zones. If the parking for the elderly units is integrated into encompassed within the building, the
 115 minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet, except
 116 in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty
 117 thousand (40,000) square feet.
 118

119 3. Retail Use Limitation.
 120 Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more
 121 than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone.
 122

122 **16.3.2.17 Shoreland Overlay Zone OZ-SL.**

123 **D. Standards.**

124 1. Minimum lot standards

125	a. Minimum lot size by base zone, within the	
126	Residential-Village (R-V) zone	8,000 square feet
127	Residential-Urban (R-U) zone	20,000 square feet
128	Residential-Rural (R-RL), Residential-Suburban (R-S) <u>and</u>	
129	Residential-Kittery Point Village (R-KPV) zones	40,000 square feet
130	Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L)	
131	and Business-Local 1 (B-L1) zones	60,000 square feet
132	Residential-Rural Conservation (R-RLC) zone	80,000 square feet
133	Business-Park (B-PK) zone	120,000 square feet
134	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet</u>
135	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>
136		

137	b. Minimum land area per dwelling unit by base zone, within the	
138	Residential-Village (R-V) zone	8,000 square feet
139		
140		
141		

142	Business-Park (B-PK) zone	10,000 square feet
143	Residential-Urban (R-U), Business-Local (B-L) and	
144	Business-Local 1 (B-L1) zones	20,000 square feet
145	Mixed Use (M-U), Residential-Rural (R-RL),	
146	Residential-Suburban (R-S) <u>and</u>	
147	Residential-Kittery Point Village (R-KPV) zones	40,000 square feet.
148	Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
149	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet*</u>
150	<u>* 3,000 square feet for the first two dwelling units</u>	
151	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

152
153
154 c. Minimum Shore frontage by base zone per lot and dwelling unit

155	<u>Mixed Use-Badgers Island (MU-BI)</u>	<u>25 feet</u>
156	Residential-Village (R-V) and Residential Urban (R-U) zones	
157	<u>Mixed-Use Kittery Foreside (MU-KF) zones</u>	<u>50 feet</u>
158	Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),	
159	Business-Park (B-PK), Business-Local (B-L) and	
160	Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
161	(shore frontage per dwelling unit)	50 feet
162	Residential-Rural (R-RL), Residential-Suburban (R-S),	
163	and Residential-Kittery Point Village (R-KPV)	
164	zones (shore frontage per lot)	150 feet
165	(shore frontage per dwelling unit)	100 feet
166	Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)	250 feet

167
168 The minimum shore frontage requirement for public and private recreational facilities is the same as that
169 for residential development in the respective zone.
170

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

- 173
174 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the
175 maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal
176 application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy
177 (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-
178 dependent use.
179
180 ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the
181 maximum lot coverage is seventy (70) percent.
182
183 iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area when
184 the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential -
185 Urban Zone (R-U) and the Shoreland Overlay Zone.
186
187 iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage is 20%.
188
189

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

191
192 a. All new principal and accessory structures (except certain patios and decks per Section 16.3.2.17.D.2.b,
193 must be set back as follows:

- 194
195 i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies,
196 tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and
197 seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland
198 edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified
199 according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E,, except that in the Commercial
200 Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement. In the Resource Protection

201 Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking
202 spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements
203 specified above apply.

204
205 ii. The water body, tributary stream, or wetland setback provision does not apply to structures which
206 require direct access to the water body or wetland as an operational necessity, such as piers and retaining
207 walls, nor does it apply to other functionally water-dependent uses.

208
209 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least
210 seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of
211 a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal
212 setback required for principal structures in the Shoreland Overlay Zone.

213
214 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the
215 top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by
216 the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent
217 Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location
218 of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant is responsible for
219 the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State
220 Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the
221 matter to the Board of Appeals.

222
223 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or
224 landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or
225 retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the
226 protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier,
227 they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

228
229 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place
230 an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code
231 Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of
232 yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor
233 eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all
234 other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the
235 structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

236
237 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated
238 at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the
239 flood as defined by soil types identified as recent flood-plain soils.

240
241 g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not
242 exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

243
244 i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The
245 Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the
246 Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable
247 alternative exists to accommodate a water-dependent use.

248
249 ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND)
250 Zones where the maximum lot coverage is seventy (70) percent.

251
252 Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot
253 area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the
254 Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

255
256 h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide
257 shoreline access in areas of steep slopes or unstable soils provided the:

258
259 i. structure is limited to a maximum of four feet in width;

260
261 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a
262 wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources
263 Protection Act, 38 M.R.S. §480-C); and

264
265 iii. applicant demonstrates that no reasonable access alternative exists on the property.

266
267 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use,
268 or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional
269 requirements shall be met for each additional dwelling unit, principal structure, or use.
270

271
272 **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

273
274 **16.7.3.5.4 Nonconforming Structure Relocation.**

275
276 C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure,
277 ~~the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or~~
278 ~~Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the~~
279 ~~destroyed vegetation is required.; and The Board of Appeals or Planning Board (in cases where the structure is~~
280 ~~located in a Shoreland Overlay or Resources Protection Overlay Zone.) may restrict mowing around and pruning~~
281 ~~of the replanted native vegetation to encourage a more natural state of growth. Replanting will be is required as~~
282 ~~follows:~~

283
284
285
286 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

287
288 A. Any nonconforming structure which is located less than the required setback from a water body, tributary
289 stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the cause, by more than
290 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or
291 replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction,
292 or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary
293 stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in
294 cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code
295 Enforcement Officer, in accordance with this Code.

296
297 B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the
298 reconstructed or replacement structure is less than the required setback it may not be any larger than the
299 original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or
300 Expansion and 16.7.3.6.1 Nonconforming Structure Expansion, as determined by the nonconforming floor area
301 and volume of the reconstructed or replaced structure at its new location.

302
303 C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond
304 the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed
305 ~~reconstructed~~ at less than the setback requirement for a new structure. When it is necessary to remove
306 vegetation to replace or reconstruct a structure, vegetation ~~will~~ shall ~~must~~ be replanted in accordance with
307 Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure
308 that has been partially damaged must be made to the Code Enforcement Officer.

309
310 D. Any nonconforming structure which is located less than the required setback from a water body, tributary
311 stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action by the owner by~~
312 50% or less of the market value of the structure before such damage, destruction or removal, may be
313 reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases
314 where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve
315 (12) months of the established date of damage, ~~or destruction,~~ or removal.
316

317 E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical
318 extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section
319 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

320
321

322 **16.7.3.5.7 Nonconforming Use Expansion.**

323 Expansion of a nonconforming use of any structure or land area other than that occupied as such when created
324 is not permitted with the following exceptions:

325
326

- 327 A. uses in conformity with Chapter 16.7; and
- 328 B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone
329 with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume,
330 during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards
331 in Section 16.3.2.17.D.2.

332
333

334 **16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

335 The reviewing authority per subsections A, B, and C below, may require evaluations be prepared by a person
336 certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to
337 bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general
338 use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining
339 that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing
340 regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and
341 wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain
342 management, archaeological and historic resources, and commercial fishing and maritime activities, and other
343 functionally water-dependent uses.

344 A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a
345 nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use
346 does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

347
348 B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
349 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of
350 the Board of Appeals provided the proposed use is not more nonconforming.

351
352 C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone,
353 an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning
354 Board per Section 16.7.3.5.2-16.7.3.6.2.

355
356

357 **16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

358 A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code,
359 single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the
360 particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or
361 width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not
362 involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located.
363 Relaxation of yard and other requirements not involving area or width may be obtained only through
364 miscellaneous variation request to the Board of Appeals.

365 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

366 A. Contiguous Nonconforming Lots. If two or more contiguous
367 nonconforming lots or portions thereof are in single or joint ownership
368 of record, and if all or part of the lots do not meet the dimensional
369 requirements of this Code, and if one or more of the lots are vacant or



370 contain no principal structure, the lots shall must be combined to the
371 extent necessary to meet the dimensional requirements, common
372 ownership and if a combination of such lots or a portion thereof
373 constitutes a lot of nearer conforming size, such combination is
374 deemed to constitute a single lot.

375
376 B. Contiguous Built Upon Nonconforming Lots. If two or more
377 contiguous lots or parcels are in a single or joint ownership of record
378 at the time of adoption of this Code, if all or part of the lots do not
379 meet the dimensional requirements of this Code, and if a principal use
380 or structure exists on each lot, the non-conforming lots may be
381 conveyed separately or together, provided that the State Minimum Lot
382 Size Law (12 MRSA §4807-A through 4807-D) and the State of Maine
383 Subsurface Wastewater Disposal Rules are complied with.

384 If there exists a legally created principal structure on each of the
385 contiguous nonconforming lots or portions thereof that would
386 otherwise require the lots to be combined as provided herein, the
387 contiguous lots need not be combined to create a single lot as
388 required by Section A above.



389
390 C. Contiguous Partially Built Upon Lot. If two or more contiguous
391 lots or parcels are in a single or joint ownership of record at the time of
392 or since adoption or amendment of this Code, if any of these lots do
393 not individually meet the dimensional requirements of this Code or
394 subsequent amendments, and if one or more of the lots are vacant or
395 contain no principal structure, the lots shall be combined to the extent
396 necessary to meet the dimensional requirements. If one or more of
397 the contiguous nonconforming lots is vacant or contains no principal
398 structure, the lots must be combined to the extent necessary to meet
399 the purposes of this Code as required by Section A above.



400
401 This subsection does not apply:

- 402 1. to any Planning Board approved subdivision located outside the Shoreland Overlay Zone which was
403 recorded in the York County Registry of Deeds on, or before July 13, 1977;
- 404 2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface
405 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State
406 of Maine Subsurface Wastewater Disposal Rules; and
 - 407 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - 408 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are
 - 409 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square
410 feet of lot area.

411
412 D.C. Single Lot Division.

413 If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot
414 provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional
415 requirements of this Code. If three or more principal structures existing on a single lot legally created when
416 recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as
417 conforming as practicable to the dimensional requirements of this Code.

418 (Ordained 1-23-12; Effective 2-23-12)

419
420 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

421 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
422 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements
423 of this Code for both the original and addition or enlargement of the structure or use.

424
425 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

426 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to

427 be considered part of the structure for such determination. Step landings may not exceed three feet by three feet
428 (3'x3') in size.

429
430
431 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**
432 (Ordained 9-26-11; Effective 10-27-11)
433

434 **16.7.3.6.1 Nonconforming Structure Expansion.**

435 A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit
436 from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the
437 structure and must be in accordance with the subparagraphs below.
438

439 A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-
440 water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will
441 not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the
442 lifetime of the structure.
443

444 B. If a replacement structure conforms to the requirements of Section ~~16.7.3.6.1.A~~ 16.7.3.5.4 and Section
445 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement
446 structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded
447 by 30% in floor area and volume since that date.
448

449 C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the
450 structure and new foundation must be placed such that the setback requirement is met to the greatest practical
451 extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B,
452 Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior
453 dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1 A, and the foundation
454 does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill
455 side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be
456 an expansion of the structure.
457

458 **16.7.3.6.2 Nonconforming Use Change.**

459 An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning
460 Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the
461 subject and adjacent properties and resources, including water dependent uses in the Commercial
462 Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the
463 area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no
464 greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the
465 probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat,
466 vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management,
467 archaeological and historic resources, and commercial fishing and maritime activities, and other functionally
468 water-dependent uses.
469

470
471
472 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**
473 **Article XXVIII. Single and Duplex Family Dwellings**
474

475 **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay Zones.**
476

477 In addition to the criteria specified in Section 16.6.6 and ~~17.6~~ 10.8.3.4, applicable to the granting of a special
478 exception use request, the Planning Board may approve an application for a single or duplex family dwelling
479 special exception use request, where applicable, provided the applicant demonstrates all of the following
480 conditions are met:

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- A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where a single family dwelling ~~the structure~~ can be built or similarly for a duplex in the Shoreland Overlay zone.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

ENACTMENT ORDINANCE

488 Title 16.3.2.17 Shoreland Overlay Zone and ancillary ordinance provisions in
489 Chapters 16.2.2, 16.3.2, 16.7.3, and 16.8.28

491 **AN ORDINANCE** relating to amending portions of the Town's Shoreland Zoning provisions in
492 Title 16, Land Use and Development Code pursuant to Maine Mandatory Shoreland Zoning
493 Act.

494
495 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
496 Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that
497 authorize the town, under certain circumstances, to provide for the public health, safety and
498 welfare. The Council does not intend for this Ordinance to conflict with any existing state or
499 federal laws.

500
501 **WHEREAS**, the amendment allows for compliance with the State's Mandatory Shoreland
502 Zoning Act, pursuant to Maine Department of Environmental Protection conditional approvals,
503 orders #5-99 (12/29/1999), #23-10 (9/2/2010), and #5-99-A (8/4/2000); and

504
505 **WHEREAS**, the Town Council finds these ordinance provisions pursuant to and consistent
506 with the Kittery Comprehensive Plan, striking a reasonable balance among the Town's various
507 zoning goals;

508
509 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN
510 CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO
511 TOWN CODE TITLE 16.3.2.17 SHORELAND OVERLAY ZONE AND ANCILLARY
512 ORDINANCE PROVISIONS IN CHAPTERS 16.2.2, 16.3.2, 16.7.3, and 16.8.28 CODIFIED IN
513 THE TOWN CODE, AS PRESENTED.

514
515 **INTRODUCED** and read in a public session of the Town Council on the __ day of _____,
516 2014, by: _____ {NAME} Motion to approve by
517 Councilor _____ {NAME}, as seconded by Councilor _____
518 {NAME} and passed by a vote of _____.

519
520 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
521 Maine on the __ day of _____, 2014, _____ {NAME}, Chairperson

522
523 **Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine
 Town Planning Board Meeting
 October 23, 2014**

Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and make recommendation to Town Council for adoption. An amendment to the Town Code to address the applicability of the Soil Suitability Guide for Land Use Planning in the State of Maine referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions, Title 16.2.2.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Board review and discussion/	8/22/2013, 1/9/2014; 2/27/14; 4/24/14	HELD
	Workshop	December 3, 2013	HELD
	Planning Board Code Subcommittee (PBCS) Mtgs.	2/4/14; 2/12/14; 2/18/14, 3/19/14, 4/1/14, 4/9/14, 4/16/14	
YES	Public Hearing	Review 2/27/14; PH held 3/13/14, continued, sent to Subcommittee;	HELD
		Joint Workshop Held	9/8/14
YES	Final Review/Recommendation to Town Council	Scheduled 10/23/14	

BACKGROUND

On October 6th a Joint Council/Planning Board Workshop was held and no changes were recommended. There was a question regarding the date referenced in the proposed amendments for Title 16.3 Land Use Zone Regulations and a request to check a title used in the proposed amendments for Title 16.2 Definitions.

REVIEW

The question regarding Title 16.3 is concerning the October 25, 2012 date referenced. This date is used rather than an enactment date because unlike in 2012, the changes proposed in this amendment are related to the need for a new reference due to other changes proposed rather than a change in policy. In 2012 the amendment provided a change as to how development not subject to subdivision was regulated, where “lands not suitable for development” were now subtracted from the gross lot area before determining minimum land area per dwelling unit.

The October 25, 2012 date allows the opportunity to maintain the point in time where the policy was originally changed, still subjecting the same properties in 2012 to what is effectively the same regulation in the proposed new definition “minimum land area per dwelling unit”.

Staff checked the reference made to ‘Kittery Historical and Naval Society’ and it appears to be correct.

RECOMENDATION

Attached are the proposed amendments revised per the recommendations at the Joint Workshop. Unless there are new concerns staff recommends the Planning Board make a recommendation to Town Council to adopt the proposed amendments.

Move to recommend to Town Council the adoption of the proposed amendments to Title 16 received October 23, 2014 including: 16.7.8 Land Not Suitable for Development and 16.2.1 Definitions.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014 Joint Workshop Meeting: 9/08/14	Title: Land Not Suitable for Development (Current) Net Residential Acreage Calculation (Proposed)
Town code section: Title 16, §16.7.8	History: new proposal

CODE AMENDMENT (PG. 2), ENACTMENT ORDINANCE (FORTHCOMING)

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PURPOSE OF PROPOSAL:

This proposal would amend the Town's Land Use and Development Code, Title 16 (LUDC) which in its present form does not permit the Planning Board to approve most subdivision development where septic systems are required.

SUMMARY OF PROPOSAL/AMENDMENT:

The proposal would amend the LUDC with regard to the calculation of Net Residential Acreage, which establishes the maximum number of dwelling units allowed in a new subdivision. (Lines 60-63)

It would repeal the statutory reliance upon an outdated reference known as *The Soil Suitability Guide for Land Use Planning in the State of Maine* and would substitute standards that comply with the Comprehensive Plan. (Lines 53-54 & 108-110)

To arrive at Net Residential Acreage, the amendment would require subtracting the sum of all portions of land wherein dwelling units cannot possibly be built due to wetlands, easements, burying grounds, rights-of-way, etc., or where there are substantial constraints to development. In certain cases where constraints are present, partial credit would be granted thus adding to the buildable net. (Lines 60-88 & 83-84)

JUSTIFICATION:

Absent this amendment, few new subdivision developments are likely to be approved by the Planning Board. The amendment would correct this serious problem.

The current ordinance prohibits septic systems on soils identified as "poor or very poor". The outdated reference classifies most land in Kittery as "poor or very poor". The amendment is necessary before subdivisions requiring septic systems may go forward.

The amendment was drafted after gathering information from a panel of local soil scientists and engineers and reviewing similar ordinances from other towns in southern Maine.

This amendment would implement the Comprehensive Plan's requirement to manage density, to protect natural resources and features and to preserve property values. It would be fair to developers and does not burden small land owners because non-subdivision projects would be subject to fewer deductions under the calculation for 'minimum land area per dwelling unit.

FISCAL IMPACT:

None.

42

44 **Article VIII. Land Not Suitable for Development**

45
46 **16.7.8.1 — Locations and Sewage.**

47 The Planning Board may not approve portions of any proposed development that:

- 48 1. Are situated below sea level;
- 49 2. Are located within the one hundred (100) year frequency floodplain as found in the definition;
- 50 3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except
- 51 the Planning Board may grant approval if central sewage collection and disposal system is provided.
- 52 4. Has any part of the development located on filled tidal wetlands.
- 53 5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide
- 54 for Land Use Planning in the State of Maine.

55
56 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

57
58 **Article VIII. Net Residential Acreage**

59
60 **16.7.8.1 Net Residential Acreage Calculation**

61 Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel subject to
62 subdivision. To calculate Net Residential Acreage the land area listed below must be subtracted from a parcel's
63 gross area. Where land areas to be subtracted overlap, the area therein shall be subtracted once.

- 64 A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide
65 (HAT) levels for the most current year.
- 66 B. All land located within the floodplain as defined in Title 16.2, Flood, One Hundred (100) Year.
- 67 C. All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water
68 bodies, including fifty (50) percent of the associated setbacks described in Other Buildings and Structures,
69 Table 16.9, Chapter 9 in this Title.
- 70 D. All land located on filled tidal lands, per Title 16.2 Tidal Land, Filled.
- 71 E. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be
72 built.
- 73 F. All land located within proposed rights-of-way including parking and travel ways. Driveways are excluded.
- 74 G. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any physical
75 feature, natural or manmade, such that it creates a barrier to the central development of the site and no
76 means of access is proposed nor likely to be provided in the future. However, to demonstrate that identified
77 isolated land may be considered developable for the purpose of this calculation, the applicant must submit a
78 plan and supporting documentation for the Board's consideration.
- 79 H. All land zoned commercial.
- 80 I. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- 81 J. All land identified as exposed bedrock, or soils with a drainage class of poorly drained, and/or very poorly
82 drained as defined in Title 16.2 Soils.
- 83 K. Fifty (50) percent of all land characterized as drainage class of somewhat poorly drained, unless public
84 sewer is used, in which case no land area is subtracted.
- 85 L. All land area within a cemetery/burying ground as defined in Title 16.2, including associated setback per
86 MRS Title13 §1371-A Limitations on construction and excavation near burial sites.
- 87 M. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay Zone
88 not included in 16.7.8.1.A-L.

89
90 **16.7.8.2 Documentation**

91 The Net Residential Acreage calculation must be supported by verifiable information and accurate data and
92 shown on the subdivision plan or other plan when applicable.

93
94 **16.7.8.3 Residential development not subject to subdivision**

95 The maximum number of dwelling units for residential development not subject to subdivision shall be based on
96 minimum land area per dwelling unit defined in Chapter 2 Definitions of this Title.

98 Chapter 16.2 DEFINITIONS

99 Title 16.2 Definitions

100
101 Tidal Land, Filled means portions of the submerged and intertidal lands that have been rendered by human
102 activity to be no longer subject to tidal action or below the natural low-water mark after October 1, 1975.

103
104 **Soils.**

105 1. ~~“Poorly drained soils” means soils where water is removed so slowly that the water table is at or within~~
106 ~~twelve (12) inches of the ground surface for six to nine months of the year.~~

107
108 2. ~~“Very poorly drained soils” means soils in an area where water is removed so slowly that the water table is at~~
109 ~~or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

110 A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the most recent
111 Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage Class that
112 reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes.

113 Cemetery and Burying Ground: A private or public place set apart for the interment of the dead. In the absence
114 of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery
115 Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is determined
116 by starting with a 10-foot distance from existing tombstones and expanded, where necessary, to form a final
117 rectilinear area.

118 **Net residential acreage** means the land area identified for regulatory purposes as developable and is means
119 the gross available acreage less minus the area required for streets or access and less the areas of any portions
120 of the site which are unsuitable for development land area identified as outlined in Article VIII of Chapter 16.7
121 Net Residential Acreage. The Net Residential Acreage Calculation is used to determine the maximum number of
122 dwelling units allowed on a parcel subject to subdivision.

123
124 **Minimum land area per dwelling unit.**

125 Minimum land area referenced in Chapter 3, Article II Zoning Definitions, Uses, Standards of this Title means the
126 gross area of a parcel not subject to subdivision minus the land area listed below. Where land areas to be
127 subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision see 'Net
128 Residential Acreage'.

- 129 A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide
130 (HAT) levels for the most current year.
131 B. All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water
132 bodies.
133 C. All land located on filled tidal lands, per Title 16.2 Tidal Land, Filled.
134 D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be
135 built.
136

137 Chapter 16.3 LAND USE ZONE REGULATIONS

138 Article III. Zone Definitions, Uses, Standards

139
140 16.3.2.1 Residential – Rural R-RL.

141 D. Standards

142 2. Dimensional Standards:

143
144 Minimum land area per dwelling unit 40,000 square feet*

145
146 *As per Chapter 16.2 definition of net residential density minimum land area per dwelling unit except to exempt
147 properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot
148 was conforming prior to the date of this enactment October 25, 2012. (Ordained 9/24/12; effective 10/25/12)

149 16.3.2.2 Residential – Suburban R-S.

150 D. Standards

151 2. Dimensional Standards.

152
153 Minimum land area per dwelling unit*
154 without public sewage disposal 40,000 square feet
155 with public sewage disposal 30,000 square feet

unless reduced in accordance with
Note A.

*As per Chapter 16.2 definition of net residential density minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.3 Residential - Kittery Point Village R-KPV.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 40,000 square feet*

*As per Chapter 16.2 definition of net residential density minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.4 Residential – Urban R-U.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit 20,000 square feet*

*As per Chapter 16.2 definition of net residential density minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.5 Residential - Village R-V.

D. Standards

2. The following space standards apply:

Minimum land area per dwelling unit 4,000 square feet*

*As per Chapter 16.2 definition of net residential density minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective 10/25/12)~~

16.3.2.6 Residential- Rural Conservation R-RC

D. Standards

2. The following dimensional standards apply:

Minimum land area per dwelling unit 80,000 square feet*

*As per Chapter 16.2 definition of minimum land area per dwelling unit except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to October 25, 2012.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

16.8.11.5 Application Procedure.

All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:

1. Calculations and maps to illustrate:

a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;

b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7 All land area identified in Title 16.7.8.1 Net Residential Acreage; and

c. ~~net residential acreage and~~ Net Residential Density; and

d. open space as defined in Section 16.8.11.6.D.2 of this Article.

OTHER TITLE 16 AMENDMENTS PREPARED FOR
NOVEMBER 10, 2014 COUNCIL MEETING

- Approved Plan Expiration & Expiration of Wetlands Approval
- Adjustment of Common Boundary Line of Nonconforming Lots (aka: Thron/Arris)

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thompson, Chair
Council meeting date: November 10, 2014	Title: Approved Plan Expiration and Expiration of Wetlands Alteration Approval
Town code section: Title 16, §16.10.9.1.4, 16.10.9.1.5 and 16.9.3.8	History: amended proposal

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW NOTES

PURPOSE OF PROPOSAL:

To provide clarity as to when and under what conditions an approved plan expires and the ability to obtain an extension.

SUMMARY OF PROPOSAL/AMENDMENT:

1. The existing code language is ambiguous as to how to apply the conditions necessary to determine if a plan's approval is expired. The proposal separates the conditional clauses with two sentences.
2. The proposal deletes *16.10.9.1.5 Requests for Extension* as it provides unnecessary redundancy with *16.10.9.1.4 Approved Plan Expiration*, which now addresses extensions.
3. Clarity is provided as to what happens if a plan approval does expire.
4. The total length of time an approved subdivision plans may be extended is reduced from 10 years to 5 years.

JUSTIFICATION:

The proposal removes ambiguity making it clearer to applicants the expectations for completion of approved development plans, simplifying administration of the Code by staff and the Planning Board.

FISCAL IMPACT:

None

CODE AMENDMENT

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article IX. Post Approval

16.10.9.1 Post Approval Actions Required.

16.10.9.1.4 Approved Plan Expiration.

- A. ~~An approved~~ subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one (1) year from Planning Board date of approval, or Where work has commenced within one (1) year of approval, is not substantially such approval will expire unless work is complete within three (3) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.
- B. A non-subdivision For all other development plans, plan's approval by the Planning Board approval will expire if work on the development has not commenced within one (1) year from date of approval, or Where work has commenced within one year of approval, such approval will expire if work is not substantially complete within two (2) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.
- C. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five (5) years for a subdivision plan and three (3) years for all other development plans.
- D. When a plan expires the applicant may re-apply subject to current Town Code

16.10.9.1.5 Requests for Extension.

The Planning Board may grant extensions to expiration dates upon written request by the developer, on a caseby-case basis. ~~{Modified and moved to C. above}~~

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT

Article III. Conservation of Wetlands Including Vernal Pools

16.9.3.8 Expiration of Wetlands Alteration Approval.

Wetlands Alteration Approval will expire if work on the development has not commenced within one (1) year of Planning Board date of approval, or is not substantially Where work has commenced within one (1) year of approval, such approval will expire unless work is complete within (2) two years of the original approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant extensions to the approval, not to exceed period specified in 16.10.9.1.4.C, provided the request is submitted to the Board prior to the expiration of approval.

ENACTMENT ORDINANCE

Title 16.10.9.1.4 and 16.9.3.8

AN ORDINANCE amending portions of Title 16, Land Use and Development Code pertaining to the expiration of approved development plans and wetlands alteration.

WHEREAS, the Kittery Town Council is authorized to enact this Ordinance, as specified in Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for the public health, safety and welfare. The Council does not intend for this Ordinance to conflict with any existing state or federal laws; and

WHEREAS, the amendment clarifies when the approval for a development plan or wetland alteration plan expires; and

WHEREAS, the Town Council finds these ordinance provisions pursuant to and consistent with the Kittery Comprehensive Plan, striking a reasonable balance among the Town's various zoning goals; and

NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.10.9.1.4 APPROVED PLAN EXPIRATION and 16.9.3.8 EXPIRATION OF WETLANDS ALTERATION APPROVAL CODIFIED IN THE TOWN CODE, AS PRESENTED.

INTRODUCED and read in a public session of the Town Council on the ___ day of _____, 2014, by: _____ {NAME}
Motion to approve by Councilor _____ {NAME}, as seconded by Councilor _____ {NAME} and passed by a vote of _____.

THIS ORDINANCE IS DULY AND PROPERLY ORDAINED by the Town Council of Kittery, Maine on the ___ day of _____, 2014, _____ {NAME}, Chairperson

Attest: Maryann Place, Town Clerk

**Town of Kittery Maine
Town Planning Board Meeting
May 22, 2014**

Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	1/23/14, Continued to 3/13&5/22/2014;	
YES	Schedule Public Hearing	Scheduled 5/22; ran in legal section in the Portsmouth Herald for Sat.5/10 and again for Wednesday 5/14	COMPLETE
YES	Public Hearing	Scheduled for 5/22/14	HELD
YES	Review/Recommendation to Town Council	1/23/14; 5/22/14 to TC for joint wkshp	RECOMMENDED

Background

The prior amendment was not approved by Town Council, see packet info from 1/23/14. This amendment review was continued by the Board for input by staff and a member of the Code Subcommittee, and continued again, 3/13/14, for input by subcommittee. The attached amendment reflects those changes. *16.9.3.8 Expiration of Wetlands Alteration Approval* was added to the amendment since it has similar language and issues. With the addition of 16.9.3.8 another public hearing is warranted.

Recommendation

Staff recommends the Board, identifying no issues at the public hearing, move to recommend adoption by the Town Council and schedule the proposed amendment to be discussed at the June 1, 2014 joint workshop with the Town Council.

**Town of Kittery
Ordinance Revision Memorandum**

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date:	Title: Adjustment of Common Boundary Line of Non-conforming lots.
Town code section: Title 16, §16.7.3.5.10 through 12	History: new proposal

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW NOTES

PURPOSE OF PROPOSAL:

The proposal would simplify the process by which to approve limited adjustments to lot lines of developed, legally nonconforming lots within and outside the Shoreland Overlay zone.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.7.3.5.12.A.1 (line 108) would permit the Code Enforcement Officer to approve a simple, equal swap of land when there is no change to the square area of either adjusted legally nonconforming lots.

Section 16.7.3.5.12.A.2 (line 112) would permit the Board of Appeals to approve adjustments to lot lines outside the Shoreland Overlay zone, even if the resulting lot size would be made more non-conforming. This would only apply if the new lots are 20,000 sq. feet or greater (if connected to septic); or 5,000 sq. feet or greater (if connected to town sewer).

Section 16.7.3.5.12.A.3 (line 122) would permit the Planning Board to approve adjustments to lot lines that result in a more non-conforming lot within the Shoreland Overlay zone, if the resulting lots conform as much as is practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland zoning minimum lot standards and shoreline requirements.

Under no circumstances could the resulting lots be smaller than 20,000 sq. feet or have less than 100 feet of shoreline. If the lots currently conform to the minimum standard (30,000 sq. feet or greater, with 150 feet of shoreline) they would have to remain conforming. If both lots currently do not meet MDEP minimum standards, lot lines would not be permitted to be adjusted.

JUSTIFICATION:

This amendment would give the town needed flexibility to approve lot size changes, while protecting the environment within the Shoreland Overlay zone.

Current law does not permit the Town to make minor lot size adjustments to legally non-conforming developed lots, even if there are good reasons to do so.

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This amendment is needed to permit lot adjustments that would result in less irregular lot lines and more practical access to utilities or existing structures.

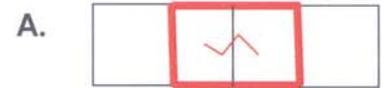
FISCAL IMPACT: None.

CODE AMENDMENT

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16.7.3.5.10 Contiguous Nonconforming Lots. (Ordained 1-23-12; Effective 2-23-12)

A. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination is deemed to constitute a single lot.



B. Contiguous Built Upon Nonconforming Lots. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.



C. Contiguous Partially Built Upon Lot. If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

16.7.3.5.11C. Single Lot Division of a Nonconforming Lot.

If two principal structures ~~existing~~exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures ~~existing~~exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. (Ordained 1-23-12; Effective 2-23-12)

~~**16.7.3.5.11 Nonconforming Parking or Loading Space.**~~ (Ordained 9-26-11; Effective 10-27-11)

~~A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided~~

96 sufficient to satisfy the requirements of this Code for both the original and addition or
97 enlargement of the structure or use. {MOVED AND RENUMBERED 16.7.3.5.13}

98
99 **16.7.3.5.12 — Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

100 The addition of steps and landings exterior to the structure does not constitute expansion. Such
101 steps are not to be considered part of the structure for such determination. Step landings may
102 not exceed three feet by three feet (3'x3') in size. {MOVED AND RENUMBERED 16.7.3.5.14}

103
104
105 **16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.**

106
107 A. The common property line of two nonconforming lots of record, each with legally created
108 principal structures, can be adjusted if:

109 1. The Code Enforcement Officer (CEO) determines that the resulting lots are not more
110 nonconforming than the existing lots with respect to the dimensional requirements of this Code;
111 or

112
113 2. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO
114 determines the proposed lot line adjustment makes the lot more nonconforming, the Board of
115 Appeals determines that each resulting lot is as conforming as practicable to the dimensional
116 requirements of this Code; and

117 a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public
118 sewer; or

119 b. each resulting lot is not less than the smallest residential lot permitted under the town's
120 land use base zones, Title 16.3, when served by public sewer.

121
122 3. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO
123 determines the proposed lot line adjustment makes the lot more nonconforming, the Planning
124 Board determines that each resulting lot is as conforming as practicable to the Maine
125 Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot
126 standards for principal structures and uses¹; and

127 a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in
128 shore frontage^{2,3}; and

129 b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot
130 standards for principal structures and uses remains conforming to those requirements¹;
131 and

132 c. common boundary lines may not be adjusted when both subject lots are non-
133 conforming per state minimum lot size requirement.³

134
135 ¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section
136 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150
137 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200
138 feet of shore frontage.

139 ² Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same
140 single or joint ownership

141 ³ Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through
142 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer
143 is required

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B. It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming Lots*) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

{NEW}

16.7.3.5.143 Nonconforming Parking or Loading Space. (Ordained 9-26-11; Effective 10-27-11)

A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND ONLY AMENDED SECTION NUMBER}

16.7.3.5. 124 Nonconforming Steps. (Ordained 9-26-11; Effective 10-27-11)

The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size. . {MOVED AND ONLY AMENDED SECTION NUMBER}

168 *ENACTMENT ORDINANCE*

169 Title 16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming
170 Lots

171
172 **AN ORDINANCE** amending Article III Nonconformance in Chapter 7, Title 16 Land Use
173 Development Code, including the adjustment of common boundary line of developed
174 nonconforming lots.

175
176 **WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as
177 specified in Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its
178 powers that authorize the town, under certain circumstances, to provide for the public
179 health, safety and welfare. The Council does not intend for this Ordinance to conflict
180 with any existing state or federal laws.

181
182 **WHEREAS**, permitting boundary line adjustments to nonconforming developed lots
183 would result in more practical access to utilities or existing structures, permitting
184 boundary line adjustments to nonconforming developed lots would result in less
185 irregular lot lines. It would also allow more appropriate placement of or access to
186 utilities and structures while ensuring compliance with the intent of Chapter 16-7 and the
187 State's Mandatory Shoreland Zoning Act; and

188
189 **WHEREAS**, the current code, 16.7.3.5.10.C, 16.7.3.5.11 and 16.7.3.5.12, requires
190 minor format changes for clarity and to accommodate the new provision related to
191 16.7.3.5.12 *Adjustment of Common Boundary Line of Nonconforming Lots*; and

192
193 **WHEREAS**, the Town Council finds these ordinance provisions pursuant to and
194 consistent with the Kittery Comprehensive Plan, striking a reasonable balance among
195 the Town's various zoning goals;

196
197 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN
198 CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION
199 TO TOWN CODE TITLE 16.7.3.5.12 ADJUSTMENT OF COMMON BOUNDARY LINE
200 OF NONCONFORMING LOTS CODIFIED IN THE TOWN CODE, AND INCIDENTAL
201 CHANGES TO 16.7.3.5.10.C, 16.7.3.5.11 AND 16.7.3.5.12, AS PRESENTED.

202
203 **INTRODUCED** and read in a public session of the Town Council on the ___ day of
204 _____, 2014, by: _____ {NAME}
205 Motion to approve by Councilor _____ {NAME}, as seconded by
206 Councilor _____ {NAME} and passed by a vote of _____.

207
208 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of
209 Kittery, Maine on the ___ day of _____, 2014, _____ {NAME},
210 Chairperson

211
212 **Attest:** Maryann Place, Town Clerk
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215

**Town of Kittery Maine
Town Planning Board Meeting
June 26, 2014**

216 **Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development**
217 **Code.** Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow
218 for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.
219
220

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Held 6/27/13; 10/24/13; 1/23/14; & 3/13/14	COMPLETE
YES	Schedule Public Hearing	Scheduled for 2/27/14	COMPLETE
YES	Public Hearing	2/27/14 Public Hearing	HELD
	Town Council/Planning Board Joint Workshop	Scheduled 6/2/14	HELD
YES	Review/Recommendation to Town Council	Approved & recommended to Council	6/26/14

221
222**Staff Comments****Background**

226 On February 12, 2013, Mary Thron and Raymond J Arris received approval from the BOA to alter a lot line between
227 two contiguous non-conforming lots. The applicant's original goal was to simply transfer property from one non-
228 conforming lot (M58 L42) to the abutting non-conforming lot (M58 L42A) to accommodate a new septic field
229 without the need of an easement. The BOA did not grant this request because the outcome would make an existing
230 nonconforming lot more nonconforming. Property M58 L42 is currently 35,415 square feet in size, less than the
231 80,000 square feet required in the Residential Rural Conservation zone. Transferring land would reduce the already
232 undersized lot making the property more non-conforming. The BOA, however, granted an equal land swap, creating
233 an irregular (zig-zag) property line between the lots, something the applicant is trying to avoid with this proposed
234 code amendment.

235

236 In addition to Title 16, the State's Mandatory Shoreland Zone (MRSA 38, Chapter 3, and Subsection 435-449)
237 applies to those properties located within the Shoreland and Resource Protection Overlay Zones. The State's
238 minimum standards prohibit the creation of a "more non-conforming" condition. At the June 2nd joint workshop
239 comments and changes regarding format and substance were made and recommended. Changes were also suggested
240 to the summary and justification sections of the memorandum, highlighted in yellow.

241

Review

242

244 Staff conferred with board member Kalmar and has incorporated the following changes to address the comments
245 from the June 2nd Joint Workshop (see attached Ordinance Revision Memorandum):

- 246 1) Lines 42, 71, 90 & 92: remove the hyphen in words 'non-conformance' and 'non-conforming' for
247 consistency.
- 248 2) Lines 72 & 74: substitute 'exist' for 'existing'
- 249 3) Lines 79 – 88: show the current code sections in their original location and indicate through strikethrough
250 and notation that the provisions are proposed to be moved and renumbered.

- 4) Lines 96-97 & 102-103: It was suggested that the CEO's ability to approve any changes was precluded by sections A.2 and A.3. The additional clauses, identifying that the CEO first determines that the lot is more nonconforming prior to either boards' review or approval, addresses this comment.
- 5) Lines 151-153: Revised the Enactment Ordinance to reflect comments/suggestions regarding the describing the proposed amendment.

Recommendation

With the latest changes in place, and with no other issues raised, the Board can recommend adoption to the Town Council.

16.7.3.5.10 Contiguous Non-Conforming Lots. (Ordained 1-23-12; Effective 2-23-12)

C. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination is deemed to constitute a single lot.



B. Contiguous Built Upon Nonconforming Lots. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.



C. Contiguous Partially Built Upon Lot. If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

16.7.3.5.11C. Single Lot Division of a Non-Conforming Lot.

If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. (Ordained 1-23-12; Effective 2-23-12)

304
305 **16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming Lots.**
306

307 **A. The common property line of two non-conforming lots of record, each with legally created principal**
308 **structures, can be adjusted if:**

309 **1. the Code Enforcement Officer determines that the resulting lots are not more non-conforming than**
310 **the existing lots with respect to the dimensional requirements of this Code; or**

311 **2. when the lots are located entirely outside the Shoreland Overlay Zone, the Board of Appeals**
312 **determines that each resulting lot is as conforming as practicable to the dimensional requirements of**
313 **this Code; and**

314 **a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or**

315 **b. each resulting lot is not less than the smallest residential lot permitted under the town's land use**
316 **base zones, Title 16.3, when served by public sewer; or**

317 **3. when all or part of either lot is located in the Shoreland Overlay Zone, the Planning Board**
318 **determines that each resulting lot is as conforming as practicable to the Maine Department of**
319 **Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal**
320 **structures and uses¹; and**

321 **a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore**
322 **frontage^{2,3}; and**

323 **b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for**
324 **principal structures and uses remains conforming to those requirements¹; and**

325 **c. common boundary lines may not be adjusted when both subject lots are non-conforming**
326 **according to the State's minimum lot dimensional requirements.¹**
327

328 **¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum**
329 **Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and**
330 **adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.**

331 **² Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint**
332 **ownership**

333 **³ Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and**
334 **State of Maine Subsurface Wastewater Disposal Rules or public sewer is required**
335

336 **B. It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming***
337 ***Lots*) to allow for the creation of an additional lot. A property line adjustment in accordance with this**
338 **subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a**
339 **legally non-conforming lot of record, not applicable to the joining of lots.**
340

341 **16.7.3.5.1314 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

342 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
343 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the
344 requirements of this Code for both the original and addition or enlargement of the structure or use.
345

346 **16.7.3.5.1412 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

347 The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are
348 not to be considered part of the structure for such determination. Step landings may not exceed three feet
349 by three feet (3'x3') in size.
350

**Town of Kittery Maine
Town Planning Board Meeting
October 23, 2014**

ITEM 6E – Town Code Title 5 – Amendment to Chapter 5.10.1 Use of the Public Way. Propose removing Section 5.10.4 Applicability, referencing a specific zone and annual expiration. Proposed amendment language would allow use of the public way in all non-residential zones without a sunset clause.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion		10/23/14
YES	Review/Recommendation to Town Council		PENDING

Background

Enclosed is a Report to Town Council dated May 28, 2014 summarizing the use of the public way and requesting an extension to 12/31/14. Amendment and enactment language is enclosed reflecting proposed changes to Title 5.10.4

The Board has discussed extending this amendment to include all non-residential zones, not just the MU-KF zone, and eliminate any reference to an expiration date. Additionally, the Board has discussed whether Title 5 is subject to Planning Board deliberation as it addresses the public way and is not a land use, Title 16, ordinance.

New language (Section 5.10.4) proposes that businesses in non-residential zones other than the MU-KF who wish to utilize a public way, must provide a map identifying eligible properties to be approved by Council prior to the issuance of a permit. Following Council approval, businesses must then submit an application for administrative review (Planner and CEO) and approval (see *Use of a Public Way Permit*, enclosed).

Review

The enclosed amendment removes reference to a singular zone and restricted dates, and includes new language instructing applicants to receive Use of the Public Way Plan approval from Council and to apply for a *Use of a Public Way Permit* each calendar year.

Recommendation

Move to recommend to Town Council the amendment to Title 5.10.1 Use of the Public Way, as dated October 23, 2014.



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: May 28, 2014
From: Gerry Mylroie, Town Planner
Subject: Title 5 Amendment – Use of the Public Way in the Mixed Use – Kittery
Foreside Zone – Applicability Extension to December 31, 2014
Councilor Sponsor: Jeffrey Thomson, Council Chair

EXECUTIVE SUMMARY

The Town Council amended Title 5, Businesses and Licenses, Section 5.10, Use of the Public Way on June 10, 2013 to allow seasonal outdoor seating and tables in the public right-of-way in the Foreside Zone through December 31, 2013. The Planning Board is recommending Town Council conduct a public hearing and take action to retroactively extend the applicability of the amendment beginning January 01, 2014 and ending on December 31, 2014.

STATEMENT OF NEED

Town Council adoption of the subject Amendment to Title 5 Businesses and Licenses, Section 5.10, Use of the Public Way is required to continue the use of seasonal outdoor seating and tables in the public right-of-way in the Foreside Zone. This amendment continues the support of the town to improve Kittery's quality of place and business conditions in this zone.

BACKGROUND

Town Council adopted an amendment to Section 5.10, Use of the Public Way Ordinance on June 10, 2013. Since then property owners have taken advantage of the amendment with welcomed success. Most notable is AJ's Wood Grill Pizza that has provided outdoor seating and tables in Kittery Foreside.

FACTS BEARING ON THE EQUATION

There have been no reported issues or negative concerns with this use of the public way.

CURRENT SITUATION

Title 5 Businesses and Licenses, Section 5.10 Use of the Public Way, currently allows for seasonal outdoor seating and tables in the public right-of-way in the Mixed Use-Kittery Foreside Zone until calendar year 2013.

PROPOSED SOLUTION/RECOMMENDATION

An agenda item to schedule a public hearing will be initiated for the May 28, 2014 Town Council meeting. It is recommended upon completion of the public hearing that Town Council take affirmative action and adopt the amendment to Town Code, Title 5 Businesses and Licenses, Section 5.10, use of the Public Way to retroactively extend the applicability of the amendment beginning January 01, 2014 and ending on December 31, 2014.

RATIONALE FOR THE PROPOSED SOLUTION (INCLUDING COSTS)

The cost to the Town of Kittery for continuation of this amendment is zero. Kittery's Foreside's quality of place and business conditions are improved by allowing seasonal outdoor seating and tables in the public right-of-way.

The following minor amendment have been made to Section 5.10.4 of the Kittery Town Code:

Line #95: Strike out the words "for the" and add the
Word "through"

Line #95: Strike out the year "2013" and add the year "2014"

Attachments:

- (1) Amended Kittery Town Code Title 5, Section 5.10
- (2) Ordinance to amend Title 5, Chapter 5.10

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Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014	Title: Title 5 – Use of the Public Way
Town code section: Title.5.10.4	History: Amendment

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ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW

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PURPOSE OF PROPOSAL:

Town Council adopted an amendment to the Public Way ordinance on June 10, 2013. Since then, property owners have taken advantage of the program with welcomed success. Most notable is AJ's Wood Grill Pizza that has provided outdoor seating and tables in Kittery Foreside. There have been no reported issues with the use of the public way in this area. Interest in this ordinance by business owners in other zones has prompted consideration of extending the seasonal use of the public way to all non-residential zones in Kittery.

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SUMMARY OF PROPOSAL/AMENDMENT:

The enclosed amendment (Section 5.10.4) removes prior reference to a singular zone and restricted dates.

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New language clarifies that businesses in non-residential zones who wish to utilize a public way must provide a "Use of the Public Way Plan" map identifying eligible properties. The Plan must be approved by Council prior to the issuance of a permit. Following Council approval of the Plan, businesses must then submit an application for administrative review (Town Planner and CEO) and approval (see *Use of a Public Way Permit*, enclosed).

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JUSTIFICATION:

Prior language required Council action annually to extend the expiration date of the ordinance, and restricted use to one area, the Mixed-Use Kittery Foreside Zone. There has been business interest in allowing use of the public way in other zones. Additional language clarifies the process for approval and permitting.

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FISCAL IMPACT: None

1 **Chapter 5.10**

2
3 **5.10.1 Title. USE OF THE PUBLIC WAY**

4 This chapter is known as the Use of the Public Way ordinance.

5
6 **5.10.2 Intent and Purpose.**

7 A. It is the purpose of this chapter to promote more attractive, communal, orderly and functional
8 pedestrian-oriented streetscapes, including outdoor benches, seating, tables and chairs. Site
9 furnishings shall be furnished and maintained by the business/property owners and merchants
10 for public use and are not for the exclusive use of the patrons of a particular business.

11 B. In return for the privilege of use of the public way, merchants and business/property owners
12 are expected to self-police themselves to provide and maintain said site furnishings according to
13 their submitted sketch plan and approved Use of Public Way Permit.

14 C. This chapter is further intended to specifically prevent unsafe passage of pedestrians that
15 could occur along sidewalks that are compromised by the use of site furnishings.

16
17 **5.10.3 Definitions.**

18 Terms, phrases and words in this chapter have the meaning given herein or, if not defined, are
19 given their ordinary accepted meaning:

20
21 **Public Way** means the area between the street curb (or edge of street pavement if curb does
22 not exist) and the property line. If a land title survey or other official documentation
23 demonstrating the location of the property line is not provided, it will be assumed that the public
24 way extends to the building façade.

25
26 **Site furnishings** means those elements and site amenities that are shown on the site plan that
27 accompanies the Use of the Public Way permit and approved by the Code Enforcement Officer
28 (CEO) and Town Planner. Such elements may include, but are not limited to: benches, tables,
29 chairs, umbrellas, bicycle racks, and trash receptacles. Excluded elements include: vending
30 and soda machines, refrigerated cabinets, ice machines, freezer chests and other like
31 appliances. There will be no signage and/or advertising associated with the site furnishings
32 unless as reviewed and approved by the CEO and Town Planner per Town Code Title 16,
33 Chapter 8, Article X Signs.

34
35 **Use of the Public Way Plan** is the map identifying those properties the Town Council deems
36 eligible to apply for a permit to use the Public Way, as defined within this Chapter, without prior
37 Town Council approval.

38
39 **Pedestrian Access Route (PAR)** must be free of obstructions and, at a minimum, include the
40 following:

- 41 1. Surfaces must be firm, stable, and slip resistant. Concrete or asphalt must be free of holes
42 and depression. Gratings, access covers, and other appurtenances must not be located on
43 curb ramps, landings, and gutters within the PAR;
- 44 2. Width clearance must be 4 feet minimum, with a continuous passing width of 5 feet;
- 45 3. Passing width at a 200-foot intervals must be 5 feet by 5 feet minimum;
- 46 4. Vertical clearance must be 7 feet in height

47
48 **5.10.4 Applicability.**

49 ~~The regulations of this chapter apply only to those properties located in the Mixed Use Kittery~~
50 ~~Foreside Zone, and for the through calendar year 2014.~~ **Regulations in this Chapter apply to all**
51 **non-residential zones within the Town of Kittery. A Use of the Public Way Plan must be**

52 approved by Town Council. Following Plan approval, a *Use of a Public Way Permit* application
53 must be submitted and approved by the CEO and Town Planner for each calendar year that
54 businesses wish to utilize a public way in accordance with this Chapter.

55

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58 **AN ORDINANCE** relating to Title 5, Business Licensees and Regulations of the Kittery Town
59 Code sections for the use of the public right-of-way by property and business owners to promote
60 an active sidewalk environment with a strong pedestrian orientation.

61
62 **WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as specified in
63 Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that
64 authorize the town, under certain circumstances, to provide for the public health, safety and
65 welfare, not intending for this Ordinance to conflict with any existing state or federal laws; and
66

67 **WHEREAS**, the Town Council intends, through the adoption of this Ordinance, to implement
68 and promote goals and implementation strategies pursuant to the Kittery Comprehensive Plan,
69 Sections B9 and G8 to revise nonresidential district zoning standards to promote economic
70 growth, carrying out the purposes and general policies statements and strategies of the Plan;
71 and
72

73 **WHEREAS**, the Council finds these ordinance provisions pursuant to and consistent with the
74 Kittery Comprehensive Plan, striking a reasonable balance among the Town's various zoning
75 goals;
76

77 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN
78 CHARTER SECTION 2.14:
79

80 **THE TOWN OF KITTERY HEREBY ORDAINS THE FOLLOWING ORDINANCE TO BE**
81 **CODIFIED IN THE TOWN CODE, AMENDING TITLE 5, CHAPTER 5.1, SECTION 5.10.4,**
82 **APPLICABILITY OF THE USE OF THE PUBLIC WAY, AS PRESENTED.**
83

84 **Approved as to form:** {NAME}, Town Attorney
85

86 **INTRODUCED** and read in a public session of the Town Council on the __ day of _____,
87 20__, by: _____ {NAME} Motion to approve by
88 Councilor _____ {NAME}, as seconded by Councilor _____
89 {NAME} and passed by a vote of _____.

90
91 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
92 Maine on the __ day of _____, 2014, _____ {NAME}, Chairperson
93

94 **Attest:** {NAME}, Town Clerk
95
96
97



TOWN OF KITTERY MAINE

TOWN PLANNING and DEVELOPMENT DEPARTMENT

200 Rogers Road, Kittery, Maine 03904

PHONE: (207) 475-1323

Fax: (207) 439-6806

www.kittery.org

APPLICATION: USE OF THE PUBLIC WAY PERMIT

THIS REVIEW PROCESS REQUIRES APPROVAL FROM BOTH THE TOWN PLANNER AND THE CODE ENFORCEMENT OFFICER

FEE FOR INITIAL APPLICATION/ RENEWAL APPLICATION:	<input type="checkbox"/> \$25.00 <input type="checkbox"/> \$10.00
--	--

Amount Paid: \$ _____

Date: _____

PROPERTY DESCRIPTION	Parcel ID	Map	Lot	Zone(s):		LOT SIZE (SQUARE FEET)	
	Physical Address						
PROPERTY OWNER'S INFORMATION	Name			Mailing Address			
	Phone						
	Fax						
	Email						
APPLICANT/ OWNER'S AGENT INFORMATION	Name			Name of Business			
	Phone			Mailing Address			
	Fax						
	Email						

DESCRIBE HOW PUBLIC WAY WILL BE USED	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>
	What furnishings are proposed?

CERTIFICATION / INDEMNIFICATION: To the best of my knowledge, all the information submitted on this application and attached plan is true and correct and I indemnify the Town for any claims arising out of the permitted public way, include site furnishings.

 Signature of Owner

 Date

Minimal Plan Submittal Requirements

3 COPIES OF THE PROPOSED USE OF THE PUBLIC WAY ON A LAND SURVEY PLAN OF PROPERTY

PRIOR TO COMMENCEMENT OF THE REVIEW PROCESS, THE STAFF WILL DECIDE WHETHER SUFFICIENT INFORMATION HAS BEEN PROVIDED.

THE APPLICANT IS RESPONSIBLE TO PRESENT A CLEAR UNDERSTANDING OF THE PROPOSAL.

SEE SECTION 5.10.6 SUBMISSION REQUIREMENTS FOR A USE OF PUBLIC WAY PERMIT

Scale size:

- Under 10 acres: no greater than 1" = 30'
- 10 + acres: 1" = 50'

Title block:

- Title: 'Use of Public Way Plan'
- Property Street Address
- Business/Applicant/Owner name and address
- Name of preparer of plan with professional information and seal for Land Survey that delineate property/lot line information
- Parcel's tax map identification (MAP – LOT)
Large print in lower right-hand corner
- Date of plan preparation and any associated revisions

General:

Information shown on the plan must be sufficient to demonstrate compliance with Chapter 5.10, Town Code Title 5, including ensuring a Pedestrian Access Route (PAR) is free of obstructions (5.10.3)

- Property information that displays public and private ownership
- Location of building façade, entrances, street curb, sidewalk, curb cuts, crosswalks, light/utility poles, street trees and other structures/objects in and along the Public Way for the subject property and the adjacent properties.
- Identify any on-street parking
- Plan references that document the source of the information shown on the plan

REVIEW

Within fifteen (15) working days of receipt of a complete application, the CEO and Town planner shall render a decision. The decision may be to approve; approve with modifications; approve with conditions; or, disapprove the application. The decision is to be based strictly on the submitted application and the review criteria listed in Section 5.10.7.

REVIEW ACTION

____ Approved ____ Denied
 ____ Approved with conditions as follows:

 Town Planner Date

 Code Enforcement Officer Date

5.10.6 Submission Requirements for a Use of the Public Way Permit.

Submission of a completed Use of Public Way permit application including:

- A. Business name and street address;
- B. Property Map and Lot number;
- C. Owner name and contact information; and
- D. Types of site furnishings.

The sketch plan submitted for approval with the application must include all of the following information:

- E. Title block: Business name and address, name of applicant, the person/agent responsible for preparing plan, and the signature of the owner, or authorized representative, of the property;
- F. Approximate north arrow, scale, assessor's map and lot number in the lower right-hand corner of the plan, and date the plan was prepared;
- G. General layout of building façade and associated entrance(s), sidewalk, curb and existing street furnishings and utilities (i.e. utility poles, fire hydrant, street lights, signs, and other site furnishings located on abutting properties); and
- H. Property lines and other features necessary to indicate the location of the Public Way and demonstrate safe passage for pedestrians.

5.10.7 Review Standards.

The use of the public way must be designed to accommodate pedestrians and patrons without danger to the public health or safety. To this end the following standards must be satisfied:

- A. A Pedestrian Access Route as defined in 5.10.3 must be provided within the Public Way at all times.
- B. Site furnishings must not block customary access to the street, such as, but not limited to, curb cuts, cross walks, doors to park cars
- C. Site furnishings must not extend past the frontage of the property that is being considered for the permit.

5.10.3 Definitions.

Terms, phrases and words in this chapter have the meaning given herein or, if not defined, are given their ordinary accepted meaning:

Public Way means, for the purposes of Chapter 5.10 only, the area between the street curb (and edge of street pavement if curb does not exist) and the property line. If a land title survey or other official documentation demonstrating the location of the property line is not provided, it will be assumed that the public way extends to the building façade.

Site furnishings means those elements and site amenities that are shown on the sketch plan that accompanies the Use of the Public Way permit application and approved by the Code Enforcement Officer (CEO) and Town Planner. Such elements may include, but are not limited to: benches, tables, chairs, umbrellas, bicycle racks, and trash receptacles. Excluded elements include: vending and soda machines, refrigerated cabinets, ice machines, freezer chests and other like appliances. There may be no signage and/or advertising associated with the site furnishings unless as reviewed and approved by the CEO and Town Planner per Town Code 16.8.10.1, et seq.

Pedestrian Access Route (PAR) must be free of obstructions and, at a minimum, include the following:

1. Surfaces must be firm, stable, and slip resistant. Concrete or asphalt must be free of holes and depression. Gratings, access covers, and other appurtenances must not be located on curb ramps, landings, and gutters within the PAR;
2. Width clearance must be 4 feet minimum, with a continuous passing width of 5 feet;
3. Passing width at a 200-foot intervals must be 5 feet by 5 feet minimum; and
4. Vertical clearance must be 7 feet in height.

SUBMITTALS THAT STAFF DEEMS SUFFICIENTLY LACKING IN CONTENT WILL BE RETURNED TO THE APPLICANT WITHOUT REVIEW.

2012-2014
PLANNING BOARD ACTION ITEMS

ITEM #	START DATE	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
1	8/9/2012	16.10.9.2 REDEFINE FIELD CHANGES: Major/Minor	1		
2	10/11/2012	REVIEW 16.10 (WORKSHOP ITEM #1 FROM 10/11/12 WORKSHOP) Plan Application Review	3		
3	10/11/2012	Post Building Permits on Web Site		Requested: Shelly Bishop: TBD	
4	10/11/2012	Proposed Ordinance Changes on line	2		
5	10/11/2012	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING	1	at sketch plan- 4/24/13	Ongoing
6	10/13/2012	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	No DPW update submitted since October, 2012	
7	10/13/2012	BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES: 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances (Bob M.)	2	Workshop: Sustain So ME: set up January 2014 workshop (1/24 AM)	Ongoing
8	2/14/2013	DEFINE COMMERCIAL RECREATION	2		
9	2/28/2013	UPDATE DESIGN STANDARDS FOR LED LIGHTING:	3		
10	3/28/2013	Set up Workshop to discuss High Pointe Circle Issues: Road Extension & Gate and use of woods road; review prior approvals and minutes	1	Staff (GM) will attempt to resolve and report to KPB (4/25/13)	
11	3/28/2013	CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year (See also: VIII.3.i.1 2015 Code Amendments: Briefing Book)		May 15, 2013 Workshop: December 3, 2013 workshop, w Soil Suitability;	Ongoing
12	4/11/2013	Format of Comp Plan		ON HOLD	
13	4/25/2013	WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	2	KOSC wants input	
14	4/26/2013	ROADS / SIDEWALKS TO NOWHERE (ROW plans)	1	Ongoing	
15	8/22/2013	Site dev pre-meeting; CMA construction inspection;	1		
16	10/24/13 Amendment	DPW Road Cuts: Title 5 amendment; approved by PB 10/24/13; to Council 11/25/13		Revise per Council Action (on Hold)	
17	10/24/2013	Shoreland definition			
18	10/24/2013	HAT - Highest Annual Tide: no Elevation 6			
19	10/24/2013	Definition: Substantially complete re: development vs. building permits			
20	10/24/2013	Soil Suitability Guide; discontinue: (NRA)	1	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval	
21	11/14/2013	Waivers; legal issue?		January 2014	
22	11/14/2013	Fines			
23	11/14/2013	16.7.3.5.6 Reconstruction periods			

2012-2014
PLANNING BOARD ACTION ITEMS

24	11/14/2013	Structure replacement outside of shoreland zone (missing from code)	1	
25	11/14/2013	Federal standards, re: road design		
26	11/14/2013	By-Law changes	1	Markup provided; discussed 11/13, 12/13; 1/14; 3/14; 7/14
27	11/14/2013	Review flood hazard ordinance; 16.5.3.4		Coordinate w CMA; need estimates
28	12/12/2013	Structure replacement inside shoreland/excavation	1	
29	12/12/2013	Pedestrian / Bike paths		
30	12/12/2013	Minor subdivisions; density; septic		
31	1/23/2014	Outdoor Seating, extend to other zones (See also: VIII.3.i.iv 2015 Code Amendments: Briefing Book, #38)	1	Use of the Public Way- For PB review: 10/23/14
32	1/24/2014	Findings of Fact workshop		
33	2/27/2014	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	1	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14
34	2/27/2014	List of Committees/Boards to monitor ?		
35	2/27/2014	Flag Lots (16.8.-16.9)		
36	3/13/2014	Septic pretreatment requirement as bonus (See also: VIII.3.ii 2015 Code Amendments: Briefing Book, #38)		
37	3/13/2014	Proof of building materials (ie. sand from Alfred for septic systems)		
38	3/27/2014	FY 2015 Amendments: Briefing Book ii. Septic pretreatment iii. Quality Improvement Development Standards update iv. Outdoor seating to other zones v. Adjacent off-site improvement update vi. Consolidate RR and RC zones vii. Consolidate BL and L-1 zones viii. Sign standards/education/enforcement		
39	3/27/2014	Kittery Historic Resources; historic designation identification		
40	5/8/2014	Sign ordinance changes (see also Briefing Book, #38)		Workshop: 7/14/14; Int'l Sign Assoc. 10/23/14
41	5/22/2014	Invasive plants;		
42	5/22/2014	Encourage rain gardens in parking areas (parking credits/bicycle racks)		
43	5/22/2014	Shared driveways (Conserv. Comm)		
44	5/22/2014	Committee Updates		
45	7/24/2014	LED/Message boards/internal & external lights & timers		
46	7/24/2014	Window/A-frame & portable signs/banners		
47	7/24/2014	Sign character/appearance/administration & enforcement		
48	8/28/2014	Removal of shoreland invasive plants		

