



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, December 18, 2014

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

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 12/11/2014

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.

OLD BUSINESS

ITEM 1 – (15 minutes) - Board Member Items / Discussion

- | | |
|--|------------------------|
| A. Action List | E. Committee Updates |
| B.. Proposed Amendments to Town Council– 12/8/14 MTG | F. Amended Bylaws |
| C. Route 1 – BP District TPB Advisory Committee | G. 2015 Board Officers |
| D. Overlay Zone (Kittery Crossing and Coastal Route 1 Malls) | H. Other |

ITEM 2 – (15 minutes) - Town Planner Items:

A Memorial Circle Improvement Plan; B.KACTS Grant for Route One By-Pass locale; C. Bike/PEd Plan; D. Kittery Foreside Committee; and E. Other.

NEW BUSINESS

ITEM 3 – (20 minutes) – Town Code Amendment - Title 16.2.2 Definitions – Selected Commercial Recreation. Action: discuss amendment. Proposed amendment provides flexibility in what activities are considered as commercial recreation, and to specify those activities that are expressly prohibited.

ITEM 4 – (20 minutes) – Town Code Amendment - Title 5.10 Use of the Public Way. Action: discuss amendment. Proposed amendment allows for expand the current provision to other non-residential zones and also addresses liability and removal of furnishings.

ITEM 5 – (20 minutes) – Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction. Action: discuss amendment. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone.

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.

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	3		
2	10/13/2012	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	No DPW update submitted since October, 2012	
3	2/14/2013	DEFINE COMMERCIAL RECREATION	1	Review: 12-18-14	
4	2/28/2013	UPDATE DESIGN STANDARDS FOR LED LIGHTING:	3		
5	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)	
6a	10/13/2012	BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances		Workshop; Sustain So ME; set up January 2014 workshop (1/24 AM)	
6b	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.i 2015 Code Amendments: Briefing Book)		May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability;	
6c	4/25/2013	WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES		KOSC wants input	
6d	12/12/2013	Minor subdivisions; density; septic			
7	4/26/2013	ROADS / SIDEWALKS TO NOWHERE (ROW plans)/Shared Driveways/ROW Standards	1		
8	8/22/2013	Site dev pre-meeting; CMA construction inspection;	1	December, 2014	
9	10/24/13 Amendment	DPW Road Cuts; Title 5 amendment; approved by PB 10/24/13; to Council 11/25/13	1	Revise per Council Action / Re-visit: January 2015	
10	10/24/2013	Shoreland definition	1	Get from State?	
11	10/24/2013	HAT - Highest Annual Tide: no Elevation 6	1	January, 2015	
12	10/24/2013	Definition: Substantially complete re: development vs. building permits	1		
13	10/24/2013	Soil Suitability Guide; discontinue; (NRA)	Done	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval	Pending
14	11/14/2013	Fines	3	CDM to discuss with TM	
15	11/14/2013	16.7.3.5.6 Reconstruction periods (in OZ-SL and RP; state requirement)	?	Review: 12-18-14	
16	11/14/2013	Structure replacement outside of shoreland zone (missing from code)	1	Review: 12-18-14	
17	11/14/2013	By-Law changes	1	Markup provided; discussed 11/13; 12/13; 1/14; 3/14; 7/14; Review/finalize 12/18/14	
18	11/14/2013	Review flood hazard ordinance; 16.5.3.4	3	Coordinate w CMA; need estimates	
19	12/12/2013	Structure replacement inside shoreland/excavation	2	CDM	

2012-2014
PLANNING BOARD ACTION ITEMS

20	12/12/2013	Pedestrian / Bike paths / Bike Racks	1	CDM will provide existing bike path plan	
21	1/23/2014	Outdoor Seating, extend to other zones	1	Use of the Public Way- For PB review: 10/23/14; Review: 12/18/14	
22	1/24/2014	Findings of Fact workshop (include municipal fiscal impact)		Staff will work on process	
23	2/27/2014	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Done	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14	Pending
24	2/27/2014	List of Committees/Boards to monitor ?	1	2015	
25	2/27/2014	Flag Lots (16.8.-16.9)	Done		Pending
26	3/13/2014	Septic pretreatment requirement as bonus (See also: VIII.3.I.ii 2015 Code Amendments: Briefing Book, #38)	Done		Pending
27	3/13/2014	Proof of building materials (ie. sand from Alfred for septic systems)		Check with other communities	
28	3/27/2014	FY 2015 Amendments: Briefing Book			
29	3/27/2014	ii. Septic pretreatment iii. Quality Improvement 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	3	Status of Briefing Book to Council?	
30	5/8/2014	Kittery Historic Resources; historic designation identification			
30a		Sign ordinance changes	2	Workshop: 7/14/14; Int'l Sign Assoc: 10/23/14	
30b		Message boards/internal & external lights & timers			
30c		Window/A-frame & portable signs/banners			
31	5/22/2014	Sign character/appearance/administration & enforcement	3		
32	5/22/2014	Invasive plants; shoreland invasive plant removal	3		
33	5/22/2014	Encourage rain gardens in parking areas Parking credits	2		

Revised per comments by Councilor Dennett.

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. A 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 such approval, is not substantially the 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 is has not commenced within one (1) year from the date of Planning Board approval, or Where work has commenced within one year of such approval, the 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. Prior to expiration, 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's approval expires, the applicant may re-apply subject to the Town Code current at the time of re-application.

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 case-by-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.

A. 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 provided the request is submitted to the Board prior to the expiration of approval.

B. 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.

Council Hearing, Monday, December 08, 2014

"10. PUBLIC HEARINGS

a. (120114-1) The Kittery Town Council moves hold a public hearing and hereby ordains amendments to Title 16, Chapters 16.10, 16.2, 16.3, 16.7, and 16.8 of the Kittery Town Code, as recommended by the Planning Board."

General flaws:

1. No Planning Board hearing on Chapter 16.10 was found. Item 1 includes a change to Chapter 16.9.3.8 which is not included in Council agenda.
2. No enactment statement expressing legislative intent nor bases of law is provided (see attached).
3. The generic "Ordinance Revision Memoranda" inadequately explain the need and justification (e.g. Item 2 references three attachments not provided so the "orders" may be examined and understood; still uses MRSA; and makes a bald claim of 38 MRS S438-A(4), but provides no information on what the state "minimum guidelines" are, nor any comparison to how Kittery's ordinance is deemed deficient.)
4. The Town Manager's report lists evaluation of 8 items, yet only four are presented for hearing. With no comment on two of those presented, for the sum of all others, only one recommendation is made. Great use is made of the words "assume", "question", "concern", "occurred". It must be inferred that sufficient issue exists with those proposals that they should have been presented for hearing. Ad lib legislation on highly complex matters has never been a good idea.

Specific flaws:

TMPRG Item 2: 10 pages of proposal, and a single comment about a definition. (More later).

TMPRG Item 3, 16.7.3.5.12: It appears that part of these Planning Board proposals would increase the minimum lot size to 6,000sf (elsewhere). So proposing 5,000 here is contradictory. There are other inconsistencies/conflicts with land area per dwelling unit and lot size. For example:

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***

Minimum lot size **6,000 square feet**

TMPRG Item 3, Lines 123-140 (changed format): Concur. Use of footnotes for enforceable language is a poor legislative technique and they may well fall within Town Code Title 1, Section 1.2.3, Catchlines of Sections.

TMPRG Item 3, Lines 143-147: Concur. (More later).

PLANNING BOARD ITEM 1:

Pg 2, Line 39, 41, 45, 47: "...will expire...". "will" means "is about to", or "is going to". That usage leaves ambiguity. More specific would be to say, "...expires..."

Note: Consideration should be giving to requiring the specific dates of expiration be noted in the Planning board approval.

Pg 2, Lines 40 & 42. "...within one (1) year from Planning board date of approval." "...within three (3) years of the original date of..." Two different phrases to refer to the same date.

Pg 2, Lines 46 & 48. Same issue as above.

Pg 2, Line 51: All plans are "case-by-case", making this phrase superfluous.

Pg 2, Line 55: "...the current Town Code." Raises the question of what that "current" code is, this one or one ordained in the future? Better to say, "...the Town Code then in effect."

Pg 2, Line 69 & 73. See similar notes above.

PLANNING BOARD ITEM 2:

As noted under general, above, no evidence of the actual "orders" is provided and no comparison state guidelines, so no evaluation of consistency or compliance is possible to determine. Nor can other statutory considerations be reviewed for context/applicability (e.g. home rule).

Pg 2, Lines 34-43. A dwelling unit is a dwelling unit is a dwelling unit. Attempting to create a separate definition for a single zone is absurd and would most likely lead to unintended consequences. Part of the current definition objective was to insure that the larger size requirements for elderly, ADU, and TIFDU remain. A single definition consistent with both can easily be derived without misusing "shall".

Dwelling unit means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time and containing cooking, sleeping and toilet facilities. The term includes mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not dwelling units. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit.

Pg 2-3: Significant confusion arises over the use (or possibly misuse) of the terms "eldercare facility", "elderly housing", "nursing care facility", and "convalescent care facility". See all definitions and application.

Pg 2, Lines 93-116: Note that these "NOTES" apply exclusively to the Mixed Use zone. If the actual intention to set standards applicable to the Shoreland and/or Resource Protection zones, this should be removed from the one base zone and inserted into the overlay zones.

Pg 2, Lines 100-109:

Proposed:

~~NOTE 2: For dwelling units that are part of a mixed use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet. For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones.~~

If the parking for the residential units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet except in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.

Should be:

NOTE 2: For dwelling units that are part of a mixed use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is ~~integrated into~~ encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area.

Further, whatever is intended with these note revisions seem unnecessary with existing standards in the Shoreland Overlay Zone for MU, R-RL, R-S, and R-KPV IN THE BASE ZONE (all at 40,000sf). For MU-BI, the requirement is already 6,000sf, and the Foreside proposal would double the shoreland requirement to 10,000sf where the base zone is 5,000. Why/how is Foreside different than Badgers Island?

Page 4, Lines 154-166: Require a minimum shore frontage, while it is readily evident that many, many lots in the overlays have no frontage.

Pg 4, Line 187: How/why is the MU zone different from Commercial or Business enough to restrict coverage to 20% vs 50%?

Pg 6, Lines 267-269: From ME DEP 06-096-1000, but is inconsistent with voter approved petition for ADU (a dwelling unit) to be locatable in all zones (Temporary Intra-Family Dwelling Units should be included). Specific attention should be given to voter interests for all of the purposes those units were created. It is not a given that the DEP rules are inviolate. (i.e. (ADU)**16.8.25.4.1 Lot Standards. C. Zone Lot Size and Unit Density.** The property on which an accessory dwelling unit is located must meet the size required by a zone's standards. **However, an accessory dwelling unit is exempt from the density requirement of such zone.**

Pg 6, Lines 279-280: The parentheses around the phrase "(in cases where the structure is located in a Shore/and Overlay or Resources Protection Overlay Zone.)" is awkward construction and leads to confusion that either Board may... especially with the period after "zone". Clearer grammar (if the intent is for only the Planning board to have the authority) would be, "The Board of Appeals, or Planning Board in cases where the structure is located in a Shore/and Overlay or Resources Protection Overlay Zone, may restrict..." (This issue occurs in several other locations.)

Pg 6, Line 289: Whether “by any cause” or “regardless of the cause”, a negligent owner, or one committing arson would achieve a benefit not otherwise available?

Pg 6, Lines 293-295: See comment for lines 279-280. “, in accordance with this Code.” is redundant and superfluous.

Pg 6, Line 297: The first sentence is an absolute, “In no case will a structure be reconstructed or replaced so as to increase its non-conformity.” Which is put paid by the rest of the paragraph pointing to sections which allow expansion.

Pg 6, Line 306: Has the words, “~~will~~ shall must be”. Current passage says, “will be”. If the intention is to make it mandatory, the revision should be, “~~will~~ must be”.

Pg Line 311: Removes “~~through no fault of action by the owner~~”. See comment for line 289.

Pg 7, Line 346: Refers to section 16.4.3.5, which is titled and relates only to “Business Use Changes” whereas this section appears to allow approval for any conforming use.

Pg 7, Lines 348-354: Authorities should be identical. (e.g. BoA ...not more nonconforming...(whatever that may mean) and, PB ...per Section 16.7.3.6.2).

Pg 7, Line 370-371: Has the word “shall” which should be removed. “...meet the dimensional requirements.” Of what?

Pg 8, Line 378: Has the phrase, “... at the time of adoption of this Code”. At which time of adoption of the Code?

Pg 8, Line 382: Has “MRSA” which is an incorrect reference. Should be “MRS”.

Pg 8, Lines 391-392: Has the phrase “...at the time of or since adoption or amendment of this Code.” Different that the one noted above and completely meaningless since no specific time can be determined.

Pg 8, Line 396: “dimensional requirements”. See comment for lines 370-371.

Pg 8, Line 402. “located outside the Shoreland....” It is unclear, and may require legal determination, as to whether this dramatic change to grandfathered protections is lawful.

Pg 9, Lines 444-445: This proposal adds two whole new dimensions to the requirements which will take a patiently detailed examination to determine clarity and consistency.

Maine CEO Manual excerpts (and a number of others):

“To determine the purpose of the ordinance provision, interpret each section to be in harmony with the overall scheme envisioned by the municipality when it enacted the ordinance. The assumption is that the drafter would not have included a provision that clearly was inconsistent with the rest of the ordinance.

A zoning ordinance must be construed reasonably with regard to the objects sought to be attained and to the general structure of the ordinance as a whole. All parts of the ordinance must be taken into consideration to determine legislative intent.

The restrictions of a zoning ordinance run counter to the common law, which allowed a person to do virtually whatever he or she wanted with his or her land. The ordinance must be strictly interpreted. Where exemptions appear to be in favor of a property owner, they should be interpreted in the owner's favor."

Pg 9, 482-484:

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.

Appears to change the original meaning somehow, but its meaning and possible application is mystifying.

PLANNING BOARD ITEM 3:

This proposal is a fractured mess. The summary makes no reference to the renumbering and move of certain sections and addresses only the proposed new section 16.7.3.5.12.

Pg 2, Lines 47-78: Addressed extensively in Item 2, no revisions are shown here.

Pg 2, Line 80: Refers to Section 16.7.3.5.11 which currently is titled, "16.7.3.5.11 Nonconforming Parking or Loading Space." And has no subparagraphs. Section 16.7.3.5.10 Contiguous Non-Conforming Lots. C. Single Lot Division. (The second subparagraph C in the section) addresses the division of any lot in town, whereas the proposed change would permit it only in nonconforming lots.

Pg 3, Lines 102-140: This proposal adds another new dimension to the requirements which will take a patiently detailed examination to determine clarity and consistency.

Pg 4, Lines 143-147. As above and concur with Manager's statement.

PLANNING BOARD ITEM 8:

Despite not having the associated ordinance enactment clauses, this proposal is so simplistic, it may be ordained without further ado, especially since the subject was raised well over a year ago.

ATTACHMENT 1.

AN ORDINANCE relating to incorporating integrated, workable, and enforceable, requirements for a voter approved citizen petition for accessory dwelling units in the town by amendment to Chapters 16.08, 16.12 and revision of 16.32 of the Kittery Town Code, as more particularly set forth herein.

The 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.

WHEREAS, the Kittery Town Council is enacting this Ordinance in order to amend the requirements related to accessory dwelling units as enacted by citizen petition referendum and voter approval on November 08, 2008 in order to make them workable, enforceable, and in compliance with all present and longstanding requirements of the current land use and development code of general application throughout the town; and

WHEREAS, the Town Council intends, through the adoption of this Ordinance, to provide such integrated, workable, and enforceable, framework while maintaining as fully as possible the spirit, intent and primary objectives of the voter enacted ordinance;

NOW THEREFORE, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS THE FOLLOWING ORDINANCE TO BE CODIFIED IN THE TOWN CODE TITLE 16, TO AMEND SECTION 16.08.020 DEFINITIONS; SUBSECTION 16.12.110, COMMERCIAL – C; AND, TO REVISE CHAPTER 16.32, DESIGN AND PERFORMANCE STANDARDS, ADDING ARTICLE XXIX, AS PRESENTED.

Approved as to form: {NAME}, Town Attorney

INTRODUCED and read in a public session of the Town Council on the ___ day of _____, 2___, by: _____ {NAME} Motion Councilor as seconded by _____ {NAME} Councilor and passed by a vote of TBD.

THIS ORDINANCE IS DULY AND PROPERLY ORDAINED by the Town Council of Kittery, Maine on the ___ day of _____, 2010, {NAME}, Chairperson

Attest: {NAME}, Town Clerk



Town of Kittery, Maine

Town Planning and Development Department
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Telephone: (207) 439-0459 Fax: (207) 439-6806
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KITTERY TOWN PLANNING BOARD BYLAWS

Adopted January 17, 1974
Revised and approved, November 19, 1987
Revised and Approved, May 23, 1991
Revised and Approved October 11, 2007
Revised and Approved February 28, 2008

[4/2013 edits per Frank Dennett, for discussion]

[12/2013 edit, Susan Tuveson]

[3/2014 edit, Susan Tuveson, per board comments]

The Planning Board of the Town of Kittery has been established under the Town Charter adopted 1967, according to HP 521-LD768, Revised Planning and Zoning Statutes in Maine, 1969, and other applicable State Statutes.

Section 1. The Planning Board ~~shall consists~~ shall consist of seven (7) ~~permanent~~ members appointed by the Town Council in accordance with the Town Charter adopted in 1967 and revised on June 11, 2002. ~~Members shall be residents of the Town for at least one (1) year prior to their appointment.~~ The term of office of a member is three (3) years. ~~The Town Clerk will swear in all members. All members will take and subscribe to the oath of office as administered by the Town Clerk or any other person authorized by law to administer an oath.~~ Upon appointment by the Town Council, and upon renewal of term, each member will take and subscribe to the oath of office as administered by the Town Clerk or any other person authorized to administer an oath.

Section 2. At the first regularly scheduled meeting in December, the Board shall elect a ~~Chair, Vice chair, and Secretary~~ from its regular ~~among its members~~ membership, a Chair, Vice Chair, and Secretary. ~~for the ensuing year.~~ Term of service is one year.

37 Section 3. ~~The regular m~~ Meetings of the Planning Board ~~shall be~~ **shall be** held in the Town
38 Office at 6:00 p.m., on the second and fourth Thursdays of each calendar month, except for
39 November and December ~~of each year~~, when the regular meetings ~~shall be~~ **be** held on the
40 second and third Thursdays. ~~of those months.~~ ~~When~~ **Where** a regularly scheduled Planning
41 Board meeting ~~falls~~ **occurs** on a holiday, the regular meeting for that date shall be set by the
42 Board at its last regular meeting prior to the holiday. The date, time or location of any regular
43 meeting may be changed by ~~an vote of the Board at a previous meeting upon an~~ affirmative vote
44 of four (4) members, ~~of the Board.~~ **Taken at any regular meeting of the Board, in accordance**
45 **with (Maine meeting provision: cancellations) plus citation.**

46
47 Section 4. Special meetings may be called by the Chair; ~~and,~~ **or,** in ~~the~~ case of ~~his/her~~ **the**
48 **Chair's** absence, disability or refusal; **to participate,** may be called by the Vice-Chair, or by four
49 (4) members of the Board. Notice of ~~said~~ **such special** meeting **shall be made** to Board
50 Members ~~shall must be made~~ by telephone at least 12 hours before the meeting-, **and by email**
51 **with confirmation by return email within the same 12-hour time restriction.** The telephone call
52 **and text of the email shall will shall** set forth the matters, **or matters,** to be **discussed and/or** voted
53 on, and ~~nothing else shall may~~ **other(s) shall** be considered at such special meeting.

54
55 Section 5. **At the appointed time,** ~~The~~ **the** Chair, or in the absence of the Chair, the Vice-Chair,
56 shall ~~take the chair at the time appointed for the meeting,~~ call the members to order, ~~have the roll~~
57 ~~called~~ **call the roll,** **lead the Pledge of Allegiance,** and **upon** determining **whether** a quorum of
58 **members** is present, **shall** proceed with the business of the meeting. ~~Following roll call, the order~~
59 ~~of business shall be~~ **The order of business shall be** as follows: (a) **approval of the minutes of the**
60 **preceding meeting,** (b) **public comment,** (c) **old regular business,** (d) **Board members' time,** (e)
61 **Planner's time,** (f) **new regular business,** (g) **adjournment.**

62
63 Section 6. Minutes of all meetings, ~~and workshops,~~ **and site walks shall must shall** be recorded.
64 ~~Said minutes shall be reviewed, corrected and approved by the Board at the first meeting~~
65 ~~following transcription by the recorder.~~ **Review, correction and approval by the Board of such**
66 **minutes shall occur at the first meeting following transcription by the recorder, and distribution**
67 **to Members. Upon approval, Copies- copies** of said ~~approved minutes~~ shall be furnished to the

68 Town Manager, Town Council Chair, ~~the Chair of the Zoning Board of Appeals~~ **Chair**, and the
69 Conservation Commission **Chair**. following approval.

70
71 Section 7. A quorum consists of four (4) members. ~~All decisions shall be made by~~require a
72 ~~minimum of~~ **Where only four members are present, all decisions must be made upon** four (4) like
73 votes, except on procedural matters. **Where more than four members are present, decisions shall**
74 **be made upon a minimum of four (4) like votes.**

75
76 Section 8. ~~If a member has~~ **Where a member may possess** a conflict of interest **pertaining to a**
77 **matter before the Board**, ~~and is not allowed to vote on a~~ **that member shall not be permitted to**
78 **vote on said** matter, ~~that member shall~~ **may and shall** not be counted by the Board ~~in~~ **for the**
79 **purpose of** establishing the quorum ~~for~~ **in** the matter. ~~in which he or she has a conflict.~~ Public
80 disclosure of ~~such~~ **any possible** conflict shall be made before discussion of the agenda item in
81 question. To ~~an~~ **limited** extent, as determined by the Chair, members of the public may be
82 ~~allowed~~ **permitted** to comment on this matter at this time. A majority vote of the Board members
83 present, ~~(except the member being challenged)~~ **minus the member under challenge**, shall decide
84 whether ~~an~~ **the** alleged conflict ~~in question is~~ **exists** such that it: ~~(a) may reasonably interfere with~~
85 ~~the affected member's ability to hear and act on the item impartially; and (b) to render an~~
86 **impartial hearing and decision**, and whether ~~it~~ **such participation by the member in question**
87 **would** ~~may~~ give the appearance to the public of an inappropriate conflict of interest so as to
88 undermine public confidence in the fairness of the meeting **and impartial treatment of the subject**
89 **matter.**

90
91 Section 9. ~~Attendance of members is expected at~~ **Members are expected to attend** all regular and
92 special meetings. ~~If~~ **Where** a member is absent from more than three (3) consecutive regular
93 meetings, the Board may then vote to recommend to the Town Council that the position be
94 declared vacant.

95
96 Section 10. Site walks called by the Chair ~~or~~ **and voted upon by a** majority of the Board ~~in~~
97 ~~accordance with ordinance requirements~~ are considered public meetings **and shall be properly**
98 **noticed to applicants, abutters and the general public according to requirements of ordinance.**

99 however ~~No~~ formal motions ~~shall may~~ be made, nor votes, ~~shall be made or~~ taken at a site walk.
100 ~~Public Public and abutter~~ notice ~~shall must~~ be given of all site walks, ~~and proper minutes taken.~~
101 ~~Minutes of site walks shall be the responsibility of~~ ~~the Planner, or Planner's designee,~~ is
102 responsible for minutes of site walks ~~and upon ratification~~ ~~Site walk minutes shall must shall~~ be
103 included in the records of applications before the Board.

104

105 Section 11. ~~At meetings~~ ~~the~~ Chair shall preserve order, may speak to points of order in
106 preference to other members, and shall decide all questions of order subject to appeal to the
107 Board by motion, regularly seconded, and no other business ~~shall may shall~~ be transacted until
108 the question on appeal is decided.

109

110 Section 12. The Chair shall declare all votes, but if any member doubts a vote, the Chair shall
111 cause a recount of the vote without debate.

112

113 Section 13. When a question is under debate, the Chair shall receive no motion but to adjourn,
114 or to move the previous question, or to lay on the table, or to postpone to a specified date, or to
115 refer to a committee or some administrative official, or to amend, or to postpone indefinitely:
116 which several motions shall have precedence in the order in which they stand arranged.

117

118 Section 14. The Chair shall consider a motion to adjourn as always in order, except on
119 immediate repetition; ~~and that the motion, and the motion to lay to remain~~ on the table, or to take
120 from the table, ~~shall must shall~~ be decided without debate.

121

122 Section 15. When a vote is passed, it ~~shall be is~~ ~~shall be deemed~~ in order for any member who
123 voted on the prevailing side; to move a reconsideration thereof at the same meeting, or at the
124 next succeeding meeting; ~~and w~~ ~~When a motion of reconsideration is decided, that made and~~
125 ~~seconded, the subsequent~~ vote ~~shall is shall~~ be final. ~~and may not be considered further.~~

126

127 Section 16. During a public hearing, ~~at the time appointed on an agenda for a particular matter~~
128 ~~before the Board,~~ any other person in attendance at the meeting wishing to address the Planning
129 Board on ~~an item,~~ ~~said item~~ shall so signify by raising his/her a hand. ~~and, w~~ ~~When recognized~~

130 by the Chair, and before addressing the subject matter of the hearing, such person shall approach
131 the lectern, or other designated place or manner for addressing the Board, shall state his or her
132 name and address for the record, and shall enter this same data in writing where and when
133 requested. ~~request permission to address the Board, stating his/her name, address and the subject~~
134 ~~matter on which they desire to address the Board.~~ At any other time during a meeting, the Chair
135 may, at his/her retains the discretion, to invite further public comment. In all cases, ~~the~~ Chair,
136 with consent of the Board, may set reasonable time limits on members of the public choosing
137 who choose to address the Board. Likewise, ~~the~~ Chair may also limit public testimony to that
138 deemed to be relevant and material to a pending issue the subject matter of the hearing, or other
139 Board concern.

140

141 Section 17. All meetings of the Board shall be public. However, the Board, upon
142 majority vote, The Board may recess for executive session, upon majority vote, consistent with
143 the Maine Right to Know Law statute, (MRSA Title 1, Sections 401-410), provided that the
144 motion to go into recess for executive session must indicate the precise nature of the business of
145 the executive to be conducted in such closed session, and include a citation of one or more
146 sources of including any and all relevant statutory or other authority that permits an executive
147 session for that business reference to such power to recess, and that final action not be taken by
148 the Board except in regular public sessions.

149

150 Section 18. Subcommittees shall be established by the Chair and shall consist of no more than
151 three (3) Board members. Planning Board subcommittee meetings are considered public
152 meetings, and the date, time and location of such meetings shall be posted in Town Hall and on
153 the Kittery Town website.

154

155 Section 19. These Bylaws may be revised by submission to the Board in writing of a proposed
156 change or changes, in writing to the Board, and scheduled for consideration in at least two
157 meetings of the Board. The change shall be effective upon adoption ratification
158 approval by the Board.

159

160 Section 19. Planning Board meetings ~~shall be~~ **shall be** conducted according to Robert's Rules
161 of Order. **Any and all** conflicts ~~shall be~~ **shall be** resolved in favor of these Bylaws.

162

163

ITEM
2C

Town of Kittery

Growth Management Program

2020

Pedestrian & Bicycle Advisory Committee Meeting

November 18, 2010

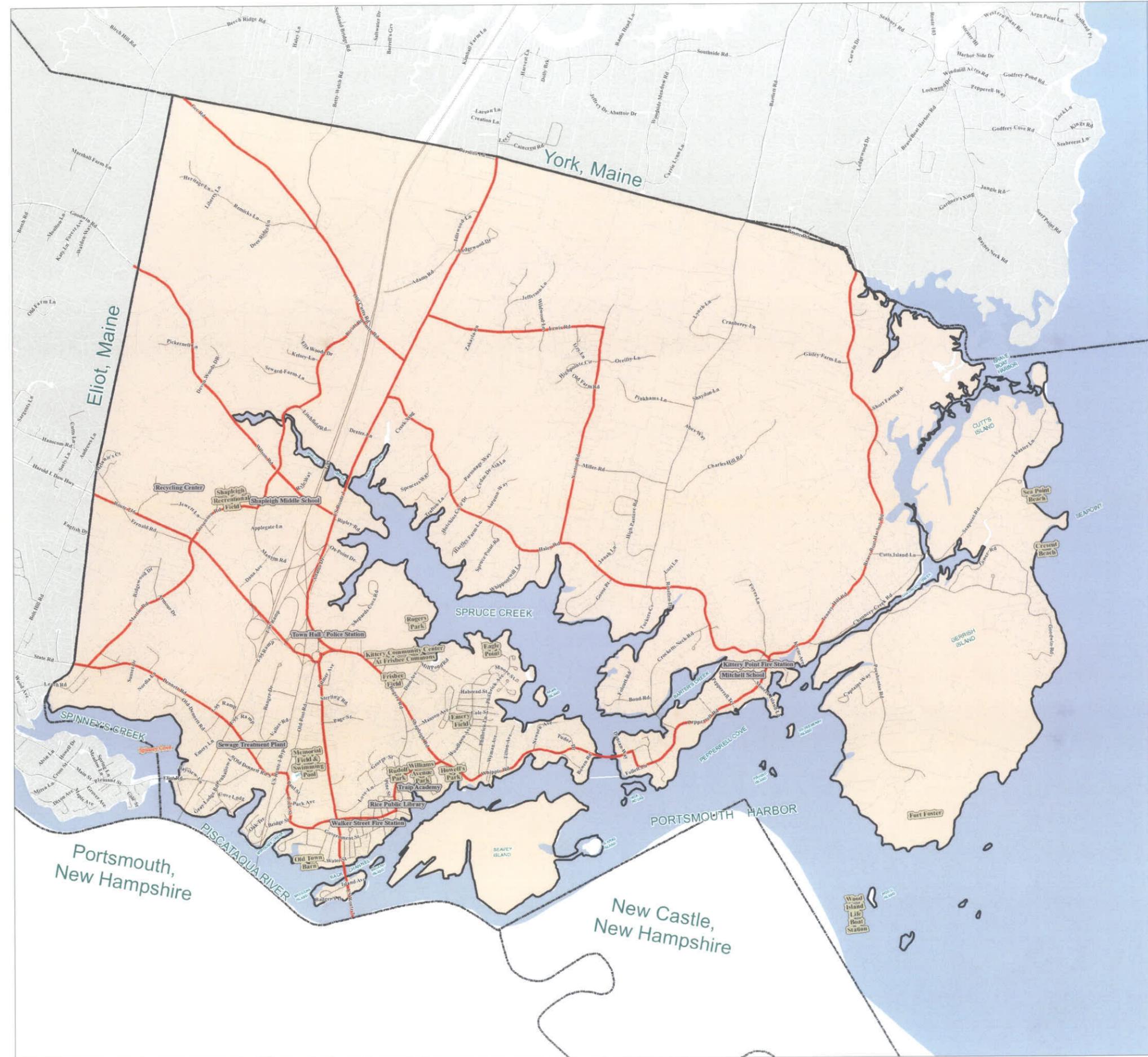
Draft Plan

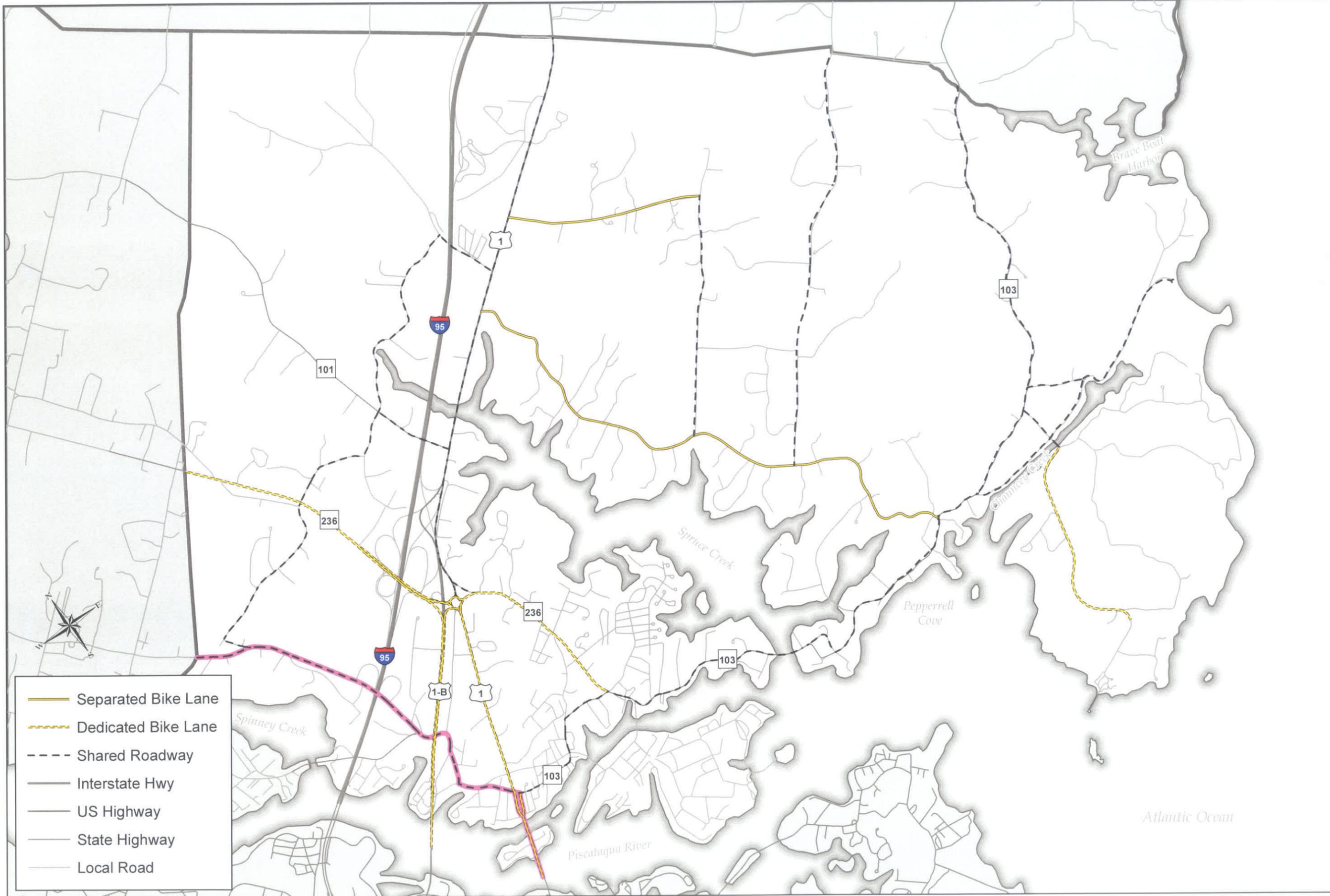
 Possible Pedestian and/or Bike Routes

Prepared by:
Kittery Planning Department
For use by the
Pedestrian and Bicycle Planning Advisory Committee



Coordinate System: NAD 1983 StatePlane Maine West FIPS 1002 Feet
Projection: Transverse Mercator
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False Northing: 0.0000
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Scale Factor: 1.0000
Latitude Of Origin: 42.8333
Units: Feet US
Author: Michael Anselmi
Date: 12/11/2010





- Separated Bike Lane
- Dedicated Bike Lane
- Shared Roadway
- Interstate Hwy
- US Highway
- State Highway
- Local Road

Map Index:

File Ref:

MasterPlan-BikeRoutes.mxd



Proposed Bicycle Routes

Prepared for Kittery Public Works by Jeff Normandin, Axis GeoGraphics



Date:

June 29, 2011

ITEM
20



Town of Kittery, Maine

Growth Management Program Plan - Kittery 2020

Transportation and Circulation - Pedestrian and Bicycle Way Plan



0 250 500 1,000 1,500 2,000 2,500 Feet

- Pedestrian and Bicycle Ways**
- Pedestrian and Bicycle Route
 - Existing Bicycle Way
 - - - Bicycle Improvement
 - Existing Pedestrian Route
 - - - Pedestrian Improvement
 - Points of Interest

DRAFT

Prepared For The Kittery Town Planning Board, Pedestrian and Bicycle Planning Advisory Committee
July 27, 2011



ITEM
2C



Growth Management Program

Transportation and Circulation
DRAFT
Pedestrian and Bicycle Way Plan

Legend

Shared Motor Vehicle,
Pedestrian, and Bicycle Ways

Bicycle Routes

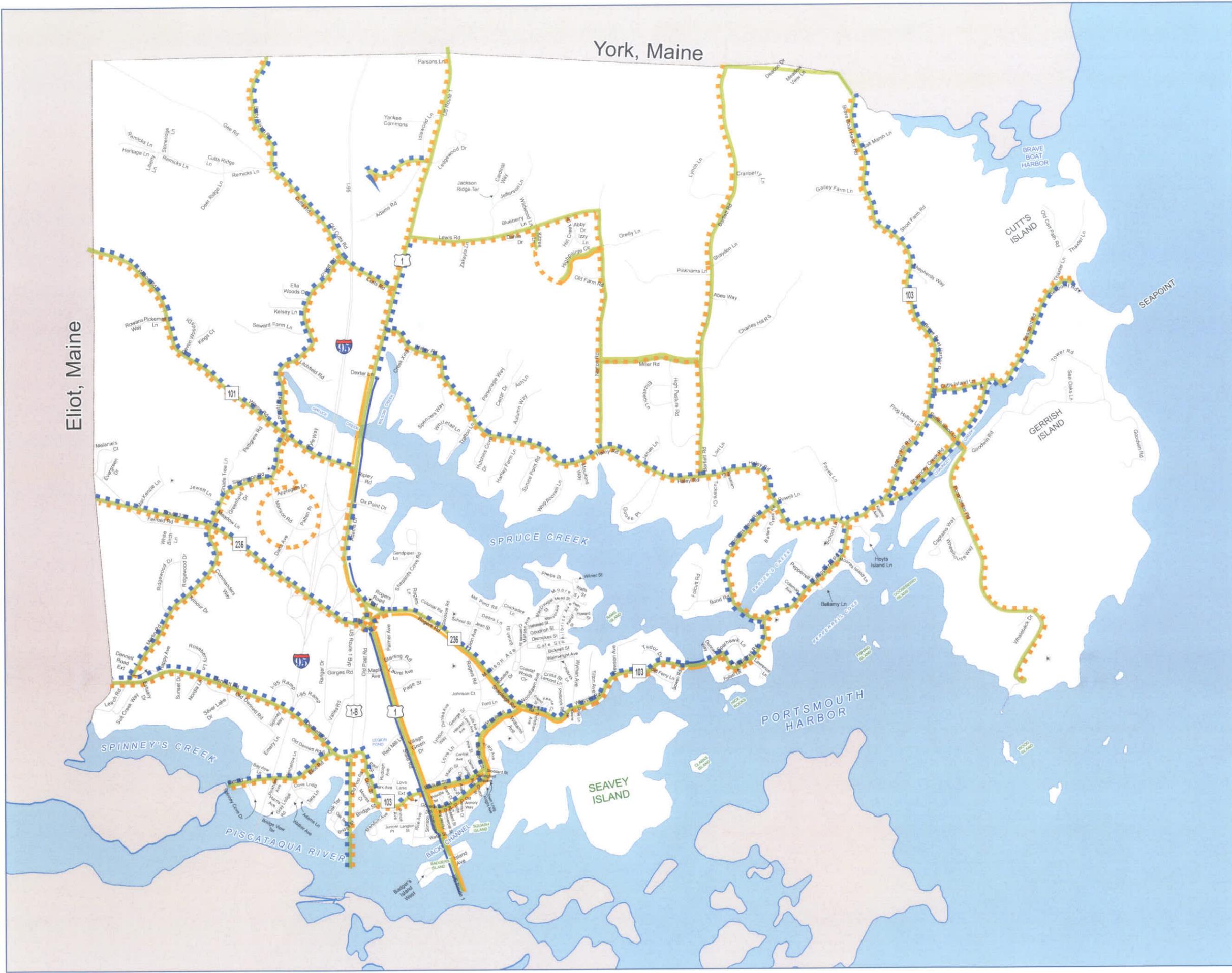
- Improvements Needed
- Existing

Pedestrian Routes

- Existing
- Improvements Needed

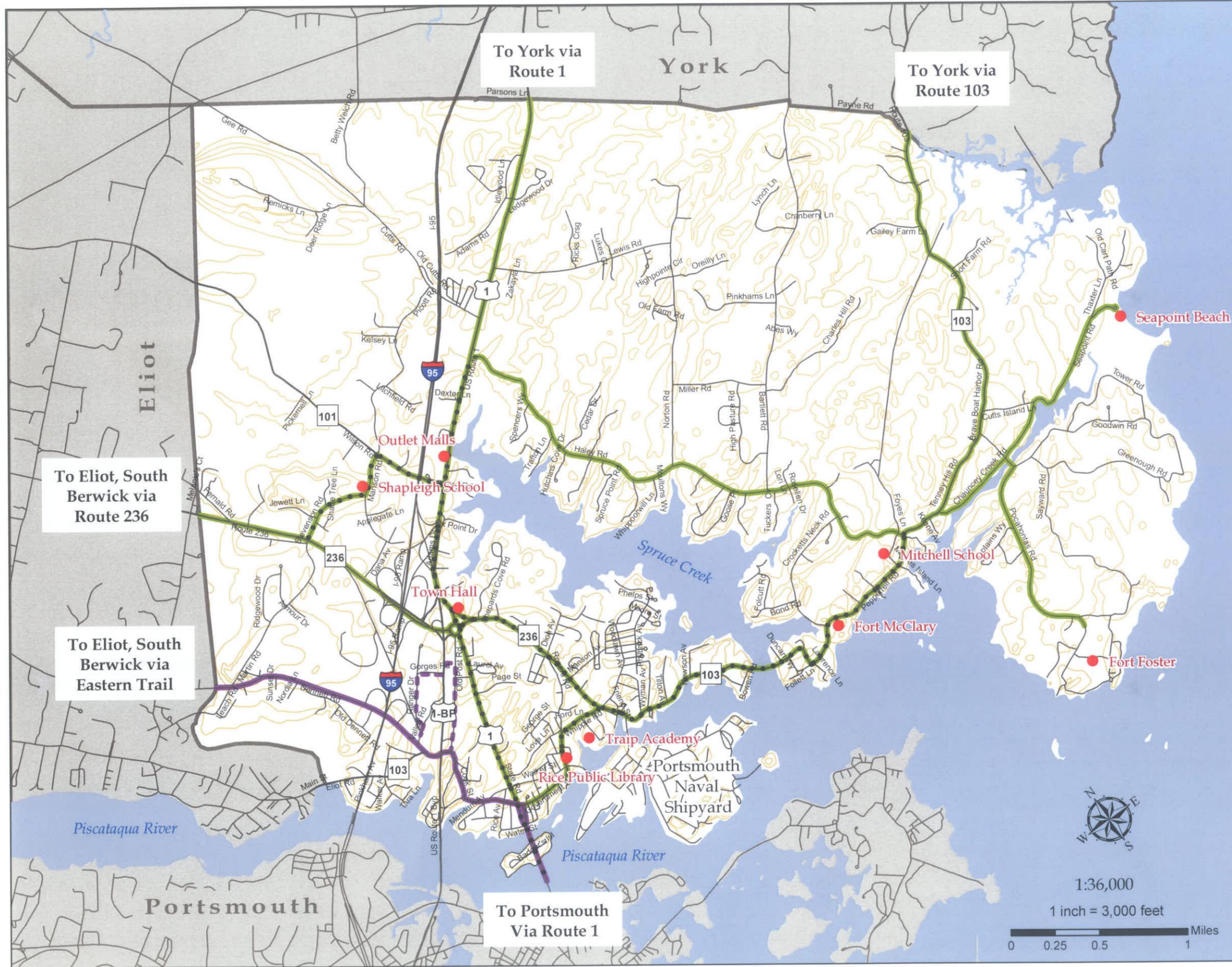


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 Units: Meter
 Author: Michael Asciola
 Date: 10/27/2011



York, Maine

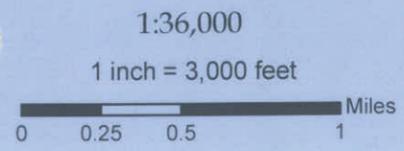
Eliot, Maine



Proposed Bicycle and Pedestrian Routes Kittery, Maine

- Possible Destination Point
- ⋯ Proposed Walking Route
- Proposed Bicycle Route
- Eastern Trail
- - - Eastern Trail (detour)
- Road
- Contour (20' interval)

Map produced by Jeff Normandin, Axis GeoGraphics, for the Town of Kittery. Data sources include the Maine Office of GIS (megis.maine.gov) and New Hampshire GRANIT (granit.unh.edu). Detailed meta-data on map layers can be found at their websites. The data presented is for general information only, and the locations of these features should not be considered authoritative. Axis GeoGraphics and the Town of Kittery will not be responsible for any legal claims or disputes arising as a result of the information presented here.
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ITEM 2-D

Town Planner Items

Kittery Foreside Committee

The Planning Board agreed to discuss the role and code requirement associated with the Kittery Foreside Committee. Attached is information to aid in beginning a discussion and to provide Staff direction.

The following is attached:

- 1) Title 16.3.2.15 MU-KF
- 2) Kittery Design Handbook, Part II Architecture
- 3) Section 2.07 Enumeration of powers *{town council power to appoint all members for all boards and committees created by statute, ordinance, charter or council action}*
- 4) Title 4 Boards, Commissions and Committees

Some potential questions:

- 1) Is the Kittery Foreside Committee (KFC) needed?
- 2) Does the current code that references the KFC adequate?
- 3) It appears there are not requirements/guidelines for membership. What credentials should be required for the committee members?

RECODIFICATION - ORDAINMENT – 07/26/2010
(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

1 **16.3.2.15 Mixed Use - Kittery Foreside MU-KF.**

2
3 **A. Purpose.**

4 To provide business, service, and community functions within the Mixed Use - Kittery Foreside zone and
5 to provide a mix of housing opportunities in the historic urbanized center of the community and to allow
6 for use patterns which recognize the densely built-up character of the zone and the limitations for
7 providing off-street parking. Design review is used to facilitate the revitalization of downtown Kittery
8 Foreside as a neighborhood center, while promoting economic development of service businesses and
9 walk-in shopping as well as respecting the zone’s historic and residential character.

10
11 **B. Permitted Uses.**

- 12 1. Dwelling units in single-family, duplex, and multifamily configurations and units in a mixed-use
- 13 building up to twelve (12) dwelling units per lot, but excluding mobile homes;
- 14 2. Public open space recreational uses;
- 15 3. School (including nursery school), hospital, eldercare facility, long-term nursing care facility,
- 16 convalescent care facility, municipal or state building or use, church; or any other institution of
- 17 educational, religious, philanthropic, fraternal, political, or social nature.;
- 18 4. Accessory uses including home occupation and church rectory;
- 19 5. Retail business and service establishments excluding those where the principal activity entails
- 20 outdoor sales and/or storage;
- 21 6. Business and professional offices, including financial institutions;
- 22 7. Shuttle service and ride sharing facilities;
- 23 8. Restaurant, coffee shop, bakery, cafes and similar food service operations but excluding drive-in
- 24 facilities;
- 25 9. Art studio or gallery;
- 26 10. Grocery store, food store;
- 27 11. Personal and/or business service;
- 28 12. Inn;
- 29 13. Commercial or private parking lots;
- 30 14. Marinas;
- 31 15. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of
- 32 seafood occur at the site;
- 33 16. Place of assembly, including theater;
- 34 17. Temporary, intra-family dwelling unit;
- 35 18. Accessory dwelling units; and
- 36 19. Specialty food and/or beverage facility.

37
38 **C. Special Exception Uses.**

- 39 1. Research and development;
- 40 2. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.

41
42 **D. Standards.**

43 1. The design and performance standards of Chapters 16.8 and 16.9 must be met except where
44 specifically altered in this subsection.

45
46 2. Dimensional Standards. The following space standards apply:

47		
48	Minimum land area per dwelling unit	5,000 square feet
49	Minimum lot size	5,000 square feet

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

50	Minimum street frontage	0 feet
51	Minimum front yard along:	
52	Government Street east of Jones Avenue including	
53	Lot 107 at the corner of Government and Walker Streets	0 feet
54	other streets	10 feet
55	Wallingford Square	0 feet
56	(Ordained 9/24/12; effective 10/25/12)	
57		
58	Minimum rear and side yards	10 feet
59	Minimum separation distance between principal	
60	buildings on the same lot	10 feet
61		
62	Maximum building height	40 feet*
63	*Except that for buildings located on lots that abut tidal	
64	waters, the highest point on the primary structure of the	
65	building including the roof, but excluding chimneys, towers,	
66	cupolas, and similar appurtenances that have no floor area,	
67	may be not more than thirty-five (35) feet above the	
68	average grade between the highest and lowest elevations	
69	of the original ground level adjacent to the building.	
70	Minimum setback from:	
71	water body and wetland water dependent uses	0 feet
72	all other uses (including buildings and parking)	75 feet
73		unless modified,
74		according to the terms
75		of subsection (E) of this
76		Section.
77		
78	Maximum building coverage	60 percent
79	Minimum open space on the site	40 percent
80		
81	Minimum land area per unit for eldercare facilities	
82	that are connected to the public sewerage system:	
83	dwelling unit with two or more bedrooms	3,000 square feet
84	dwelling unit with less than two bedrooms	2,500 square feet
85	residential care unit	2,000 square feet
86		
87	Minimum land area per bed for nursing care and	
88	convalescent care facilities that are connected to	
89	the public sewerage system	1,500 square feet
90		
91	3. Maximum Building Footprint.	
92	The maximum area of the building footprint of any new building is one thousand five hundred (1,500)	
93	square feet unless the building is replacing a larger building that existed on the lot as of April 1, 2005.	
94		
95	A. If the footprint of the pre-existing building was larger than one thousand five hundred (1,500) square	
96	feet, the maximum size of the footprint of the pre-existing building was larger than one thousand five	
97	hundred (1,500) square feet, the maximum size of the footprint of the new building may be no larger than	
98	the footprint of the pre-existing building.	

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

99 B. If the footprint of the new building is larger than one thousand five hundred (1,500) square feet, the
100 width of the new building as measured parallel to the front lot line may not be greater than the width of the
101 pre-existing building.

102
103 4. Design Standards.

104 Any new building, or additions or modifications to an existing building that:

105
106 (1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after
107 April 1, 2005, or

108
109 (2) is subject to shoreland overlay zoning as set forth in Section 16.7.3.5.1 must conform to the following
110 standards.

111
112 **NOTE:** This requirement does not apply to the replacement of a building destroyed by accidental or
113 natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not
114 increase the pre-existing building volume by more than thirty percent (30%).

115
116 a. Placement and Orientation of Buildings Within a Lot.

117
118 i. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring
119 buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site
120 and buildings, and buildings must be placed to frame, rather than block, vistas.

121
122 ii. Buildings and the front elevation must be oriented facing the street on which the building is located.
123 The siting of buildings on corner lots must consider the placement of buildings on both streets.

124
125 b. Overall Massing of Buildings.

126
127 The overall massing objective is to simulate a concentrated use of space in the Foreside zone while
128 avoiding the use of large, multi-unit buildings. In the interest of this objective, building footprints must
129 meet the maximums set forth above. Larger parcels may be developed but will require the use of multiple
130 buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the
131 existing architectural styles of the Foreside zone.

132
133 c. Grouping of Smaller Buildings.

134 When smaller buildings that are part of one project are placed adjacent to one another on the same lot or
135 adjacent lots, each building must have its own structure and elevation treatment that is different from its
136 neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall
137 arrangement of shapes.

138
139 d. Building Details.

140 Buildings must include architectural details that reflect the historic style of the Foreside zone. Molding and
141 trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should
142 be incorporated into the design.

143
144 e. Roof Slopes and Shapes.

145
146 i. Allowable roof shapes include a simple gable, gambrel, saltbox, and hip. The minimum roof pitch
147 must be 8:12 (rise over run) except in the case of a hip roof where a lesser pitch is acceptable.

148

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- 149 ii. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than
150 the pitch of the roofs on the buildings that are being linked.
151
- 152 iii. Flat or nearly flat shed roofs are not allowed except for porches, dormers, or attachments distinct
153 from the primary structure or where systems are concealed by standard roof forms.
154
- 155 iv. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of
156 buildings must apply the same roof plan principles to pitch and link roofs.
157
- 158 f. Fencing and Walls.
- 159
- 160 i. Fencing may be used to separate public and private spaces, mark property lines, and protect
161 plantings.
162
- 163 ii. Fences must harmonize with nearby structures and not unduly interfere with existing scenic views or
164 vistas.
165
- 166 iii. Picket and other medium height fences and low stone walls are permitted.
167
- 168 iv. Modern concrete walls and similar structures are prohibited.
169
- 170 v. Chain-link and stockade fences are not appropriate in front yards and may be used in side and rear
171 yards only if compatible with the overall design of the site.
172
- 173 vi. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be
174 screened with board fences, board and lattice fences, and/or landscaping.
175
- 176 g. Utilities.
177 All utilities serving a new building including electricity, telephone, cable, Internet, and alarm systems must
178 be placed underground from the access pole.
179
- 180 h. Preservation of Trees.
181 Existing large, healthy trees must be preserved if practical.
182
- 183 5. Signage
184 Display of signboard and/or products for sale may be placed on a Town sidewalk only if:
185
- 186 a. Products for sale displayed outside the building are limited to an area extending no greater than two
187 feet from the front facade of the building;
188
- 189 b. Signboards are permitted in accordance with a design detailing style and size submitted by Kittery
190 Foreside Committee and approved by the Planning Board and on file in the planning office;
191
- 192 c. Signboards and/or products for sale must be removed from the sidewalk at the close of each
193 business day;
194
- 195 d. An annual permit must be obtained from the Code Enforcement Officer. Permits are issued for a
196 calendar year or portion thereof, to expire December 31st of each year. Sign permit application fee,
197 reference Appendix A.

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

198

199

E. Special Parking Standards.

200

The Kittery Foreside zone is already largely built up and many buildings either completely or almost completely cover the lot on which they are located. Therefore, it is not possible to comply with parking standards which would otherwise be required for open land. To encourage the reuse of existing structures as far as practical, the Town establishes special parking standards and conditions within the zone.

203

204

205

1. Revised Off-Street Parking Standards.

206

Insofar as practical, parking requirements are to be met on-site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off-site or through joint use agreements as specified herein.

207

208

209

210

Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified herein:

211

212

213

214

a. Dwelling units in buildings that existed as of April 1, 2005 including the replacement of units destroyed by accidental or natural causes regardless of how configured: one parking space per dwelling unit;

215

216

217

218

b. Dwelling units in new buildings including the replacement of existing buildings other than the replacement of units destroyed by accidental or natural causes: one and one-half parking spaces per dwelling unit;

219

220

221

c. Retail, business office, or bank facilities: one parking space for each four hundred (400) square feet of gross floor area;

222

223

224

d. Professional office: one parking space for each three hundred (300) square feet of gross floor area;

225

226

e. Inn: one parking space for each guest room;

227

228

f. Church: None required, if primary use occurs on weekends;

229

230

g. Restaurants: one parking space for each one hundred (100) square feet of gross floor area used by the public.

231

232

233

NOTE: For each use in the zone, the total parking demand is calculated using the standards above or in Section 16.8.9.4 if not modified above. Then each nonresidential use is exempt from providing off-street parking for the first three required spaces. For uses requiring a demand of greater than three, then the off-street parking is to be provided on-site and/or in accordance with subsections (E)(2) and (3) of this Section.

234

235

236

237

238

239

2. Maximum Parking on New Impervious Surface.

240

Not more than one and one-half parking spaces per dwelling unit may be created on new impervious surface in conjunction with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the same building with the dwelling units, to spaces located on pre-existing impervious surface, or to spaces located on a pervious surface such as parking pavers designed to allow infiltration of precipitation.

241

242

243

244

245

246

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

247 3. Off-Site Parking.
248 Required off-street parking may be satisfied at off-site locations provided such parking is on other
249 property owned by the applicant or is under the terms of a contractual agreement that will ensure such
250 parking remains available for the uses served. Applicant must present evidence of a parking location and
251 a contractual agreement to the Town Board or officer with jurisdiction to review and approve.
252

253 4. Joint Use Parking.
254 Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if
255 the applicant can show that parking demand is non-conflicting and will reasonably provide adequate
256 parking for the multiple uses without parking overflowing into undesignated areas. Non-conflicting periods
257 may consist of day time as opposed to evening hours of operation or weekday as opposed to weekends
258 or seasonal variation in parking demand. In making this determination under development plan review,
259 the Planning Board is to consider the following factors:
260

261 a. Such joint parking areas must be held under ownership of the applicant or under terms of a
262 contractual agreement that ensures such parking remains available to all users of the shared parking
263 spaces;
264

265 b. Analysis is to be based on a most frequent basis, not a "worst case" scenario;
266

267 c. Joint use parking areas must be located within reasonable distance to the use served, but do not
268 need to be located on the same lot as the uses served;
269

270 d. Ease and safety of pedestrian access to shared parking by the users served, including any
271 improvements or shuttle service necessary;
272

273 e. Such joint parking areas must not be located in residential zones of the Town.
274 The Planning Board must make a final determination of the joint use and/or off-site parking spaces that
275 constitute an acceptable combination of spaces to meet the required parking demand.
276

277 **F. Design Review.**

278 KFC advisory design review is required for any project involving the construction of a new building, or the
279 enlargement or modification of an existing building that:
280

281 (1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after
282 April 1, 2005, or
283

284 (2) is subject to the shoreland overlay zone requirements as set forth in Section 16.43.2.17 , is subject to
285 an advisory design review by the Kittery Foreside Committee (KFC).
286

287 **NOTE:** This requirement does not apply to the replacement of a building destroyed by accidental or
288 natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not
289 increase the pre-existing building volume by more than thirty percent (30%). This review is limited to
290 consideration of the project's conformance with the design standards set forth in subsection (E)(4) of this
291 Section. Upon receipt of an application for a project in the district that is subject to this requirement, Town
292 staff shall forward the application to the chair of the KFC. The application must contain adequate
293 information to allow the committee to evaluate the project's conformance with the design standards of
294 subsection (E)(4) of this Section.
295

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

296 The KFC has a maximum of forty-five (45) days to complete its review of the project. The KFC is to provide
297 a written report documenting its findings relative to conformance with the design standards and any
298 recommendations for changes to the project needed to conform to the standards. The design review must
299 be completed prior to approval of a development plan under Chapter 16.10, or the issuance of a building
300 permit if development review is not required, unless the KFC fails to complete its review within forty-five
301 (45) days in which case the application must be processed without the KFC review. The findings of the
302 design review must be provided to the Planning Board and/or CEO for consideration in their actions relative
303 to the

DESIGN HANDBOOK

What is the purpose of the Design Handbook?

The Design Handbook is meant to supplement the ordinance language contained in the Kittery Land Use and Development Code (LUDC). By articulating as well as illustrating the Town's expectations for development, it should serve as a useful tool for developers, design professionals, Planning Board members, and Town Staff.

How is the Design Handbook organized?

The Handbook is presented in five chapters:

- I: Site Planning
- II: Architecture
- III: Landscape
- IV: Lighting
- V: Signage.

Each chapter starts with a set of goals that envision what the Town hopes to accomplish by adhering to the Handbook (e.g., Reduce visual clutter, Protect investments).

Individual chapters are divided into a number of sections that deal with specific issues (e.g., under Signage there are sections on Sign Design, Content, Multi-tenant Properties, and Internally-lit Signs). For each issue the Handbook provides planning objectives, references to the requirements in the LUDC, and design guidelines.

Photographs are used extensively throughout the Handbook to illustrate what would be considered acceptable and what would not be acceptable in Kittery. The photographs are representative samples to make the Handbook more reader-friendly. The Handbook is not meant to stifle creativity; in all situations there are many ways to achieve the town's goals.

Are the provisions of the Handbook mandatory?

Where the operative word "must" is used, the provisions of the Handbook are mandatory and are based upon the requirements of the LUDC.

Where the operative word "should" is used, the provisions are not mandatory, but are provided to educate readers about design objectives and options to meet the Town's goals.

Chapter 16.28.180 of the LUDC authorizes the Planning Board to grant waivers or to modify the requirements under special circumstances, subject to appropriate conditions.

Where does the Design Handbook apply?

The provisions of the Handbook apply to all commercial and multi-family development in Kittery. It applies to new construction as well as expansions or redevelopment of existing buildings.

Most commercial development occurs in the Mixed Use (MU), Commercial (C-1, C-2, and C-3), Local Business (LB), and Kittery Foreside (KF) Zoning Districts. Where applicable, the Handbook provides specific guidelines for each of these districts.

How did the Town develop this Handbook?

The Planning Board engaged the services of Planning Decisions, Inc., Planners, of SouthPortland and Terrence DeWan & Associates, Landscape Architects, of Yarmouth. The board, the Town Planner, and the consultant team reviewed similar documents from other communities, received comments from the public and the Town Council, and developed this document as a joint effort..

How will the Handbook be used?

There are two main functions of the Handbook. First, it will provide guidance to landowners and developers in the early stages of planning and design, to address the questions of "what am I allowed to do?", and "what is the Town looking for?"

Secondly, it will be used as a benchmark by the planning staff, Planning Board, and peer reviewers to evaluate development proposals as part of the review processes to address the questions of "Does it meet the Town's criteria?" and "What will it look like and function?"

What will the ultimate outcome be for the Town?

The guidelines in the Handbook are not designed to produce immediate results. Like the Comprehensive Plan, it provides a framework for the future. Each development / redevelopment project should be seen as an opportunity for Kittery to come closer to its vision..



II. ARCHITECTURE

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INTRODUCTION

Kittery's characteristic buildings reflect an historic past that is closely linked to its seacoast heritage. These Design Standards establish guidelines for new or renovated commercial buildings that will complement this tradition. The standards are not intended to dictate building styles. They provide a visual pattern book that illustrates Kittery's vision for its future.

LUDC Reference. These Guidelines are intended to supplement, illustrate, and amplify various sections of the Kittery LUDC. The provisions of the Code vary from district to district. Check the applicable section of the Code for specific requirements.

Architectural Goals

- Well-designed buildings that reinforce Kittery's unique sense of place.
- Good neighborhood buildings that thoughtfully consider scale, form, orientation, height, setback, massing, materials, and architectural features.
- Buildings that present a 'front door' to the street and make a positive contribution to the streetscape.
- Buildings that are designed to human scale that address the comfort, enjoyment, and safety of the users.
- Buildings that are designed as permanent, positive additions to the community, constructed of high quality, long lasting materials.
- Street corners that are treated as special places.
- Architecture that utilizes energy conservation measures wherever possible.
- Older buildings that are restored and/or reused to maintain the integrity of Kittery's historic heritage.



The scale of this traditionally designed bank is reduced by variations in roofline, massing, and high quality architectural details.

OBJECTIVES

The purpose of these guidelines is to encourage architecture that draw inspiration from traditional New England examples. Building design should be developed to a human scale through careful consideration of architectural forms, massing, detailing, number and use of materials, and color.

DESIGN GUIDELINES

Design. New buildings should be designed to fit the specific characteristics of their particular site. The architecture will be influenced by traditional New England building forms and town-making patterns, the specific needs of the intended users, the nature of the intended use, and other site-specific factors.

Architectural Styles. The primary architectural styles found in Kittery include New England colonial (e.g., Cape Cod and saltbox), Georgian, Federal, and Classic Revival. Contemporary architecture and buildings that are influenced by several styles may be appropriate, provided they meet these standards.

Human Scale. Buildings and site elements should be designed to human scale. The forms, massing, and openings of buildings should be proportional to the size of a human figure. Many architectural elements can add scale to a building – watertables, planters, recessed openings, divided pane windows, building mounted light fixtures, dormers, cupolas, projecting rooflines, covered walkways, colonnades, and similar features – provided they are designed as integral parts of the overall structure.

Freestanding Accessory Structures. Where freestanding non-habitable structures are allowed (e.g., ATMs, garages, service stations, canopies, storage units, recycling sheds, trash enclosures, cart corrals, utility buildings) they should meet the same design standards as the principal building(s) on the site. The design of freestanding structures should be coordinated with the principal building through repetition of architectural forms, materials, colors, and detailing.

Energy Conscious Design. Commercial architecture and site planning should promote energy conservation wherever possible. Consideration should be given to solar orientation and siting, use of maximum insulating materials, reduced lighting loads, and landscaping for windbreaks and shading.



Examples of high quality Maine architecture – a visitor center, a retail store, and a library – that have been designed at human scale and fit their unique sites.

GENERAL ARCHITECTURAL PRINCIPLES



Three examples of generic buildings that have no reference to traditional New England forms or materials and would not be appropriate to Kittery.



These four commercial buildings are characterized by their use of traditional New England forms and materials. Entrances are well marked and provide users with areas for shelter and/or interaction.

GENERAL ARCHITECTURAL PRINCIPLES



A freestanding ATM and remote teller located in the rear of the building designed to complement the main bank building in color, scale, and detailing.



This restaurant occupies a highly visible corner location, yet provides the public with a scaleless, blank wall that does not contribute to the aesthetics of the street.



A freestanding car wash designed with the forms, colors, and materials commonly found in New England.



A commercial building that lacks scale. There are virtually no distinguishing features to give the structure character or relate it to the context of New England.



The scale of this hardware store has been reduced by wide roof overhangs, projecting gabled entranceways, and roof support brackets.



This cart corral does not reflect the architectural treatment of the large retail establishment and appears out of place in the parking lot.

OBJECTIVES

Renovations or additions offer an opportunity to add visual interest to existing buildings and to strengthen their relationship with the site and nearby structures. The Town expects high quality architectural and site design for all renovations and additions.

DESIGN GUIDELINES

Alterations. Where the existing building currently meets the design standards, proposed renovations should be designed to respect the proportions, fenestration patterns, and details of the original building. Where the existing building does not meet the design standards, the owner is strongly encouraged to upgrade the entire structure.

Design. Applications to the Planning Board that involve renovations and additions must show all improvements and how they relate to the existing structure. A narrative should accompany the application to explain the designer's intent to relate the original building and site with the proposed changes.

Materials. Where existing buildings meet the design standards, additions or renovations should complement or match the materials, form, color, and detailing of the original structure. Where the original building does not meet the standards, the owner should demonstrate how the materials used in the renovation will complement the existing structure.

Architectural Features. Renovations should retain any distinctive architectural features or examples of skilled craftsmanship. Where such features occur, similar details should be incorporated into the addition where possible.



The essential character of this simple cottage was preserved when it was renovated into an office. The addition in the rear followed the same lines as the original structure.



The repetition of architectural and landscape details help to integrate a shopping center with a historic building.



The additions on both sides of this restaurant do not relate to the form of the central structure.



A shingle-style renovation transformed a small nondescript building into a noteworthy restaurant.

OBJECTIVES

All buildings should present an inviting, human scale facade to the street, internal drives, parking areas, and surrounding neighborhoods. Entrances should be clearly visible from the street and reinforced through site and architectural features.

LUDC Reference: Chapter 16.12.

DESIGN GUIDELINES

District Standards. The requirements for architectural design and site planning vary from district to district. See the applicable section of the LUDC for specific requirements.

Front Elevation (MU, C, and LB Districts).

The front facade (the facade facing the street) must be designed as the front of the building. The front elevation must contain a front door, and/or windows, and/or display cases. On corner lots, the main entrance should face the major street, or be located on the corner of the building. Building entrances should be visible from the street and provide unobstructed areas for pedestrians.

Entrances. Each building should have a clearly defined, highly visible customer entrance. In the case of multi-tenant buildings, each separate space should have its own customer entrance. The use of the following architectural elements is recommended to add scale to the building, provided that they are integral to the design:

- canopies and covered walkways
- overhanging rooflines to provide shelter for pedestrians
- recesses or projections in keeping with the scale of the building
- raised corniced parapets over entrances
- gables and dormers
- pilasters
- outdoor sitting or dining areas
- display windows that are visible from the sidewalk
- architectural details such as moldings which are integrated into the building design
- other features which are designed to add scale and visual interest to the facade.



The front elevation of this small convenience store has a well-defined entrance that offers some protection to its customers. Space should have been provided for the vending machine.

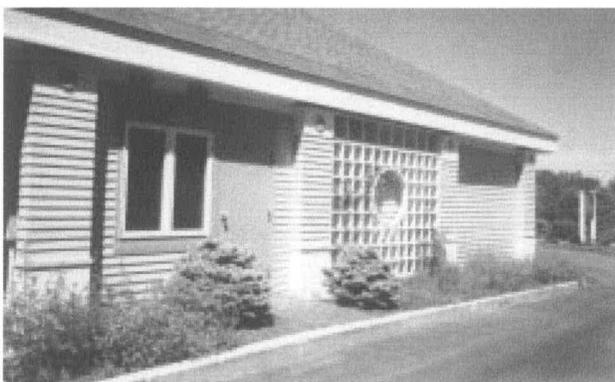
These entrances on adjacent buildings are marked by a raised parapet, integrated signage, an outdoor sitting/dining area, display windows, pedestrian-scale lighting, and planters.

Transparency. For retail structures, any facade that faces a public or private street should have display windows, entry areas, or other transparent features along 40% or more of its horizontal length. As an alternative, other architectural elements may be used to provide scale and visual interest to the front facade.

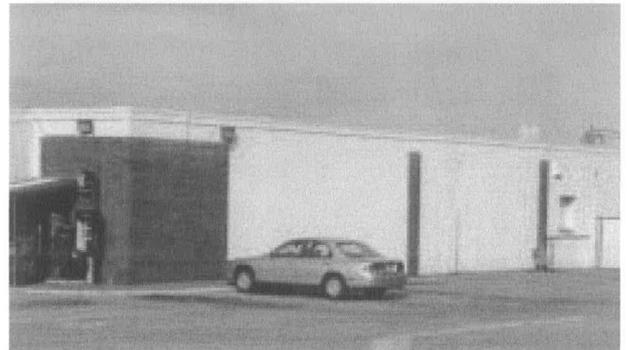


Transparency is achieved with windows on all facades of this small restaurant. The design of the building is enriched by planters, awnings, and integrated signage.

Blank Walls (MU District). No facade may extend for more than 50 horizontal feet in length without incorporating architectural features, such as pilasters, windows, cornices, porches, corners, or offsets. Where the plane of a wall is broken, the offset must be proportional to the building's height and length. Projections used to break up the mass of the building should extend to the ground. As an exception to this standard, walls with clapboards as their primary facade material may extend for 100 horizontal feet without such architectural features.

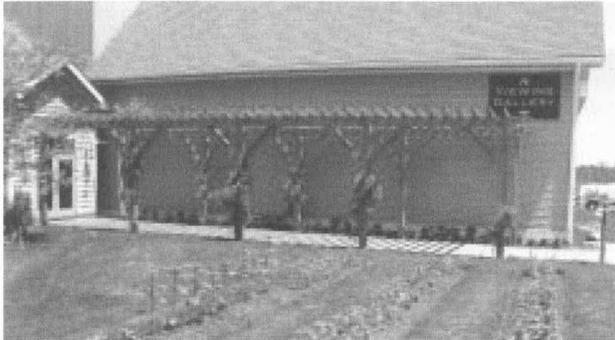


Small scale buildings, especially those viewed at close range, offer an opportunity to display a high level of detailing to enrich the pedestrian environment.



Facades should incorporate architectural features such as display windows and pilasters to create visual interest. This is especially important in pedestrian spaces.

Blank Walls (LB, C-1, C-2, C-3 Districts). Facades should incorporate architectural features – such as pilasters, windows, cornices, porches, corners, offsets, or changes in materials – to break up the mass of the building and add visual interest. Where the plane of a wall is broken, the offset should be proportional to the building's height and length. Projections used to break up the mass of the building should extend to the ground. Blank walls should not face adjacent structures, roadways, residential areas, or other public viewpoints.



The wooden trellis is an effective way to break up the length of this otherwise blank facade.



While the front plane of the wall of this building is broken, the offset does not continue to the ground. The projection becomes a billboard and the building is seen as a large box.



The scale of this 'big box' has been effectively reduced by architectural elements and detailing. The overhang provides protection for pedestrians and emphasizes the entrance.



All facades on this branch bank were treated with equal importance. The front (top) faces the street and is built to the sidewalk, encouraging pedestrian traffic. The side of the building (middle) facing a single family home is residential in scale and design. The canopy at the rear (bottom) provides a transition area between the parking lot and the back entrance.

One-sided designs (MU, C-1, C-3, LB and LB-1 Districts). Similar materials and detailing must be used on all facades to ensure continuity and design completeness and to give the building scale and visual interest. A similar treatment should be used in the C-2 District. (See the applicable Building Design Standards of the LUDC for specific requirements.)

Site Design. Signage, lighting, landscaping, and other exterior elements should be designed to complement the facade, avoid visual or functional conflicts, and maintain visibility.



The facade treatment wraps around the entire structure, creating a sense of continuity and design completeness. The building takes full advantage of a dramatic site.

Light Industrial and Boatyards (MU District). In the Mixed Use Zone the blank wall standard applies only to the front face and the first 100 feet of the side facade for light industrial buildings and boatyard uses. (See Light Industrial and Boatyard Uses section of the LUDC.) Where such uses are located on a corner lot, the Planning Board may consider both sides that face the street to be front faces for purposes of meeting this standard. Where the facade treatment extends less than the full length of the building, the site and/or architectural design must incorporate measures to minimize contrasts resulting from the change in surface treatment.

Window Shapes. Windows should be vertical in orientation or square.

Trim. Windows, door openings, ventilation openings, and other forms of exterior fenestration in frame construction should be trimmed.

Shutters. If shutters are used, they should be sized to fit the openings and provided for all windows on a given wall.

Functional Elements. All vents, downspouts, electrical conduits, service meters, HVAC equipment, service areas, loading docks, service connections, and other functional elements of the building should be treated as integral parts of the design. Meters, utility banks, HVAC equipment, and other exterior service elements should be contained in service closets, screened with walls or fences, or located out of view from the public. Building elevations presented for Planning Board review must show the location and treatment of all functional elements.



The building's meters and service connections are located out of sight in this service cabinet.

Vending Machines. The site plan and architectural elevations must show the location of all vending machines. The plans should also demonstrate how vending machines will not detract from the design of the building or the site.

Illustrations. The Planning Board may request perspectives of the building to illustrate the three-dimensional relationship between the front and side elevations. Elevation and perspective drawings should include all landscape elements (trees, shrubs, lighting, street furnishing, signs, etc.) that will be seen in conjunction with the facade.

OBJECTIVES

Building materials and design details should have a positive effect on a building's style and character.

LUDC Reference: Chapter 16.12.

DESIGN GUIDELINES

Materials (MU, C-1, C-3, LB, and LB-1 Districts). Buildings must be constructed of traditional, high-quality materials common to Kittery. Acceptable materials include brick, clapboards and shingles (wood, fiberglass, concrete, vinyl, metal), wood shakes, stone or simulated stone, and vertical boards. Contemporary materials with the same visual characteristics as traditional materials (e.g., cement plank clapboards or vinyl siding) are acceptable if properly detailed with surface textures and trim at openings, corners, and changes in material. Painted medium density overlay (MDO) plywood is acceptable when used as a secondary material in combination with traditional materials to give it scale. Long-term maintenance needs should be a consideration in the selection of all building materials.

Materials Discouraged. Highly reflective or processed materials (e.g., sheet metal or plastic panels, brushed aluminum, bronzed glass), stucco or synthetic stucco (Exterior Insulation and Finish Systems (EIFS)), adobe, concrete block, T-111, untreated plywood, particle board, tilt-up concrete panels, and multicolored brick (incorporating occasional white bricks in a random pattern) are discouraged as the primary

facade material. (Stucco, adobe, sheet metal, standard concrete block, tilt-up concrete panels, plywood, and particle board are prohibited in the MU District. See Predominant Exterior Building Materials section in the LUDC.)

Colors. Traditional colors commonly found in New England villages are appropriate for all components of the building. Facade colors must be low reflectance. The use of high intensity, high reflectance, chrome, metallic, or fluorescent colors or black is discouraged as the primary color.

Trim. Where trim is used, it should be painted or stained to complement the building's primary color.

Detailing. Arbitrary changes in materials or embellishments that are not in keeping with the rest of the building are discouraged.



Cement plank clapboard is a new material that resembles traditional wooden siding with less maintenance.



Traditional materials used on new buildings to blend into historic settings.

Acceptable Materials. Examples of the richness and variety of traditional New England materials and colors appropriate to Kittery.



Treated cedar shingles and stone



Clapboards with wood panels under windows



Clapboard siding with brick



Stained/painted wooden clapboards and cloth awnings



Stone



Stained clapboards with wooden cupola

Materials discouraged. Examples of primary building materials discouraged in Kittery (and may be prohibited in the MU district).



Reflective metallic siding



Metal panels



Multicolored brick



Untreated split face block



Highly reflective glazed tile with bright plastic accents



Textured plywood and arbitrary changes in materials



Painted concrete block



EIFS (exterior insulation and finishing system)

OBJECTIVES

The details of a building give it character, richness, and visual interest. Buildings within the Kittery Foreside District should include architectural detailing that reflects the historic styles of the district.

DESIGN GUIDELINES

District Standards. See the applicable section of the LUDC for specific architectural requirements of the KF District.

Materials. Architectural details should be constructed of high quality materials that relate to the color, form, texture, and material of the structure.

Design Elements. Molding and trim should be incorporated into the facade to finish the surface of the building, enhance doorways and windows, and provide decorative elements characteristic of the building style. All building elements and detailing should be proportional to the overall building facade.

Rooflines. Eaves and roof overhangs must be incorporated into the design of the roof to provide a distinct shadow line.

Integration into the Design. Architectural details should be an integral part of the design of the structure, and not merely appendages.

Signage. All signage components (signboards, mounting systems, lighting, trim) should be designed as an integral part of the building facade and detailed to complement the other architectural elements on the building. (See Signage for further standards.)



Deep roof overhangs can provide a sheltered place for outdoor sales as well as protection for pedestrians.



This small office building has been trimmed and detailed to reflect its origins as a summer cottage.



Roof overhangs give a distinct shadow line which helps to unify these buildings.



A mixed use building with retail below and residential above. Signage and lighting are integrated into the facade.

OBJECTIVES

When properly installed and maintained, awnings and canopies can enhance the appearance and function of a building by providing shade, shelter, shadow patterns, and visual interest. Where awnings are used they should complement the design, materials, color, and appearance of the building.

DESIGN GUIDELINES

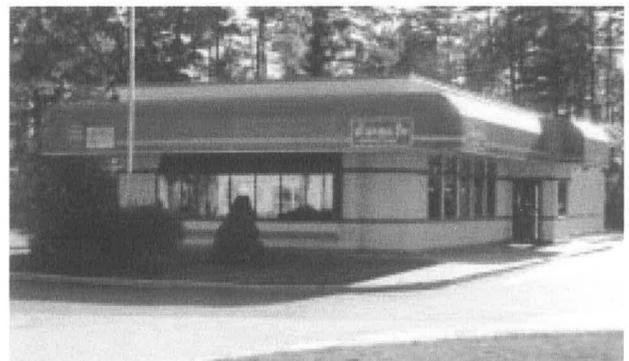
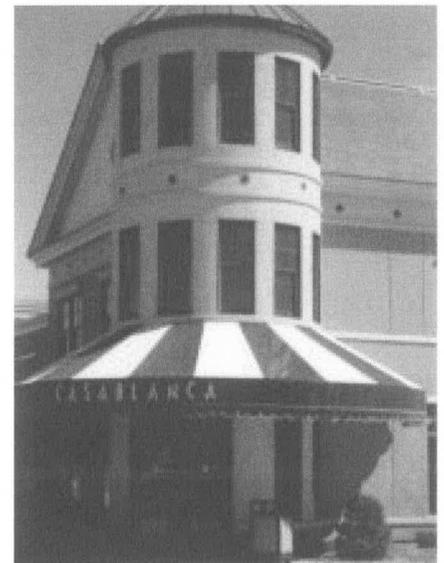
Location. Where awnings are used, both fixed or retractable, they should be an integral element of the architecture. Awnings should be located directly over windows or doors to provide protection from the elements.

Materials. Awnings and canopies should not be made of highly reflective materials, nor should they be used as advertising features. Their colors should match or complement the facade of the building.

Design Elements. Graphics used on awnings for identification or advertising should be designed as an integral part of the signage for the property, and be coordinated with other sign elements in terms of typeface, color, and spacing. Awnings should not be used as advertising features or light sources. Internally lit awnings are discouraged.



Canopies over the doorways emphasize the main entrance and provide effective protection from the elements.



Backlit, highly reflective canopies are advertising features and not appropriate in Kittery. These canopies function primarily as large signs, which are not acceptable.

OBJECTIVES

Rooflines can add visual interest to the streetscape and establish a sense of continuity between adjacent buildings. When used properly, rooflines can reduce the mass of large structures, emphasize entrances, and provide shade and shelter for the pedestrian.

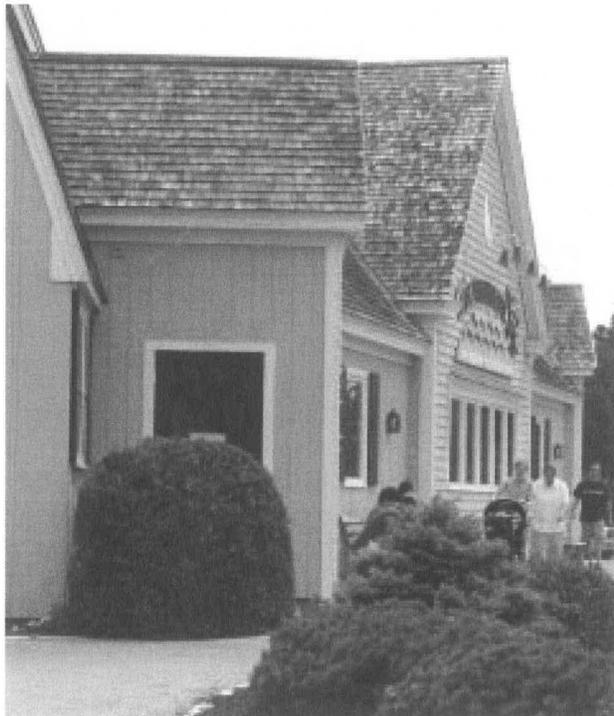
DESIGN GUIDELINES

Preferred Materials. Composite asphalt shingles and standing-seam non-glare metal are preferred for visible roofing. High gloss roofing materials are prohibited.

Roof Colors. Roofing materials should complement the color and texture of the building's facade. Roof colors should be muted earth tones or a color that is darker than the facade. Stripes and patterns on the roof are strongly discouraged. (Roof colors must be muted in the MU Zoning District. See the LUDC for specific requirements for roof colors.)



Standing seam metal roofing is a traditional material common in older commercial buildings in New England.



The color and texture of the shingles on this roof complement the building's style and color.

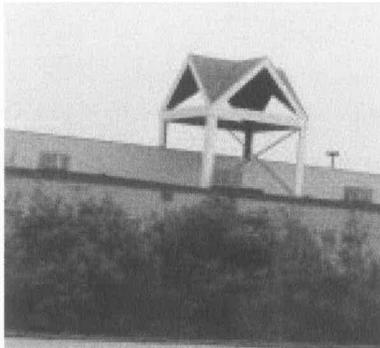


Roof colors should be muted earth tones or a color that is darker than the facade. Bright colors are not appropriate in Kittery.

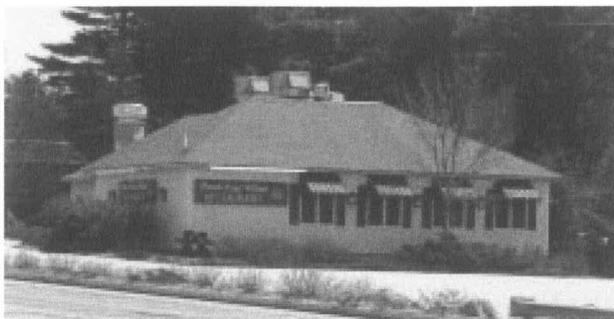
Roof-Mounted Equipment (MU, LB, LB-1, C-1, C-3 Districts). Mechanical, HVAC, and other equipment mounted on rooftops must be screened from public view or grouped in a location where visibility is limited. Where used, screening for roof-mounted equipment should be designed as an integral part of the architecture to complement the building's mass and appearance. The same treatment should also be used to screen roof mounted equipment in the C-2 District.



The apparent lack of support for this projecting tower makes the roof appear top-heavy.



The roof-mounted HVAC equipment is highly visible from the public parking lot. The projecting cupola is not integrated into the structure and appears to float.



The mechanical equipment on the peak of this roof gives it a cluttered, top-heavy appearance.

Projections. The use of cupolas, dormers, chimneys, and other roof projections is encouraged, provided they are designed as integral parts of the structure and do not appear to be floating or pasted on.

Shedding Snow and Ice. All roofs should be designed to shed snow, ice, and rainwater in a manner that does not cause a safety hazard or interfere with pedestrians or vehicles.



A cupola at the peak of this roof is a traditional form used in a contemporary structure. Roof-mounted mechanical equipment has been effectively screened by balustrades.



The central cupola is integrated into the roofline and provides a welcome break in the length of this building.

DISTRICT REQUIREMENTS

MU, LB, LB-1, & C DISTRICTS

Roof Pitch. Prominent roofs in these districts must have a minimum pitch of 4/12 (ratio of rise to run), unless demonstrated to the Planning Board's satisfaction that this is not practicable from an engineering or technical standpoint. (See the LUDC for standards for roofs in the applicable zoning district.)

Roof Form. Acceptable styles for prominent roofs in these districts include gable, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as applied mansards) are not acceptable as primary roof forms.

KITTERY FORESIDE DISTRICT

Roof Pitch. Prominent roofs on buildings in the KF district must have a minimum pitch of 8/12 (ratio of rise to run), except in the case of a hip roof where a lesser pitch is acceptable.

Roof Form. Acceptable styles for prominent roofs in this district include gable, gambrel, hipped and saltbox roofs.



Examples of hipped roof in a recent addition (top) and an historic structure (below).



A gambrel roof used in a modern office building recalls the design of shingle-style summer homes.



Flat roofs are generally not allowed for commercial structures.



An office building featuring a variety of gable roofs. The pitch on the flat dormer matches the pitch on the entryway.



Shed roofs such as these are not allowed for commercial structures.





Roofs on large buildings should help to reduce its scale. The flat roof in the top photo is still predominant and would not be acceptable. The bottom example successfully breaks up the scale of the building by variety in massing and roof planes.



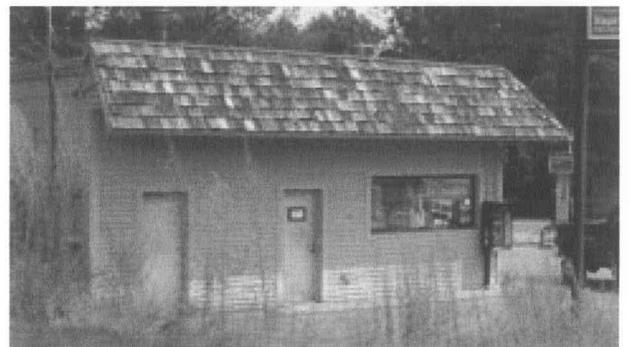
This is basically a flat-roofed buildings that would not be acceptable.



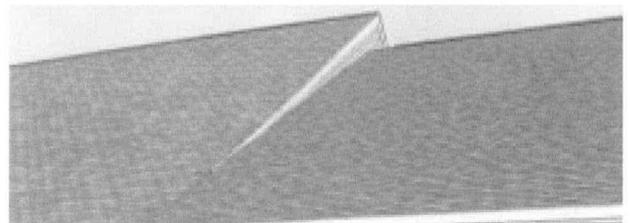
Gable rooflines should continue to the peak. This would be considered a flat-roofed building and not acceptable.



This applied gable does not relate to the architectural style of the building or the dominant roofline.



Two examples of applied mansards on flat-roofed buildings.



Roof pitches on adjacent buildings should match to avoid situations such as this.



Flat roofs are prohibited for the primary roof.



The predominant pitch on this roof is 3:12 and is no longer allowed in the MU, LB, C, or KF districts.



A roof with a 4:12 pitch, the minimum required in the MU, LB, and C districts.



The two-story portion of town hall on the left has a 10:12 pitch. The one story section has a 5:12 pitch.

EXAMPLES OF ROOF PITCHES: Prominent roofs in the MU, LB, and C districts must have pitches of at least 4:12 (rise to run). Roofs in the Kittery Foreside District must have a minimum pitch of 8:12.



The 9:12 pitch on the shelter covering this access ramp matches the slope on the main roof on this restaurant.



This new commercial building features a 12:12 pitch, which would be allowed throughout Kittery.

OBJECTIVES

Buildings located on corners are particularly important because they help define the character of two streets. These high-visibility locations should be emphasized by quality architecture and site development.

DESIGN GUIDELINES

Siting on Corner Lots. A building on the corner of two public streets should be located as close to the intersection as allowed by code. No parking, vehicular travelways, or service areas should be located between the building and the property lines along both streets.

Corner Buildings. Buildings on corners should be two or three stories in height to add mass and visual prominence to the street. All buildings on corner lots should have a second story with a usable floor area equal to at least forty percent (40%) of the building footprint.

Facade Treatment. The facade of the upper floor(s) should be visually related to the ground floor through repetition of design elements, e.g., color, materials, window treatment, and detailing that will unify the structure and help frame the ground floor.

Entrance. The main entrance to the building may be located on the major street or on the corner and designed to be visible from both streets. The architectural treatment of the corner should emphasize its prominent position. This can be accomplished by greater massing, unique detailing, lighting, etc.

Focal Points. Corner locations offer opportunities to create dynamic focal points in the streetscape. These can take the form of distinctive architectural elements, signs, sculpture, lighting, or landscaping. Where they are used, focal points should be visually related to the building as a whole, providing an accent without overwhelming it.



The mass of this two-story corner retail store provides an effective anchor for the street.



The main entrance to this corner store faces the intersection, where people see it easily from both directions.

OBJECTIVES

National franchises (e.g., restaurants, gasoline stations, retail stores) are permitted uses. However, the design of these buildings may contribute to the loss of identity for Kittery by the repetition of generic architectural forms that are found throughout the country. The design of these types of uses must conform to the applicable requirements of the LUDC and should reflect an awareness of New England architectural traditions in their form, detailing, and materials.

LUDC Reference: Chapter 16.12.

DESIGN GUIDELINES

Franchise Styles. Architectural forms primarily derived from building styles from other regions of the country are discouraged. New England regional prototypes from national franchises are acceptable, provided they meet the requirements of the District in which they are located. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.

Coordination of Site Features. Applicants must provide the Planning Board with illustrations that demonstrate how site features and accessory structures will be coordinated with the principle building. These include dumpster screens, storage buildings, refrigeration lockers, vending machines, playground equipment, signage, and lighting.



An addition to house an indoor playground bears no relationship to the existing structure. Flat roofs are not allowed in Kittery.



A fast food restaurant that was designed to complement the vision for a highway corridor.



The designs used for national franchises are often repeated across the country. Generic architecture has little or no reference to traditional New England forms.

Unacceptable Franchise Designs. Three examples of building forms commonly used by national franchises. None of these meet the design standards and would be unacceptable in Kittery.



OBJECTIVES

Linear commercial buildings (e.g., strip shopping centers, multi-tenant offices, and commercial buildings) should be designed with facade and roofline elements that reduce their scale and add architectural interest.

DESIGN GUIDELINES

Design. Buildings with multiple storefronts (e.g., strip shopping centers, one story office buildings) should be visually unified through the use of complimentary architectural forms, similar materials and colors, consistent details, and coordinated signage. Variations in the front setbacks are strongly encouraged to add visual interest, create spaces for common entries, outdoor eating / social spaces, and landscaped spaces. (See LUDC for requirements for Blank Walls in the MU Zoning District.)

Scale. Linear structures should include architectural elements designed to provide shelter, encourage pedestrian movement, and visually unite the building. These can include covered walkways, open colonnades, and similar features.

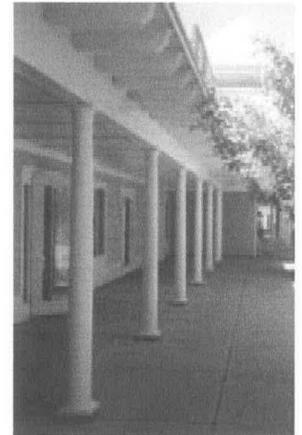
Entrances. Pedestrian entrances to each building should be clearly delineated to convey a sense of individuality. This can be accomplished by architectural detailing, roofline breaks, landscaping, lighting or a combination of these elements. Where covered walkways are used, they should extend the full length of the facade.



Covered walkways add a shadow line which can reduce the scale of a long building and unify the facade.

Rooflines. Variations in rooflines, detailing, and building heights should be included to break up the scale of connected linear buildings.

Focal Points. Linear commercial buildings should include a focal point – such as raised entrance way, clock tower, or other architectural elements – to add visual interest and help reduce the scale of the building.



Colonnades add visual interest to linear buildings, while providing scale and protection from the elements.



A commercial building that uses a clock tower as a focal point. Offset in the roofline helps to break up the mass of the building.



A multi-tenant building with no variation in the roofline or facades to break up the scale.

LINEAR COMMERCIAL BUILDINGS



Covered walkway encourages pedestrian movement and window shopping.



The scale of this linear shopping plaza has been effectively reduced through variations in roof planes, dormers and a cupola.



Variety in the use of materials adds visual interest to all facades.



The design of this commercial building features variations in roofline, awnings, and an emphasis on the front door.



Examples of linear buildings that have been effectively scaled down by variations in the roofline and facade treatment.

OBJECTIVES

Service stations and convenience stores that sell gasoline should be designed with facade and roofline elements that reduce their scale and add architectural interest to the building.

DESIGN GUIDELINES

Orientation. Service stations, convenience stores, and similar uses should be sited to face the street. Pump islands and canopies should be located in the rear or on the side so the primary building is the major feature seen from the road.

Canopies. Where canopies are used over gasoline pumps they should be integrated into the design of the building. Canopies should complement the main structure through consistency in roof pitch, architectural detailing, materials, and color. Pitched roofs and fascia trim are preferred for canopies. Bands of bold color on the canopy and backlighting inside the canopy are discouraged.



The flat-roofed canopy bears no design relationship to the well-detailed convenience store in terms of form, materials, or architectural style. The store was designed to fit into the residential surroundings.



This service station canopy is designed to be an extension of the building. The columns, roofline, dormers, and signage contribute to a sense of continuity in the architecture.

Large Openings. Openings for car washes or service bays must be integrated into the design of the building and sited so they are not directly visible from public roadways or adjacent residential areas. (See LUDC for requirements for Loading Docks and Overhead Doors for specific zoning districts.)

Site Design. The site design must address the issues of off-site noise exposure, underground drainage systems to keep water off public streets (in the case of car washes), snow storage, circulation patterns, room for vehicle stacking, and other issues peculiar to these uses.

Pedestrian Circulation. Connections to the public sidewalk should be included in the site plan to encourage pedestrian use. Access routes leading to or from service stations and convenience stores should minimize conflicts with pedestrian circulation.



The pump canopy repeats the same forms, colors, and materials as the main building.



This gasoline station is sited close to the road with the canopy and pumps in the rear.

OBJECTIVES

Drive-throughs (for restaurants, pharmacies, banks, and similar uses) should be subordinate to the design of the main building. Architectural design and circulation planning for buildings with drive-throughs require careful consideration to integrate them into the Kittery streetscape. Drive-through operations and other automobile-oriented facilities should be designed with facade and roofline elements that reduce their scale and add architectural interest.

DESIGN GUIDELINES

Drive-Throughs. Where drive-throughs are allowed, they should be incorporated into the design of the building through their scale, color, detailing, massing, and other architectural treatments. Drive-throughs should not face the street, unless there is no alternative for safety or security.

Location. Drive-throughs should be located at the side or rear of the building and avoid facing public or private roadways. Where drive-throughs are located at the rear, consideration should be given to making the site as visible as possible to ensure the safety of the patrons.

Canopies. Drive-through canopies should be visually compatible with the main structure. This can be accomplished through consistency in roof pitch, architectural detailing, materials, and color. Roof pitches for canopies should be the same or similar as the main structure. Bands of bold color on the canopy and backlighting inside the canopy are discouraged.

Pedestrian Circulation. Access routes leading to or from drive-through facilities will minimize conflicts with pedestrian circulation. Where walkways cross driveways, motorists should be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving, or other devices.



These drive-through windows have been designed as integral parts of the buildings. They repeat the rooflines, forms, and materials used in the main building.

Sec. 2.06. General powers and duties.

All powers of the town shall be vested in the council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the town by law.

Sec. 2.07. Enumeration of powers.

- (1) The council shall have the power to appoint, suspend, and remove the town manager, but suspension or removal shall be in accordance with Section 3.02 of this charter. The council shall have the power to appoint, and to remove for cause after notice and hearing, all members of boards created by statute, ordinance, this charter or by council action unless otherwise provided therein.
- (2) All appointments of voting members, regular and/or ad hoc, are made from among the qualified resident voters of the town and each appointee during term of office must remain a qualified resident voter in order to retain appointment. Applicants for the planning board and board of appeals must be interviewed by the council, with at least a quorum present, before any vote is taken by the council on the appointment.
- (3) The council shall have the power to enact, alter and repeal ordinances; adopt resolutions, codes and rules; and issue proclamations.
- (4) The council shall have the power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The council, by ordinance, may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency.
- (5) The council shall provide for an independent annual audit of all town accounts and may provide for such additional audits as it deems necessary. Such audits shall be made by the State Department of Audit or by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices.
- (6) The council shall provide for a review of the town charter at intervals not to exceed 10 years. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02; amended by vote of the people 6-10-08; amended by vote of the people 11-3-09)

Sec. 2.08. Induction of council into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all council members-elect shall be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94)

Sec. 2.09. Judge of qualifications.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 2.12, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the Superior Court.

Title 4 BOARDS, COMMISSIONS and COMMITTEES

Chapter 4.1 ESTABLISHMENT

Town governance requires attention to many demands pursuant to Federal law, Maine Revised Statutes, and the Town Charter. In order to provide for that range of requirements and make provision for citizen participation in community affairs the Boards, authority, commissions and committees addressed herein, are hereby established.

Chapter 4.2 SELECTION PROCEDURES FOR COUNCIL APPOINTMENTS

4.2.1. Purpose.

When subject to council appointment, members of Town Boards, which term includes authority, commission, committee (both standing and ad hoc), and trust are selected using the following procedures.

4.2.2 Objectives.

There are certain general objectives which are critical to the successful functioning of council-appointed Boards among these are:

- A. That Boards always have available to them candidates for membership who are qualified for the unique needs of that Board.
- B. That each Board maintain the independent posture needed to encourage the free and open dialogue crucial to its function; and
- C. That all volunteers are shown the appreciation of the community regardless of whether or not they are appointed to a particular Board.

4.2.3 Procedures.

To achieve these goals, the following procedures for the selection of Board members are adopted:

- A. A pool of applicants will be maintained by the Town Clerk.
- B. Volunteers must complete an application indicating on which Boards they wish to serve and in which order of preference. Applicants will be listed in order of precedence set by the date-time of receipt of the completed application by the Town Clerk.
- C. A member whose term is expiring is given consideration for reappointment first, subject to term limitations for the position, if any. Alternates or associates on a Board will be given first consideration for appointment when an opening occurs, in order of length of service.
- D. Pool applicants will be polled for interest for an interview when an opening occurs in order of listing precedence. Those refusing may opt to remain on the list and will be placed back on the list as of the date of refusal.

RECODIFICATION – ORDAINMENT – 07/26/2010

E. Council may waive the interview requirement for reappointments; alternates applying for full membership; and full members applying for alternate status

F. With the exception of the Planning Board and Board of Appeals, eligible applicants are interviewed for a specific Board appointment prior to consideration by the full Council..

1. The interview is conducted by the Chairperson (or designated permanent member) of the applicable Board and by one Council member designated by the Council. Councilor interviewing assignments are rotated so that no one Councilor would be involved in successive interviews for the same Board.

2. Interviews are considered private.

3. Only one interview is conducted with each applicant for each position.

4. Both interviewers must agree to the acceptability of the candidate in order for that candidate's name to be considered by the full Council.

5. Applicants not recommended to the Council may opt to remain on the list(s) if they so desire.

G. The following criteria are used in evaluating candidates:

1. Education

2. Training and experience

3. Related experiences

4. Any potential for conflict of interest

5. Preference or priority will be given to applicants who are not currently serving on any other Board (i.e., if there is more than one applicant and applicants are equally qualified, preference will be given to the person not currently serving on another Board.)

6. For reappointments or changes from Alternate to Full Member, attendance (rated as 'Excellent', 'Good', or 'Poor' is to be provided by the Chairperson of the Board on the interview form.

4.2.4 Planning Board or Board of Appeals Interviews and Appointments.

A. Applicants will be interviewed for the Planning Board or Board of Appeals with at least a quorum present at a regular or special Council meeting. If there are multiple applicants for a Board, they will be interviewed by Council as a group including applicant(s) already interviewed.

B. After the interviews are completed, Council, in open session, and by the following meeting, shall nominate, with a second, discussion and vote on the candidate(s) for the open vacancy.

C. A tie vote on an appointment shall be voted on by Council twice. Following the second tie vote the Council Chairperson shall determine the winner by lot by a coin toss.

D. Interviewed applicants not appointed may remain in the pool if they so desire.

4.2.5 Appointment Exceptions.

A. Building Committee – when Council-appointed membership is involved, appointment procedure is determined by the sitting Council.

- B. Charter Commission – procedure is determined by the sitting Council.
- C. Christmas Parade Committee – members recommended by sponsoring group.
- D. Rice Public Library Board of Trustees – application and interview procedure applies, but appointment is made by Library Trustees.
- E. Newly-formed Boards not existing as of November 1, 2000 – procedure is determined by the sitting Council.

4.2.6 Other Appointments.

- A. Town Manager, including related positions held by Manager: Interview by Council as part of hiring procedure.
- B. Assistant Code Enforcement Officer, Director of Civil Emergency Preparedness, Plumbing Inspector: Recommendation submitted by Town Manager.
- C. Registrar of Voters: Recommendation submitted by Town Clerk.
- D. Shellfish Warden: Application and interview procedure for Boards applies.
- E. Individual positions not enumerated: Procedure determined by sitting Council.

Chapter 4.3 BOARD OF ASSESSMENT REVIEW

4.3.1 Created – Powers.

The Board of Assessment Review is created pursuant to Article VII of the Town Charter and exercises the powers conferred by that Article.

4.3.2 Membership.

Qualifications of members, their appointment and terms, is governed by Article VII of the Town Charter. Members serve until their successors are appointed and qualified.

Chapter 4.4 CABLE TV RATE REGULATION BOARD

This article is administered by the Cable Television Rate Regulation Board which consists of five members and one alternate appointed by the town council from the qualified voters of the town. Members serve for terms of three years and until their successors are appointed and qualified. Members may be removed by the Town Council for cause after notice and hearing. For the initial terms only, one is appointed for three years, two for two years, and two for one year. The alternate member is appointed for a term of three years. Vacancies are filled by Town Council appointment for the unexpired term.

Chapter 4.5 REGISTRATION APPEALS BOARD

RESERVED

**Town of Kittery
 Planning Board Meeting
 December 18, 2014**

1. Commercial Recreation, Definition, Title 16 Land Use Development Code Amendments.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		
YES	Initial Planning Board Meeting	Scheduled 1/24/13, rescheduled 12/18/14	
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH	
YES	Review/Approval/ Recommendation to Town Council		

The following was presented at the **January 24, 2013** Board meeting:

Background/History:

The current ordinance contains the following definitions:

Recreational facility means a place designed and equipped for the conduct of sports leisure time activities and other customary and usual recreational activities, excluding boat launching facilities.

Selected commercial recreation means a recreational facility operated as a business and open to the public for a fee which is listed as one of the following types of allowed recreational activities:

1. Indoor commercial recreation limited to: billiards and pool, bowling alley, dancehall, swimming pool, ice skating rink, tennis, racquetball or squash courts, shooting or archery range, weight-lifting equipment center, aerobics/exercise center, roller skating rinks, basketball courts, gymnasium, concert hall, aquarium, botanical and zoological garden, bingo parlor, simulated sports; and
2. Outdoor commercial recreation limited to: riding stables, golf course, swimming pool, driving range, miniature golf, archery range, tennis courts, balloon rides, roller skating rink, botanical and zoological garden, and equestrian sports excluding racing.

Types of commercial recreation not listed are not considered to be included within the definition of "selected commercial recreation."

Low intensity recreation means outdoor recreational activities which have a low impact on the environment and neighborhood and require no motorized vehicles, significant earthmoving, or substantial structures such as: hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and boardwalks, steps, railings, and other structures necessary to provide safe accessibility for physically handicapped persons are allowed.

Public recreation means a not-for-profit recreational facility open to the general public at no charge or a subsidized charge.

By including lists of "allowed" uses, new recreational activities not previously in existence but gaining in popularity nationwide (ie: ropes courses, bungee jumping, rock walls, frisbee golf) would be specifically prohibited. The Board requested the definition be re-considered to be less limiting by removing specific recreational references.

Attached are definitions collected from other ordinances that may help formulate a definition acceptable to the Board. For instance, York expressly prohibits some recreational uses, rather than trying to identify what is permitted. Scarborough identifies *mechanical equipment or participant operated motor vehicles* as prohibited, while leaving a more broad definition for outdoor recreation. Saco and Biddeford utilize the term *including but not limited to* as a guide. For your consideration:

Selected Commercial Recreation means a recreational facility operated as a business and open to the public for a fee, designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities that do not involve the use of participant operated motor vehicles, and excluding those activities that use high intensity outdoor lighting and seating.

2014 Current Amendment Proposal

Following is the current **proposed amendment**. Additionally, staff proposes all definitions related to recreation be combined alphabetically in Title 16.2 Definitions, for ease of use.

Recreation, Low intensity recreation means outdoor recreational activities which have a low impact on the environment and neighborhood and require no motorized vehicles, significant earthmoving, or substantial structures such as: hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and boardwalks, steps, railings, and other structures necessary to provide safe accessibility for physically handicapped persons are allowed.

Recreation, Public means a not-for-profit recreational facility open to the general public at no charge or a subsidized charge.

Recreation, Selected commercial recreation means a recreational facility operated as a business and open to the public for a fee which is listed as one of the following types of allowed recreational activities, unless expressly prohibited in the specific base or overlay zones in Title 16.3.2:

1. Indoor commercial recreation includes, but not limited to: billiards and pool, bowling alley, dancehall, swimming pool, ice skating rink, tennis, racquetball or squash courts, shooting or archery range, weight-lifting equipment center, aerobics/exercise center, roller skating rinks, basketball courts, gymnasium, concert hall, aquarium, botanical and zoological garden, bingo parlor, simulated sports; and
2. Outdoor commercial recreation includes, but not limited to: riding stables, golf course, swimming pool, driving range, miniature golf, archery range, tennis courts, balloon rides, roller skating rink, botanical and zoological garden, and equestrian sports excluding racing.

~~Types of commercial recreation not listed are not considered to be included within the definition of "selected commercial recreation."~~

Recreational facility means a place designed and equipped for the conduct of sports leisure time activities and other customary and usual recreational activities, excluding boat launching facilities.

Should the Board choose to accept the current, **proposed definition and code amendments**, a motion could be made:

To accept the December 18, 2014 proposed amendment to Title 16.2.1 Definitions, for Recreation, Selected Commercial and reorganize other existing recreation definitions, and schedule a public hearing.

Inclusive language

limitating/prohibitive language

(Saco)

Commercial recreation: Any commercial enterprise, which receives a fee in return for the provision of some recreational activity **including but not limited to:** racquet clubs, gyms, amusement parks, and golf courses, which are defined elsewhere. Freestanding golf related facilities not associated with golf courses, pitch and putt courses, miniature golf courses, and driving ranges are categorized as commercial recreation.

Indoor recreation: Non-profit, governmental, or for profit facilities designed and equipped for the conduct of indoor sports, leisure time and recreational activities, and similar activities in which all activity occurs within a building or fully enclosed structure. **Indoor recreation includes, by way of example only,** skating rinks, bowling alleys, gymnasias, racquetball clubs and indoor tennis facilities.

Outdoor commercial recreational facility: A facility for outdoor recreational activity operated by an entity other than the City of Saco including cross country ski centers, ball fields, parks and playgrounds, and similar uses **but not including motorized rides** and uses allowed as part of an amusement park.

Recreational facility: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

(YORK)

Recreation & Amusement Use Category (RES-4)

• **EXPRESSLY PROHIBITED:** Campgrounds and Travel Trailer Parks; Amusement Arcades (as Primary or Accessory Use); Indoor Amusement/Entertainment/Assembly Place (Enclosed); Indoor Sports Facility (No Gambling); Outdoor Sport and Amusement Facilities Conducted for Profit; Country Club; Open Air or Drive-In Theater or Other Open Air Places of Entertainment; Bath House, for Non-Commercial Purposes. *(York)*

and excluding

parks which have athletic fields that use **high intensity lights**, outdoor seating, and which are greater than 15,000 square feet in size.

(SCARBOROUGH)

Commercial Outdoor Recreation:

A recreational use, activity, or facility, other than one operated by a governmental entity, in which the recreational activities occur primarily outside and **do not involve the use of mechanical equipment or participant operated motorized vehicles as part of the recreational experience.**

Commercial Outdoor Recreation is subject to performance standards contained in Section IX of this Ordinance.

(Biddeford)

COMMERCIAL RECREATION

Any commercial enterprise which derives a profit in return for the provision of some recreational activity **including but not limited to:** campgrounds, racquet and tennis clubs, health facility, amusement parks, golf courses, gymnasiums and swimming pools, etc.

Old Orchard Beach (2014)

Recreational facility means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, including, but not limited to, amateur athletic fields, playgrounds/tot lots, tennis courts and picnic shelters/areas, swimming pools, minigolf and hot tubs. Within any shoreland zone, the term shall not include boat launching facilities.

Commercial amusement means any building, structure, use of land, or portion thereof designed, constructed and/or operated, primarily for profit, as a place of amusement or recreation.

South Berwick (through 11/26/13)

COMMERCIAL RECREATION: Any commercial enterprise which receives a fee in return for the provision of some recreational activity, including but not limited to racquet clubs, health facility, amusement parks, golf courses, etc., but not including amusement centers, as defined herein.

AMUSEMENT CENTER: Any private or commercial premises which is maintained or operated primarily for the amusement, patronage or recreation of the public, containing an aggregate of four or more table sports, pinball machines, video games or similar mechanical or electronic games, whether activated by coins, tokens or discs, or activated through remote control by the management.

Portsmouth, NH (through 8/2014)

Amusement Park: A commercially operated enterprise that offers rides, games, and other forms of amusement. (See also: water park, theme park.)

Theme park: An amusement park whose attractions are organized around one or more themes.

10.823.10 Outdoor recreation areas and play spaces shall be located at least 50 feet from any lot line.

10.823.20 Outdoor recreation areas and play spaces shall be located at least 25 feet from any vehicular way, or shall be separated from such way by fencing.

10.825 Indoor Recreation and Amusement

10.825.10 Noise shall be confined to the inside of the building.

Rochester, NH (4/14)

207. Recreation, Indoor: A commercial facility within a building devoted to active sports and recreation. "Indoor Recreation" may include billiard parlors, pinball/video arcades, health clubs, fitness centers, paint ball, bowling alleys, indoor sports arenas, swimming pools, and gymnasiums.

208. Recreation, Outdoor: An open air commercial facility, including open air roofed structures, devoted to active sports and recreation. "Outdoor recreation" may include ball fields, miniature golf, driving ranges, archery ranges, outdoor paint ball, sports arenas, amusement parks.

skating rinks, swimming pools, tennis courts, cross country ski centers, and water slides. "Outdoor Recreation" does not include shooting ranges or facilities with individual motorized vehicles such as go carts, race cars, or motorcycles.

209. Recreation, Park: A noncommercial outdoor passive or active recreational facility serving the general public or residents of a particular neighborhood. It is owned or managed by the government, a land developer, a homeowner's association, or similar entity.

Kennebunk Zoning Ordinance, eff: 2014:

RECREATION: An activity pursued for leisure in order to refresh mind or body, or a facility designed or equipped for such pursuit. For the purposes of this Ordinance, the following related terms have specific meanings:

AMUSEMENT PARK: A park operated by an entity other than a unit of government, with a predominance of outdoor games and activities for entertainment, including motorized rides, water slides, miniature golf, batting cages, and the like. Amusement parks are not an allowed use in Kennebunk, provided that this shall not prohibit the temporary operation of activities common to amusement parks that are part of festivals, promotional functions, and the like, if licensed or specially permitted by the Board of Selectmen.

FULLY ENCLOSED PLACE OF RECREATION: A place enclosed by walls, roof, and floor, designed and equipped for the conduct of indoor sports, leisure time activities, and other customary and usual recreational activities, and operated by an entity other than a unit of government. These include, by way of example only, skating rinks, gymnasias, bowling alleys, video arcades, and the like. For the purposes of this Ordinance, theaters are treated as a separate use. Fitness studios are included under the term "personal services."

OUTDOOR RECREATION: Outdoor recreation activity operated by an entity other than a unit of government, whether operated for profit or not, including but not limited to golf courses, ball fields, parks and playgrounds, livery, and ski-tows, provided they fulfill State and Town public health requirements, but not including campgrounds, outdoor movies, outdoor dine and dance facilities, or games and activities common to amusement parks as described in the definition of amusement park. Regardless of whether outdoor recreation is listed as a permitted use or a use allowed by special exception in a given district, recreational improvements are allowed if required by the Planning Board as part of subdivision approval. Such improvements include, but are not limited to, multi-use ball fields, playground structures for children, unpaved trails used for pedestrians and non-motorized vehicles, provided they do not result in the creation of impervious surface.

FREEPORT

Commercial Recreation-Indoor: Any recreational use in which the primary use is within a structure, such as a bowling alley, roller or ice skating rink, swimming pools, tennis courts, or arcades operated primarily for profit.

Commercial Recreation-Outdoor: Any outdoor recreational use such as, but not limited to, golf courses, tennis courts, riding stables, swimming pools, or ice skating rinks operated primarily for profit, but not including campgrounds, drive-in movie theaters, race tracks and mechanical or motorized rides.

**Town of Kittery Maine
 Town Planning Board Meeting
 December 18, 2014**

ITEM 6E – Town Code Title 5 – Amendment to Chapter 5.10. Use of the Public Way. Propose removing *Section 5.10.4 Applicability*, referencing a specific zone and annual expiration. Proposed amendment would allow use of the public way in all non-residential zones without a sunset clause and add regulation language.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	10/23 discussion; deferred to 12/18/14 for further discussion	
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. At the October 23 meeting, the Board discussed additional concerns:

Title 5.10 Use of the Public Way Ordinance:

Discussion followed regarding whether this amendment will be expanded to all non-residential zones; whether it should remain in Title 5 or move to Title 16; provision of zone plans for Council review/acceptance; issues of liability regarding furnishings in the ROW; responsibility for trash/recycling receptacles; visual impact of furnishings; fee schedule and renewal periods for application; specifying removal of furnishings, etc. at end of season; identify property owners with access to ROW use (immediate abutter?); enforcement of use/renewal permit. Item will be discussed further at the December 18 Board meeting.

Recommendation

The attached Chapter 5 revisions include language in response to Board concerns noted (liability, removal of furnishings, enforcement, etc.).

Additionally, Board concerns regarding the *Use of the Public Way Plan* content are valid. Plan content requirements should be developed and included in the permit application to guide the applicant prior to Town Council consideration. As with applications presented for Planning Board review, the regulations contained in the Code (in this case, Title 5) will direct the development of the plan and permit application content. In the same light, fees for permits and renewals would be approved by Council and included on the permit application, not addressed in code language.

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
8 functional pedestrian-oriented streetscapes, including outdoor benches, seating, tables and
9 chairs. Site furnishings shall be furnished and maintained by the business/property owners
10 and merchants for public use and are not for the exclusive use of the patrons of a particular
11 business.
- 12 B. In return for the privilege of use of the public way, merchants and business/property owners
13 are expected to self-police themselves to provide and maintain said site furnishings
14 according to their submitted sketch plan and approved Use of Public Way Permit.
- 15 C. This chapter is further intended to specifically prevent unsafe passage of pedestrians that
16 could occur along sidewalks that are compromised by the use of site furnishings.

17
18 **5.10.3 Definitions.**

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

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

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

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

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

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

52 **5.10.4 Applicability.**

53 ~~The regulations of this chapter apply only to those properties located in the Mixed Use Kittery~~
54 ~~Foreside Zone, and for the through calendar year 2014.~~

55 A. Regulations in this Chapter apply to all non-residential zones within the Town of Kittery. A
56 Use of the Public Way Plan must be approved by Town Council. Following Plan approval, a
57 *Use of a Public Way Permit* application must be submitted and approved by the CEO and
58 Town Planner for each calendar year that businesses wish to utilize a public way in
59 accordance with this Chapter.

60
61 B. Responsibility and Liability
62 It is the responsibility of the business owner to assure that any site furnishings placed in the
63 public way will be safe, attractive, and clean, and in compliance with this Chapter. The
64 business owner utilizing the public way shall retain and show proof of liability insurance
65 necessary to insure the public use of said furnishings in the public way. The Town of Kittery
66 shall be held harmless.

67
68 C. Removal of site furnishings
69 All site furnishings shall be removed from the public way prior to a snow event or at the
70 close of a seasonal business, whichever occurs first. Following CEO notice, site furnishings
71 not removed as required will be removed by the Town of Kittery at the owners expense, not
72 to exceed \$500.

73
74
75
76

END

**Town of Kittery
Planning Board Meeting
December 18, 2014**

Title 16 Land Use Development Code Amendments.

To include a new section for the reconstruction of nonconforming structures outside of the Shoreland and/or Resource Protection Zone(s) not currently addressed in Title 16.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		
YES	Initial Planning Board Meeting		
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH	
YES	Review/Approval/ Recommendation to Town Council		

Staff Comments

Background: Following is the original code language regarding reconstruction of nonconforming buildings as written prior to the ordinance update of 2010. This section was not transferred to the 2010 code update.

16.28.140 Reconstruction of nonconforming buildings.

Any legally nonconforming building which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his or her agent, may be restored or reconstructed in conformity with the dimensions of the original building within twelve (12) months of the date of said damage or destruction, provided, however, that such restoration or reconstruction shall not enlarge the size or make it more nonconforming than the prior nonconforming building. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed. (Ord. 12-99; land use and dev. code § 7.3.4, 1994)

Since the update of 2010, the language in Title 16.7.3.5.6 addresses nonconforming building reconstruction only in those areas with Shoreland or Resource Protection Overlay Zones (and setback restrictions), where Planning Board review is required.

Summary:

1. For reconstruction of nonconforming buildings that are not located in the Resource Protection or Shoreland Overlay Zones, the CEO has no existing language that supports such consideration. This is addressed with the proposed language in section C.
2. The proposed code language includes a longer period of time (18 months vs. 12 months) for reconstruction and eliminates cause (no fault vs. damage other than willful act of the owner/agent), creating consistency with the existing overlay reconstruction language.
3. Staff took this opportunity to propose new language that clarifies applicability of a section within the overlay zones, removing parenthetical language.

If the Board finds these amendments acceptable, a motion would be in order:

To accept the December 18, 2014 proposed amendments to Title 16.7.3.5.6 Nonconforming Structure Reconstruction and schedule a public hearing.

1 **16.7.3.5.6 Nonconforming Structure Reconstruction.**
2

3 A. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is
4 located less than the required setback from a water body, tributary stream, or wetland and which is
5 removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure
6 before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is
7 obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided
8 that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland
9 setback requirement to the greatest practical extent as determined by the Planning Board. ~~(in cases~~
10 ~~where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) or Code~~
11 ~~Enforcement Officer, in accordance with this Code.~~
12

13 B. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is
14 located less than the required setback from a water body, tributary stream, or wetland and removed,
15 damaged or destroyed by any cause through no fault of action by the owner by 50% or less of the market
16 value of the structure before such damage, destruction or removal, may be reconstructed in-place if a
17 permit is obtained from the Code Enforcement Officer ~~or the Planning Board (in cases where the structure~~
18 ~~was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months~~
19 of the established date of damage or destruction. **[Amended and moved; formerly 16.7.3.5.6.D]**
20

21 C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any legally nonconforming
22 structure which is hereafter removed, damaged or destroyed by any cause may be restored or
23 reconstructed in conformity with the dimensions of the original building within eighteen (18) months of the
24 date of said removal, damage or destruction. Such restoration or reconstruction shall not enlarge the size
25 of the structure or make it more nonconforming than the prior nonconforming structure.
26

27 D. In the Shoreland or Resource Protection Overlay Zone(s), if the total amount of floor area and volume
28 of the original structure can be reconstructed beyond the required setback area, no portion of the
29 reconstructed structure may be reconstructed at less than the setback requirement for a new structure.
30 When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in
31 accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition
32 permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.
33 **[Amended and moved; formerly 16.7.3.5.6.C]**
34

35 E. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. In the
36 Shoreland and Resource Protection Overlay Zones, if the reconstructed or replacement structure is less
37 than the required setback it may not be any larger than the original structure, except as allowed pursuant
38 to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the
39 nonconforming floor area and volume of the reconstructed or replaced structure at its new location.
40 **[Amended and moved; formerly 16.7.3.5.6.B]**
41

42 F. In determining whether the structure reconstruction or replacement meets the setback to the greatest
43 practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria
44 in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation
45 present, if any. **[Moved; formerly 16.7.3.5.6.E]**
46
47