

**Town of Kittery  
 Planning Board Meeting  
 June 23, 2016**

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

**PROJECT TRACKING**

| REQ'D | ACTION   | COMMENTS             | STATUS                  |
|-------|--|----------------------|-------------------------|
| YES   | Initial Planning Board Meeting                 | 3/24/2016            | HELD                    |
| NO    | Secondary Planning Board Meeting               | 4/28/2016; 5/26/2016 | HELD                    |
| NO    | Joint Workshop with Town Council               | 5/16/2016            | HELD                    |
| YES   | Public Hearing (special notice requirements)   | 4/28/2016            | Scheduled for 6/23/2016 |
| YES   | Review/Approval/Recommendation to Town Council |                      | TBD                     |

**Review {See page 2 for update}**

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

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

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

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

**UPDATE:**

The attached amendment reflects comments from the Board during the most recent review from May 26, 2016. MDEP has reviewed the proposed amendments to date, and confirmed they are in compliance with Chapter 1000 standards, however, a formal approval will only be provided once the Town Council adopts the code amendments.

Changes to the amendment are highlighted in yellow and outlined as follows:

- Line 49 – During the 5/26/2016 review the Board suggested removing the term “area”; however, MDEP advised retaining.
- Line 54 – Replaced “lot coverage” with “devegetated area” to provide linguistic consistency and avoid confusion with “building coverage”
- Lines 72 – 87 – Expanded the principal and accessory structure standard ordinance to increase readability.
- Line 164 – Corrected sub-section identification
- Lines 172 – 173 – Revised Devegetated Area definition per comments by MDEP

**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 to Title 16.3.2.17.D – Shoreland Overlay Zone Standard; and 16.2.2 – Definitions.**

- 1 **D. Standards.** (Effective 2/28/15)  
 2  
 3 1. Minimum lot standards  
 4  
 5 a. Minimum lot size by base zone, within the  
 6 Residential–Village (R-V) zone 8,000 square feet  
 7 Residential–Urban (R-U) zone 20,000 square feet  
 8 Residential–Rural (R-RL), Residential–Suburban (R-S) and  
 9 Residential–Kittery Point Village (R-KPV) zones 40,000 square feet  
 10 Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L)  
 11 and Business-Local 1 (B-L1) zones 60,000 square feet  
 12 Residential-Rural Conservation (R-RLC) zone 80,000 square feet  
 13 Business-Park (B-PK) zone 120,000 square feet  
 14 Mixed-Use Badgers Island (MU-BI) zone 6,000 square feet  
 15 Mixed-Use Kittery Foreside (MU-KF) zone 10,000 square feet  
 16  
 17 b. Minimum land area per dwelling unit by base zone, within the  
 18 Residential–Village (R-V) zone 8,000 square feet  
 19 Business-Park (B-PK) zone 10,000 square feet  
 20 Residential–Urban (R-U), Business-Local (B-L) and  
 21 Business-Local 1 (B-L1) zones 20,000 square feet  
 22 Mixed Use (M-U), Residential–Rural (R-RL),  
 23 Residential–Suburban (R-S) and  
 24 Residential–Kittery Point Village (R-KPV) zones 40,000 square feet.  
 25 Residential-Rural Conservation (R-RLC) zone 80,000 square feet.  
 26 Mixed-Use Badgers Island (MU-BI) zone 6,000 square feet  
 27 \*3,000 square feet for the first two dwelling units  
 28 Mixed-Use Kittery Foreside (MU-KF) zone 10,000 square feet  
 29  
 30 c. Minimum Shore frontage by base zone per lot and dwelling unit  
 31 Mixed Use-Badgers Island (MU-BI) 25 feet  
 32 Residential-Village (R-V), Residential Urban (R-U), and  
 33 Mixed-Use Kittery Foreside (MU-KF) zones 50 feet  
 34 Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),  
 35 Business-Park (B-PK), Business-Local (B-L) and  
 36 Business-Local 1 (B-L1) zones (shore frontage per lot) 150 feet  
 37  
 38 (shore frontage per dwelling unit) 50 feet  
 39 Residential-Rural (R-RL), Residential-Suburban (R-S),  
 40 and Residential-Kittery Point Village (R-KPV) zones  
 41 (shore frontage per lot) 150 feet  
 42 (shore frontage per dwelling unit) 100 feet  
 43 Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit) 250 feet  
 44  
 45 The minimum shore frontage requirement for public and private recreational facilities is the same as  
 46 that for residential development in the respective zone.  
 47

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

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

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

71

72 a. All new principal and accessory structures (except certain patios and decks per Section  
73 16.3.2.17.D.2.b,) must be set back as follows: at least one hundred (100) feet, horizontal distance, from  
74 the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or  
75 the upland edge of a freshwater wetland, with the following exceptions:

76

77 i. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the setback requirement is seventy-five  
78 (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a  
79 wetland unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D.

80

81 ii. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance,  
82 except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in  
83 which case the setback requirements specified above apply.

84

85 iii. The water body, tributary stream, or wetland setbacks do not apply to structures that require direct  
86 access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor  
87 does it apply to other functionally water-dependent uses, as defined in 16.2.

88

89 ~~i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water~~  
90 ~~bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater~~  
91 ~~wetland, and seventy five (75) feet, horizontal distance, from the normal high water line of any water~~  
92 ~~bodies, or the upland edge of a wetland on the Mixed Use – Badgers Island and the Kittery Foreside~~  
93 ~~Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E,, except~~  
94 ~~that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement.~~  
95 ~~In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except~~

- 96 ~~for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which~~  
97 ~~case the setback requirements specified above apply. (Item moved to be included with 16.3.2.17.D.2.a,~~  
98 ~~16.3.2.17.D.2.a.i and 16.3.2.17.D.2.a.ii)~~  
99 ii. ~~The water body, tributary stream, or wetland setback provision does not apply to structures which~~  
100 ~~require direct access to the water body or wetland as an operational necessity, such as piers and~~  
101 ~~retaining walls, nor does it apply to other functionally water dependent uses. (Item moved to be~~  
102 ~~included with 16.3.2.17.D.2.a.iii)~~  
103  
104 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at  
105 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the  
106 upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks  
107 must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.  
108  
109 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken  
110 from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or  
111 “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published  
112 on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement  
113 as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located,  
114 the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine  
115 Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still  
116 not reached, the applicant may appeal the matter to the Board of Appeals.  
117  
118 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing  
119 and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer.  
120 The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery  
121 along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as  
122 an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in  
123 height immediately upon planting.  
124  
125 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to  
126 place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the  
127 Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for  
128 the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80)  
129 square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary  
130 stream as practical and meet all other applicable standards, including lot coverage and vegetation  
131 clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or  
132 tributary stream than the existing principal structure.  
133  
134 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be  
135 elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence  
136 of these, the flood as defined by soil types identified as recent flood-plain soils.  
137  
138 g. ~~The total footprint of areas devegetated for structures, parking lots and other impervious surfaces,~~  
139 ~~must not exceed twenty (20) percent of the lot area, including existing development, except in the~~  
140 ~~following zones:~~  
141  
142 i. ~~Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent.~~  
143 ~~The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot~~

144 ~~coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no~~  
145 ~~practicable alternative exists to accommodate a water dependent use.~~

146  
147 ii. ~~Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND)~~  
148 ~~Zones where the maximum lot coverage is seventy (70) percent.~~

149 ~~Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot~~  
150 ~~area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the~~  
151 ~~Residential – Urban Zone (R-U) and the Shoreland Overlay Zone. [{See 16.3.2.17.D.1.d}](#)~~

152  
153 ~~h.g.~~ Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to  
154 provide shoreline access in areas of steep slopes or unstable soils provided the:

- 155  
156 i. structure is limited to a maximum of four feet in width;
- 157  
158 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of  
159 a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural  
160 Resources Protection Act, 38 M.R.S. §480-C); and
- 161  
162 iii. applicant demonstrates that no reasonable access alternative exists on the property.

163  
164 **h.** If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure  
165 or use, or combination thereof, is constructed or established on a single parcel in the Shoreland Overlay  
166 zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or  
167 use.

168  
169  
170 **16.2.2 Definitions**

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172 **Devegetated Area** means the total area of all existing and proposed structures, driveways, parking areas  
173 and other non-vegetated surfaces located in the Shoreland Overlay and Resource Protection Zones.