

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

Town Code Amendments – 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip; 16.9.1.7 Buffer areas; and 16.2.2 Definitions

Action: Hold a public hearing; Recommend to Town Council. The proposed amendments provide clarity with regard to open space and other requirement standards in cluster residential and cluster mixed-use development.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop	2/1/2016	HELD
YES	Initial Planning Board Meeting	12/10/2015	HELD
NO	Secondary Planning Board Meeting	Held 1/14&28/2016, 2/11/16, 2/25/2016, 3/24/2016	HELD
YES	Public Hearing (special notice requirements)	1/28/2016	HELD
NO	Secondary Public Hearing (special notice requirements)	Scheduled for 4/28/2016	
YES	Review/Approval/ Recommendation to Town Council		TBD

Background

This group of amendments was developed over the course of several months, was reviewed at the workshop on May 28, 2015 and revised December 10, 2015. The amendments were revised again for review at the January 14, January 28, February 11, February 25 and March 24, 2016 Planning Board meetings. The current amendment reflects comments made from the Town Council joint workshop on 2/1, public testimony on the 1/28 public hearing and the Board’s input.

Review

Attached for the Board’s consideration are amendments to Article XI of Title 16.8. Staff revised the 3/24 draft amendment to reflect comments from previous Planning Board meetings and the February 1st Joint Workshop with Town Council. (revisions from 3/24/2016 discussion are highlighted in yellow)

Highlights in this amendment include:

1. The definition of Cluster Residential Development allowing for more consistency with the state statute, Title 30-A 4301(1-A) and 30-A 4353 (4-C) Variance from Dimensional Standards. Note, the definition of Cluster Mixed-Use Development may need a similar review, however, it may be more appropriate to do that review in the context of the Business Park base zone, where such development is permitted.
2. The intent of Title 16.8.20.1 Green Strip is combined with Title 16.9.1.7 Buffer areas, the provision staff recommends as the more appropriate location in the ordinance.
3. A re-work of the open space standard relating to size, shape and location for the reserved open space under 16.8.11.6.7.
4. The amount of developable land (net residential acreage) required to be located in open space is increased from 30% to 50%. The proposed amendment has been revised to address board members’ comments regarding encouraging growth in the sewered portions of town and issues related to small sized parcels.

Staff spoke to the legal department at MMA with regard to the appropriateness of varying the percent of required “upland” open space by zone or access to sewer. Since the provision does not explicitly prohibit the overall requirement of open space in some parts of town and not in others, MMA found that such a provision that varies the amount and type of open space should be O.K as long as the overall requirement is consistent with the Comprehensive Plan.

Staff prepared a comparison, distributed at the previous meeting, of applying the 30% vs. the 50% requirements suggesting the total decrease in area is not as significant when comparing potential difference in lot sizes.

5. Buffer requirements for cluster development along public streets that are designated in the Comprehensive Plan as ‘scenic roadways’ has been increased to 100 feet.
6. Staff reviewed Board concerns regarding the references to the Comprehensive Plan in the ordinance with MMA. See attached email for details, however, they did not see a legal problem with referencing the Comprehensive Plan, but suggested an inclusion of the information that is being referenced or cite a specific date or version of the referenced Comprehensive Plan.

Recommendation

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

...move to recommend to Town Council adoption of Town Code Amendments, 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip; 16.9.1.7 Buffer areas; and 16.2.2 Definitions

1 **Article XI. Cluster Residential and Cluster Mixed-Use Development.** (Ordained 9/24/12; effective
2 10/25/12)
3

4 **16.8.11.1 Purpose.**

5 To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine,
6 cultural and historic resources, land use patterns and recreation and open space, this Article is intended
7 to encourage and allow new concepts and innovative approaches to housing/commercial development
8 and environmental design so development will be a permanent and long-term asset to the Town, while in
9 harmony with the natural features of the land, water and surrounding development. Objectives include:
10

- 11 A. efficient use of the land and water, with small networks of utilities and streets;
 - 12 B. preservation of contiguous, unfragmented open space and creation of recreation areas;
 - 13 C. maintenance of rural character, by means of preserving farmland, forests and rural
14 viewsheds scapes, and limiting development in close proximity to existing public streets,
15 especially along scenic roads, as designated in the 1999 Update of the Kittery Comprehensive
16 Plan, adopted 2002;
 - 17 D. preservation of areas with the highest ecological value;
 - 18 E. location of buildings and structures on those portions of the site most appropriate for
19 development;
 - 20 F. creation of a network of contiguous open spaces or 'greenways' by linking the common open
21 spaces within the site and to open space on adjoining lands wherever possible;
 - 22 G. reduction of impacts on water resources by minimizing land disturbance and the creation of
23 impervious surfaces and stormwater runoff;
 - 24 H. preservation of historic, archaeological, and cultural features; and
 - 25 I. minimization of residential development impact on the municipality, neighboring properties, and
26 the natural environment.
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31 **16.8.11.3 Dimensional Standards Modifications.**

32 Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in
33 reviewing and approving proposed residential or mixed-use development under this Article, may modify
34 said the dimensional standards listed in Cluster residential development in 16.2.2. Definitions, to permit
35 flexibility in approaches to site design in accordance with the Code standards. The Board may allow
36 subdivision or site development with modified dimensional standards where the Board determines the
37 benefit of a cluster development is consistent with the Code. Such modifications may not be construed as
38 granting variances to relieve hardship.
39

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41 **16.8.11.5 Application Procedure.**

42 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,
43 Development Plan Application and Review, and the following:
44

- 45 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the
46 Sketch Plan:
47

- 48 1. Calculations and maps to illustrate:
49 a. proposed dimensional modifications and the dimensional standards required in the zone
50 in which the development will be located;
51 b. All land area identified in Title 16.7.8 Net Residential Acreage; and (Ordained 9-28-15)
52 c. Net Residential Density; and
53 d. open space as defined in Section 16.8.11.6.D.2 of this Article.
54
55 2. A map showing constraints to development, such as, but not limited to, wetlands, resource
56 protection zones, shoreland zones, deer wintering areas, side slopes in excess of ~~thirty-three~~
57 ~~percent (33%)~~ twenty percent (20%), easements, rights-of-way, existing roads, driveway
58 entrances and intersections, existing structures, and existing utilities.
59
60 3. A written statement describing the ways the proposed development furthers the purpose and
61 objectives of this Article, including natural features which will be preserved or enhanced. Natural
62 features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats,
63 important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites
64 worthy of preservation.
65
66 4. The location of each of the proposed building envelopes. Only developments having a total
67 subdivision or site plan with building envelopes will be considered.
68
69 5. A sketch plan showing a conventional nonclustered subdivision layout that complies with all
70 applicable standards, excluding those included in this Article. The Planning Board may use this
71 plan in addition to the proposed cluster site design to determine if the overall design is consistent
72 with the purpose of this Article, applicable provisions of this Title and the growth designations of
73 the 1999 Update of the Kittery Comprehensive Plan, adopted 2002. This determination may result
74 in a change to the total number of lots/dwelling units allowed.
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76 [NOTE: THE EXISTING SECTION 16.8.11.5.B IS NOT BEING AMENDEND]
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79 **16.8.11.6 Standards.**

80
81 E. Open Space Requirements:

- 82
83 1. Open space must contain equal at least 50% of the total area of the property, ~~and no less~~
84 ~~than 30% of the total net residential acreage, as defined~~ and must include no less than 50% of the
85 property's total net residential acreage. Where there is access to town sewer or it is demonstrated
86 to the Planning Board that, due to the limited size of the parcel, requiring a minimum of 50% of the
87 property's total net residential acreage to be contained in open space results in an unreasonable
88 development constraint, the minimum total net residential acreage requirement may be reduced to
89 30%.
90
91 2. Total calculated open space must be designated as follows (See Open Space definitions
92 Section 16.2): a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public
93
94 3. The use of any open space may be further limited or controlled by the Planning Board at the
95 time of final approval, where necessary, to protect adjacent properties or uses.

96
97 4. Open space must be deeded in perpetuity for the recreational amenity and environmental
98 enhancement of the development and be recorded as such. Such deed provisions may include
99 deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces
100 and their use as approved by the Planning Board.

101
102 5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams,
103 glens, rock outcrops, native plant life, and wildlife cover as identified in applicant's written
104 statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-
105 made open space must be for the development of recreational areas, pedestrian ways and
106 aesthetics that serve to interconnect and unify the built and natural environments.

107
108 ~~6. Open space should be in a contiguous form of unfragmented land to protect natural~~
109 ~~resources, including plant and wildlife habitats.~~
110 ~~[INCORPORATED IN NEW SUBSECTION 7(d) BELOW]~~

111
112 ~~7.6.~~ A portion of the open space should be in close proximity to other open spaces used for
113 recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).

114
115 7. Reserved open space must preserve areas with the highest ecological value. The final
116 composition, configuration and location of the reserved open space is determined by the Planning
117 Board after considering the applicant's objectives, the parcel's configuration and its relation to
118 natural resources on adjoining and neighboring properties. The Planning Board shall also consider
119 whether:

- 120
121 a) the majority of the land is wetland, floodplain, and areas of slopes 20% or greater;
122 b) the land is identified on specialized mapping such as that prepared by *Beginning with Habitat*;
123 c) existing open space is located on adjacent or nearby properties;
124 d) the size and shape is contiguous and unfragmented to the extent necessary to achieve the
125 conservation objective;
126 e) the land has critical habitat or conservation area as identified by Maine Department of Inland
127 Fisheries and Wildlife, Maine Department of Environmental Protection, Army Corps of Engineers,
128 or the U.S. Fish and Wildlife Service; and
129 f) the land is identified as a conservation priority by the Kittery Open Space Committee, Kittery
130 Land Trust or other land trust,

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132
133
134 I. The developer must take into consideration the following points, and illustrate the treatment of
135 buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any
136 other features determined by the Planning Board to be a part of the proposed development.

137
138 1. Orientation. Buildings, viewpoints corridors and other improvements are to be designed so
139 scenic vistas viewsheds and natural features are integrated into the development. Buildings should
140 be sited to consider natural light and ventilation.

141
142 2. Utility Installation. All utilities are to be installed underground, wherever possible. The
143 Planning Board must require the developer to adopt a prudent avoidance approach when

144 ~~permitting above ground electrical service installations.~~ Transformer boxes, pumping stations and
145 meters must be located so as not to be unsightly or hazardous to the public.

146
147 3. Recreation. Facilities must be provided consistent with the development proposal. Active
148 recreation requiring permanent equipment and/or modification of the site may not be located within
149 the wetland setback areas or contiguous reserved open space areas.

150
151 4. Buffering. Planting, landscaping, form and siting of building and other improvements, or
152 fencing and screening must be used to integrate the proposed development with the landscape
153 and the character of any surrounding development. A buffer not less than 100 feet in depth must
154 be provided along the street frontage adjacent to scenic roadways, as identified in the 1999
155 Update of the Kittery Comprehensive Plan, adopted 2002, and 50 feet in depth for all other public
156 streets. Where the portion of the development does not abut a street, the side and rear yard
157 setbacks must include a buffer no less than 20 feet in depth. All or a portion of the existing
158 vegetation may be used in lieu of new plantings for the buffer area as determined by the Planning
159 Board.

160
161 5. Development Setbacks.
162 Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter
163 16.9.4.3. These setbacks must be permanently maintained as no cut, no disturb buffer areas. If
164 the setback areas are not of substantial vegetation to do not provide a sufficient buffer, the
165 Planning Board may require additional plantings. The most restrictive setback applies in
166 determining the buffer area.

167

168 ~~Article XX Subdivision Noise Pollution Buffer~~ **[RESERVED]**

169 ~~16.8.20.1 Green Strip.~~

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171 ~~Subdivision design must minimize the possibility of noise pollution either from within or without the~~
172 ~~development (from highway or industrial sources) by providing and maintaining a green strip at least~~
173 ~~twenty (20) feet wide between the abutting properties that are so endangered.~~

174 ~~{MODIFIED AND MOVED TO 16.9.1.7.B}~~

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176
177 **16.9.1.7 Buffer and Buffer areas.**

178 A. Any nonresidential yard setback space abutting an existing or potential residential area shall
179 be maintained as a buffer area, as defined in 16.2.2, strip by the developer and subsequent owners.
180 Such buffer area shall be is for the purpose of eliminating any adverse effects upon the environmental
181 or aesthetic qualities of abutting properties, or any type of nuisance affecting impacts to the health,
182 safety, welfare and property values of the residents of Kittery. The Planning Board or Board of
183 Appeals may require an increase to the size of the buffer area and/or establish a buffer, as defined in
184 16.2.2, if yard area is insufficient to mitigate the potential adverse effects as determined by the Board.

185
186 B. Subdivision development must minimize the possibility of noise pollution either from within or from
187 outside the development (from highway or industrial sources) by providing and maintaining a buffer or
188 buffer areas as described in subsection A. above.

189
190 C. Subdivision development must provide and maintain a buffer or buffer area of no less than fifty

191 (50) feet deep along the frontage of existing streets.

192
193 D. The Planning Board may reduce or waive the buffer requirement in areas where the Board
194 determines that a buffer would have an adverse effect on existing scenic viewsheds or public safety.
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197 **16.2.2 Definitions**

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199 **Cluster residential development means** a form of development land use improvements and/or
200 change in which the dimensional requirements standards are reduced below those that normally
201 required in the by the land use zoning regulations district in which the land use improvements and/or
202 change is located, in exchange for the creation of permanent open space for recreation areas, the
203 preservation of environmentally sensitive areas, agriculture and silviculture, and for the reduction in
204 the size of road and utility systems. return for the provision to set aside a portion of the tract as of
205 permanent open space and other environmental enhancements. Permanent open space is owned and
206 maintained jointly in common by individual lot/unit owners, the Town, or a land conservation
207 organization. For the purpose of this definition "dimensional standards" means and is limited to
208 ordinance provisions relating to lot area, building coverage, street frontage and yard setback
209 requirements.

210
211 Viewpoint means a place from which the surrounding landscape or scenery can be viewed or
212 observed.

213
214 Viewshed means those parts of a landscape that can be seen from a particular point.
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