

16.1 General Provisions

16.1.1.1 Title; Applicability.

- A. This title is known, and may be cited as, the "Land Use and Development Code of the Town of Kittery, Maine."
- B. Application of title. The provisions of this title pertain to all the land and water areas as herein defined within the boundaries of the Town.

16.1.1.2 Purpose.

- A. This title is designed for all the purposes of zoning embraced in the Maine Revised Statutes and has been created as an integral part of a growth management program, comprehensive planning, and implementation process for the Town to promote the health, safety and general welfare of its residents.
- B. Among other things, zoning is designed to:
 - (1). Encourage the most appropriate use of land and water throughout the Town;
 - (2). Promote traffic safety;
 - (3). Provide safety from fire and other elements;
 - (4). Provide adequate light and air;
 - (5). Prevent overcrowding of real property;
 - (6). Prevent development in unsuitable areas;
 - (7). Promote an adequate transportation and circulation system; **[Amended 9-26-2011 by Ord. No. 11-15]**
 - (8). Control and manage the coordinated development of unbuilt areas;
 - (9). Encourage the formation of community units;
 - (10). Provide an allotment of land area in new developments sufficient for all the requirements of community life;
 - (11). Conserve energy and natural resources and protect the environment;
 - (12). Preserve land values; and
 - (13). Provide for adequate public services.

16.1.1.3 Administration of Title 16 by Planning Board.

The Planning Board administers this title and delegates duties as prescribed herein.

16.1.1.4 Conflicting requirements.

- A. Conflict within this title. Where the requirements of this title are in conflict with each other, the most restrictive or that imposing the higher standards governs.
- B. Conflict with other statutes. Wherever the requirements of this title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards governs.

16.1.1.5 Severability.

In the event that any section, subsection or any portion of this title is declared by any court of competent jurisdiction to be invalid for any reason, such decision does not affect the validity of any other section, subsection or other portion of this title; to this end, the provisions of this title are declared to be severable.

16.1.1.6 Rules of Construction.

- A. For the purposes of this Ordinance:
- B. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual;
- C. The present tense includes the future tense;
- D. Words used in the singular include the plural and words used in the plural include the

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singular;

E. The word “shall” is mandatory, the word “may” is permissive;

F. The words “used” or “occupied” included the words “intended,” “designed,” or “arranged to be used or occupied”;

G. The word “dwelling” includes the word “residence”;

H. The word “lot” includes the words “plot” and “parcel”

I. In case of any difference of meaning or implication between the text of this chapter and any map or illustration, the text shall control;

16.1.1.6J. Terms not defined shall have their customary dictionary meaning.

16.1.1.7 Amendments.

No amendments to this title may be adopted until after the Planning Board and the Town Council have held a public hearing thereon. Public notice of the hearing must be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing. Said amendments are effective as provided by the Town Charter.

16.1.1.8 General Development Requirements

This chapter outlines requirements for conformity; discusses nonconformance and waivers; and defines various development review thresholds and requirements to further the safe and orderly development of the Town.

A. Conformity

(1). Conformity required.

No building, structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved or altered, and no new lot may be created except in conformity with all of the regulations herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use or a variance is granted. See **Chapter 16.8, Article VII**, for specific requirements related to septic waste disposal systems.

(2). Minimums and uniformity.

The regulations specified by this title for each class of district are minimum requirements and apply uniformly to each class or kind of structure or land.

(3). Land within street lines.

Land within the lines of a street on which a lot abuts is not considered as part of such lot for the purposes of meeting the area/frontage requirements of **Chapter 16.3**, notwithstanding the fact that the fee to such land may be in the owner of such lot.

(4). Yard, parking or loading space.

No part of a yard or other space or off-street parking or loading space about or in connection with any building and required for the purpose of complying with this title may be included as part of a yard, open space or off-street parking or loading space similarly required for any other building, except as authorized in **§§ 16.8.9.3 and 16.8.9.4**.

(5). Zone boundary line extension.

Where a zoning district boundary line divides a lot, the regulations applicable to either zone of such lot may extend not more than 50 feet into the portion in the other zone(s), except when a less restrictive portion abuts the Resource Protection Zone.

a. Before granting any such extension, the Planning Board must determine that the proposed use of the extended portion will:

- i. Not prevent the orderly and reasonable use of properties in the adjacent zone;
- ii. Be in harmony with the character of the adjacent zone;

- iii. Not adversely affect the property values of adjacent zone's immediate neighborhoods;
 - iv. Not create any traffic hazards or undue traffic congestion on streets in the adjacent zone;
 - v. Not give off obnoxious gases, odors, smoke or soot;
 - vi. Not cause disturbing emission of electrical discharges, dust, light, vibration or noise; and
 - vii. Be adequately screened and buffered from the adjacent zone.
 - b. The Planning Board may require a study to be performed or commissioned by the applicant to ensure compliance with the above requirements.
 - (6). Averaging building setbacks.

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side.
- B. Nonconformance [Amended 9-26-2011 by Ord. No. 11-13; 9-26-2011 by Ord. No. 11-14; 1-23-2012 by Ord. No. 12-01; 1-28-2015 by Ord. No. 15-01; 9-28-2015 by Ord. No. 15-09; 5-22-2017 by Ord. No. 17-04]
- (1). Purpose.

The purpose of this title is to promote land use conformities. The purpose of this article is to regulate nonconforming structures, uses, and lots, and to promote the following objectives.
 - (2). Prohibitions and allowances.
 - a. Except as otherwise provided in this article, a nonconforming condition must not be permitted to become more nonconforming.
 - b. Nonconforming vacant lots of record may be developed, maintained or repaired.
 - c. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.
 - (3). General.
 - a. Transfer of ownership. Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this title.
 - b. Repair and maintenance. This title allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this title, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.
 - c. Nonconforming parking or loading space. A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this title for both the original and addition or enlargement of the structure or use.
 - (4). Nonconforming structures.
 - a. Nonconforming structure relocation. Except where otherwise permitted in this title, relocation of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the relocation must be approved by the Planning Board.
 - i. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements, to the greatest

Commented [1]: Editor's Note: Former § 16.7.2.6, Single noncontiguous lots, was repealed 9-26-2011 by Ord. No. 11-14.

practical extent, as determined by the Planning Board or Board of Appeals, and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII, for other specific requirements related to septic waste disposal systems.

- ii. In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board or Board of Appeals must consider the following conditions:
 - a. The size of the lot;
 - b. The slope of the land;
 - c. The potential for soil erosion;
 - d. The location of other structures on the property and on adjacent properties;
 - e. The location of the septic system and other on-site soils suitable for septic systems;
 - f. The type and amount of vegetation to be removed to accomplish the relocation.
- iii. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The Planning Board or Board of Appeals may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Tree removal and vegetation replanting is required as follows, effective 2-28-15:
 - a. Prior to the commencement of on-site construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all on-site work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.
 - b. Trees removed to relocate a structure must be replanted with at least one native tree, six feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.
 - c. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.
 - d. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.
- iv. If the total footprint of the original structure can be relocated beyond

the required setback area, no portion of the relocated structure may be constructed at less than the setback requirement for a new structure.

- b. Nonconforming structure repair and/or expansion.
 - i. Except where otherwise permitted in this title, repair and/or expansion of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board.
 - ii. The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure provided the proposed expansion meets all of the following criteria:
 - a. A vertical expansion that follows the existing building footprint;
 - b. Will not result in setbacks less than those existing;
 - c. Is not located in the Shoreland Overlay or Resource Protection Overlay Zone.
 - iii. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies.
 - a. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.6.6.B.
 - b. Except in the Residential - Village (R-V) Zone, minimum setbacks of residential storage sheds that are less than 121 square feet, one-story residential garages that are less than 577 square feet, and decks less than 251 square feet may be one-half the minimum rear and side yard setbacks, providing the lots are legally nonconforming.
 - c. Where the expansion of the residential use within the Commercial Zones involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this title. If the proposed structure expansion cannot meet the dimensional requirements of this title, the application may be submitted to the Board of Appeals for review as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals must use the criteria established in this section, and then may approve the proposed variations to the dimensional requirements.
 - d. The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet in size.
 - e. In addition to the standards in the above § 16.7.3.3B(3)(a) through (d), the expansion of nonconforming structures

located in the Shoreland or Resource Protection Overlay Zone must meet the following:

1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming structure the structure and new foundation must be placed such that setback requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in § 16.7.3.3A(2), Nonconforming structure relocation.
2. Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited.
3. Notwithstanding § 16.7.3.3B(3)(e)[2] above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows:
 - [a] The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.
4. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or coastal or freshwater wetland setback requirement. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered as follows:
 - [a] For structures located less than 100 feet from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet, or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.
 - [b] For structures that are located within the Resource Protection Overlay Zone, the maximum combined total footprint for all structures may not be

expanded to a size greater than 1,500 square feet, or 30% larger than the footprint that existed at the time the Resource Protection Overlay Zone was established, whichever is greater. The maximum height of any structure may not be greater than 25 feet, or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 100 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland must meet the footprint, roof pitch and height limits in § 16.7.3.3B(3)(e)[4][a], above.

c. Nonconforming structure reconstruction.

- i. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in § 16.7.3.3A(2), Nonconforming structure relocation, the physical condition and type of foundation present, if any.
- ii. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and removed, damaged or destroyed by any cause by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within 12 months of the established date of damage or destruction.
- iii. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained from the Code Enforcement Officer within 18 months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure.
- iv. Nothing in this section prevents the demolition of the remains of any structure damaged or destroyed. Application for a demolition permit for any structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.
- v. In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. If the reconstructed or replacement structure is less than the required setback, it may not be any larger than the original

structure, except as allowed in § 16.7.3.3B, Nonconforming structure repair and expansion.

- vi. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with § 16.7.3.3A(3), Nonconforming structure relocation.
- vii. Except where expressly permitted in this title, in no case may a structure be reconstructed or replaced so as to increase its nonconformity.

(5). Nonconforming uses.

- a. Nonconforming use continuance. The use of land, or structure, lawful at the time such use began, may continue although such use may not meet the provisions of this title.
- b. Discontinued resumption prohibited. A nonconforming use discontinued for a period exceeding one year, or which is superseded by a conforming use, loses its status as a permitted nonconforming use. The uses of the land or structure must thereafter meet the provisions of this title. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five-year period.
- c. Nonconforming use expansion. Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be expanded within existing residential structures. Where the expansion of a nonconforming residential use involves the expansion of a structure, the structure must be expanded in conformity with all requirements as outlined in § 16.7.3.3, Nonconforming structures.
- d. Nonconforming use change: review authority and evaluations. The reviewing authority, per Subsections D(1), (2) and (3) below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.
 - i. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland.
 - ii. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals.
 - iii. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board.

(6). Nonconforming lots.

- a. Nonconforming lots of record.
 - i. Nonconforming lots. In any district, notwithstanding limitations

imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

b. Contiguous nonconforming lots.

- i. Contiguous nonconforming lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional requirements of this title.

[\[Image\]](#)

- ii. Contiguous-built upon nonconforming lots. If two or more contiguous lots or parcels are in a single or joint ownership of record prior to July 13, 1977, and prior to December 15, 1973, for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this title, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

[\[Image\]](#)

- iii. Contiguous partially built-upon lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this title, if any of these lots do not individually meet the dimensional requirements of this title or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the applicable dimensional requirements of this title.

[\[Image\]](#)

iv. This subsection does not apply:

- a. To any Planning Board approved subdivision located entirely outside of the Shoreland Overlay Zone and Resource Protection Overlay Zone, and which was recorded with the York County Registry of Deeds on, or before, July 13, 1977;
- b. If one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this title § 16.8.7.1, Septic Waste Disposal, and the State of Maine Subsurface

Wastewater Disposal Rules; and

1. If each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 2. If any lot(s) that do not meet the frontage and lot size requirements of § 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.
- c. Single lot division of a nonconforming lot. If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title.
- d. Adjustment of common boundary line of nonconforming lots.
- i. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:
 - a. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this title; or
 - b. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and
 1. Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or
 2. Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer; or
 - c. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and
 1. Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage^{2,3}; and
 2. A lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and
 3. Common boundary lines may not be adjusted when both subject lots are nonconforming per MDEP Mandatory Shoreland Zoning minimum lot standards.³
 - ii. It is not the intention of the above subsection (Adjustment of

common boundary line of nonconforming lots) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

NOTES:

- 1 Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 square feet lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 square feet lot size with 200 feet of shore frontage.
- 2 **Title 16.7.3.5D** is allowed only when both subject lots are under the same single or joint ownership.
- 3 Adherence to State Minimum Lot Size Law (12 M.R.S. §§ 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.

16.2 Administration and Enforcement

16.2.1.1 This Chapter describes general administration and enforcement of the requirements of this title.

16.2.1.2 Planning Board appointment and powers.

A. Appointment and composition.

- (1). The Planning Board is established by the Town Charter, Article VIII, Sec. 8.01, Planning, and applicable state statutes.
- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.
- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties.
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).
- (6). The Board is to:
 - e. Perform duties as provided by law.
 - f. Hear and decide on required development plans, including special exception use requests, that require Planning Board review, using the development application and review procedures and criteria and other provisions in this title.
 - g. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

Commented [2]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

Commented [3]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

16.2.1.3 Board of Appeals

A. Appointment and composition.

- (1). The Board of Appeals is established by the Town Charter, Article VIII, Sec. 8.04, and 30-A M.R.S. § 2691.
- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.

- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
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- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).
- (6). The Board is to:
 - a. Perform duties as provided by law.
 - b. Administrative decision appeal. Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this title.
 - c. Variance request. Hear and decide on a variance request within the limitations set forth in this title and 30-A M.R.S. § 4353(4).
 - d. Miscellaneous variation request. To hear and decide on a miscellaneous variation request to permit variation in:
 - i. Nonconformance as prescribed in Article III of Chapter 16.7;
 - ii. Standards contained in Chapter 16.8, Article IX, Parking, Loading and Traffic, or § 16.8.10.13, Sign violation and appeal; or
 - iii. Accessory dwelling unit standards per Article XXV of Chapter 16.8.
 - e. Special exception use request. Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the development application and review (Chapter 16.10) procedures and review criteria and other provisions in this title.

Commented [4]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

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16.2.1.4 Port Authority

A. Appointment and composition.

- (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as amended, and Town Charter, Article IX.
- (2). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.
- (3). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.

- (4). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.
- (5). Members serve until their successors are appointed and qualified.
- (6). No member shall serve more than two consecutive terms of five years. Any member who has served two consecutive terms of five years is ineligible to serve on the Board for a period of one year. Computation of term limits commences with the first term of five years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than five years after the effective date.
- (7). A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority and show the vote of each member upon each question
- (2). The Port Authority is to:
 - a. Perform duties as provided by law.
 - b. Where Town Council action is required under 38 M.R.S. § 1021 et seq., Wharves and Fish Weirs, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.
 - c. Water area development powers and duties.
 - i. The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.
 - ii. Where Port Authority review is required, such review must be completed prior to Planning Board review.
 - iii. Port Authority review and approval authority under this title applies to structures extending into a water body beyond the mean high-water line or the upland edge of a coastal wetland and extends from the water body to the mean high-water line or upland edge of a coastal wetland.
 - iv. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high-water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over, a structure extending into a water body beyond the mean high-water line or the edge of a coastal wetland require Planning Board approval. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
 - v. Where the Planning Board is the lead reviewing authority, a shorefront development plan must be submitted for Planning Board approval. A Port Authority ruling on the shorefront development plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to Planning Board approval.
 - vi. Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-

Commented [6]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

water line. The standards contained in § 16.8.15.1 are to be met.

16.2.1.5 Town Planner

- A. Responsibilities. The Town Planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The Planner is responsible for all municipal planning functions, including the administration of this title, and the implementation of the Kittery Growth Management Program. These functions include but are not limited to land and water use planning; providing technical assistance and staff support to the Planning Board; researching, developing, coordinating and administering land and water use and planning related projects; maintaining accurate planning records; and interacting with members of the public involved with the planning process.
- B. Plan submission.
 - (1). All plan submission requirements for an application for land/water area use and development are to be submitted to the Planner.
 - (2). The Planner must review all plan submission contents to ascertain that they meet the requirements of this title before they are delivered for review or consideration by the Planning Board.
 - (3). The Planner, upon confirmation of a plan's submission contents sufficiency, is to place the application on the Board's agenda for a scheduling hearing.
NOTE: Planner confirmation does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the Planning Board.
- C. Staff coordination. The Planner is to coordinate with appropriate municipal department heads to ensure they have received required plan information for the performance of their duties under this title.
- D. Reporting. The Planner must report the status of all active plans (received, pending, under review, and approved not built – past expiration date) to the Board monthly

16.2.1.6 Code Enforcement Officer (CEO)

- A. Responsibility. It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of this title.
- B. Permits. The CEO is to issue required permits for building, occupancy, plumbing, electrical or such other as may be required.
- C. Appeal/request initiation. The CEO must initiate the forms required for appeals/requests to the Board of Appeals.
- D. Inspection. The CEO must inspect all buildings, developments, subdivisions and such other facilities/uses within the requirements of this title.
- E. Business use changes. The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in §§ 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this title.

16.2.1.7 Enforcement; general. [Amended 9-26-2011 by Ord. No. 11-15]. If the Code Enforcement Officer (CEO) finds any of the provisions of this title are being violated, the CEO must notify by certified mail, return receipt requested, the person responsible for such violations, indicate the nature of the violation, and order the action necessary to correct it. The CEO must order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being done; or take any other action authorized by this title to ensure compliance with or to prevent violations of its provisions.

16.2.1.8 Building/Regulated Activity Permits

Building/regulated activity permits and certificates of occupancy are required to control development to ensure that such development conforms to this title. This chapter outlines the requirements of this process.

- A. Permit. No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.
- B. Conformity. No building/regulated activity permit may be issued except in conformity with this title, except after written order of the Board of Appeals.
- C. Permit records. The CEO must maintain a public record of all building/regulated activity permits and applications thereof.
- D. Permit period. **[Amended 10-26-2015 by Ord. No. 15-11]**
 - (1). A permit expires if the Code Enforcement Officer determines no substantial work has been commenced within six months from date of issue. A permit expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction. Written request for renewal must be made prior to the permit expiration.
 - (2). The permit may be renewed one time only for a single six-month period to commence work, upon payment of the base application fee. If the Code Enforcement Officer determines substantial work has not commenced upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted.
 - (3). The permit may be renewed one time only for a single six-month period to complete work, upon payment of the base application fee. If work is not substantially complete as determined by the Code Enforcement Officer upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted based on the value of the remaining permitted work.
 - (4). Any work commenced or completed without the issue of a permit as required by this title is subject to an after-the-fact permit with all applicable fees doubled.
- E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as determined by the Code Enforcement Officer:
 - (1). Fair market value of the work is greater than \$2,000;
 - (2). Changes to electric, plumbing or septic systems;
 - (3). Increase in coverage;
 - (4). Construction of a building or expansion of a structure;
 - (5). Structural alteration;
 - (6). Change in use or new business occupancy;
 - (7). Erection or expansion of signage;
 - (8). Installation or expansion of piers and docks;
 - (9). An activity that requires inspection by the CEO to determine compliance with this title; or
 - (10). Creates one or more acres of disturbed area.
 - (11). Structure demolition. **[Added 9-24-2012 by Ord. No. 12-11]**
- F. Application.
 - (1). Plans.
 - a. All applications for building/regulated activity permits are to be accompanied by plans showing the actual dimensions and shape of the lot

to be built upon, including but not limited to property and setback lines; the exact sizes and locations and dimensions of the proposed building or alteration of any existing structures and the proposed sewage disposal systems as designed by a Maine-licensed site evaluator. The Code Enforcement Officer may waive the requirement for plans in the case of minor interior alterations which in the CEO's opinion do not result in a change in use. The application is to include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this title. All plans and correspondence are to include the map and lot designation of the property concerned in the upper right-hand corner.

- b. At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative is to have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or applicant, except when a temporary occupancy permit has been given to the dwelling owner or applicant.
- (2). Drainage and sewage disposal. Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal and prior obtainment of a subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the Maine State Plumbing Code and Chapter 16.8.
- (3). Fee. Except for municipality permits, application for a building/regulated activity permit must be accompanied by a fee which is established by the Town Council. (See Appendix A, Fee Schedules.) **[Amended 9-26-2011 by Ord. No. 11-15]**
- (4). Flood hazard ordinance. Any building or structure that might be erected in an area subject to periodic flooding must meet all conditions of Chapter 15.3, relating to flood hazard permit and review procedure, of this Code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.
- (5). Conformance to standards. **[Amended 5-30-2012 by Ord. No. 12-04]**
 - a. All developments must be in conformance with the procedures, standards and requirements of this title.
 - b. All work that requires a building/regulated activity permit must conform to the Maine Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 et seq., which is adopted by the Department of Public Safety, Bureau of Building Codes and Standards, Maine Technical Building Codes and Standards Board, by Rule 16-635, Chapters 1 through 6, as may be amended from time to time.
 - c. The following codes, standards, rules and their amendments are in full force and effect in their entirety and are not affected by the operation of Title 16 or the MUBEC:
 - i. National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-A.
 - ii. Maine State Plumbing Codes standards, adopted pursuant to 32 M.R.S. § 3403-B.
 - iii. Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.
 - iv. Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32 M.R.S. § 14804.
 - v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S. § 15104-A.

Commented [7]: Editor's Note: Title 15 was repealed. See now Chapter 16.9, Art. VIII.

- vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
- vii. National Fire Protection Association (NFPA) firesafety codes and standards, adopted pursuant to 25 M.R.S. § 2452 and § 2465, as follows:

- d. NFPA 1 - Fire Code.

- e. NFPA 101 - Life Safety Code.

- f. NFPA 54 - Fuel Gas Code.

- g. NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and Solid-Fuel-Burning Appliances.

- (6). Permit review time constraints. The Code Enforcement Officer must approve or deny an application for a building/regulated activity permit within 14 working days of receiving said application. The Town Manager may approve or deny an application if no action is taken by the Code Enforcement Officer within 14 working days.

16.2.1.9 Certificate of occupancy.

- A. Certificate requirement. It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this title and all applicable state and federal requirements.
- B. Certificate application requirement. No building/regulated activity permit may be issued until an application has been made for a certificate of occupancy and the certificate of occupancy is issued in conformity with the provisions of this title upon completion of the work.
- C. Temporary certificate.
 - (1). A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants and the public.
- D. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all Planning Board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the Planning Board, and certificate of occupancy may be issued by the CEO, when phase conditions have been met.
- E. Records. The Code Enforcement Officer must maintain a public record of all certificates of occupancy.
- F. Failure to obtain certificate. Failure to obtain a certificate of occupancy is a violation of this title.
- G. Minor interior alterations. An occupancy permit is not required for minor interior alterations during which the building would be considered occupied and which, in the judgment of the Code Enforcement Officer, does not constitute a change in use of the building.

16.2.1.10 Numbering of buildings. [Added 9-26-2011 by Ord. No. 11-15]

- A. Street-numbering map.
 - (1). All buildings must bear a distinctive street number in accordance with and as designated upon the street-numbering map on file with the Town's Assessing Department. The Town Assessor is responsible to maintain and keep current said map.

(2). No person may affix, or allow to be affixed, a different street number from the one designated on the street-numbering map.

- B. Display of number. The number is to be displayed upon the front of the building and/or on the side facing the street. The number must be plainly visible from the street. Owners of buildings and houses that are set back out of view from the road must place a post or sign at the driveway entrance with the specified numbers. Said post/sign is not considered a structure which must conform to Land Use and Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said post/sign must be placed out of the Town's right-of-way and be six feet in height.
- C. Multifamily houses or apartment buildings. For multifamily houses or apartment buildings, the house number is to be displayed as outlined in Subsection **B**. Each individual apartment or living unit must be clearly sublettered.
- D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in color with the color of the building or background to which they are attached.
- E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of this section within the time limit of not more than 30 days specified in such notice is liable to a fine of not less than \$50 nor more than \$100 per violation.

16.2.1.11 Plumbing and septic system permit fees. **[Added 9-26-2011 by Ord. No. 11-15]**

- A. Applicability. This section applies to fees charged by the Town for plumbing and subsurface wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. § 4201 et seq. and pursuant to rules promulgated by the Department of Health and Human Services (DHHS) under the authority of 30-A M.R.S. § 4201 et seq. ("State Plumbing Code"). For purposes of this section, the terms contained in this section have the meanings given to them in the State Plumbing Code.
- B. Plumbing permit fees.
 - (1). At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. § 4201 et seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance with the following schedule and at the rate provided for each classification shown herein:
 - a. Any person who begins any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is liable to pay double the permit fee fixed by this section for such work. However, this provision does not apply to emergency work when it is proven to the satisfaction of the local plumbing inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days, or else a double permit fee as hereinabove provided is to be charged.
 - b. For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached is construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings are to be based on the number of plumbing fixtures, water heaters, etc., involved.
 - c. The following permit fees are to be charged:
 - i. Minimum fee for all permits, see Appendix A.
 - ii. Fixture fee, see Appendix A.
 - iii. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.

- iv. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
- v. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
- vi. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
- vii. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stickbuilt structures, and a plumbing fixture fee is to be charged based on this section.
- viii. A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

C. Subsurface wastewater disposal system fees.

- (1). Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.
- (2). Late permit fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in Subsection A of this section.

16.2.1.12 Decision Appeal, Variance and Other Requests

A. Purpose.

This chapter describes the minimum requirements for aggrieved parties to file an appeal under this title and related state statutes or to seek the granting of a special exception as found in Chapter 16.3, as well as a variance or miscellaneous variation request to the standards as provided herein.

B. Appeal of Planning Board, Board of Appeals or Port Authority decision.

- (1). An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Planning Board was rendered.
- (2). An aggrieved party with legal standing may appeal a final decision of the Board of Appeals to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Board of Appeals was rendered.
- (3). An aggrieved party with legal standing may appeal a final decision of the Port Authority to the York County Superior Court in accordance with Maine Rules of Civil Procedures Rule 80B within 45 days from the date the decision by the Port Authority was rendered.

C. Appeal of Code Enforcement Officer decision.

A Code Enforcement Officer decision may be appealed to the Board of Appeals as provided in § 16.6.4A.

D. Appeals/requests to Board of Appeals.

For the purposes of this chapter, an appeal or request means any of the following:

- (1). Administrative decision appeal. When the Board of Appeals reviews an administrative decision appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this title and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify or reverse the

decision of the Code Enforcement Officer.

- (2). Variance request.
 - a. A variance may be granted only by the Board of Appeals under the following conditions:
 - i. For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;
 - ii. The use is not prohibited by this title; and
 - iii. Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:
 - a. The land in question cannot yield a reasonable return unless a variance is granted.
 - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - c. The granting of a variance will not alter the essential character of the locality.
 - d. The hardship is not the result of action taken by the applicant or a prior owner.
 - b. Notwithstanding § 16.6.4B(1), the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.
 - c. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.
 - d. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this title to the greatest extent possible and, in doing so, may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.
- (3). Miscellaneous variation request. The Board of Appeals may hear, decide and approve variations in:
 - a. Nonconformance as prescribed in Chapter 16.7, Article III;
 - b. Parking, loading and traffic standards contained in Chapter 16.8, Article IX;
 - c. Sign violation and appeal standards contained in § 16.8.10.3; or
 - d. Accessory dwelling unit standards contained in Chapter 16.8, Article XXV.
- (4). Special exception use request.
 - a. The Board of Appeals will hear, decide and may grant an applicant's special

exception use request where authorized in Chapter 16.3 for any application excluded from Planning Board review as stated in § 16.10.3.2, if the proposed use meets the criteria set forth in § 16.6.6, Basis for decision.

- b. The Planning Board will review, decide and may approve an applicant's special exception use request where the proposed project requires Planning Board review as defined in § 16.10.3.2 or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in §§ 16.10.8.3D and 16.6.6.

E. BOA appeal/request filing procedures.

- (1). Making an appeal/request. An administrative decision appeal, variance request or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be submitted within 30 days of the date of the official written decision being appealed. Other requests may be filed at will.
 - a. The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this title and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:
 - i. The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.
 - ii. The appeal or request must include a concise written statement, indicating what relief is requested and why the appeal or request should be granted.
 - iii. Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the code enforcement office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of 10 sets of all submissions is required.
 - iv. The Board of Appeals must hold a public hearing on an appeal or request within 35 days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.
 - b. At any time between the initial acceptance by the Code Enforcement Officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.
- (2). Hearing and notice.
 - a. Before taking any action on any appeal/request, the Board of Appeals must hold a public hearing and provide the following notifications:
 - i. By mail at least seven and not more than 14 days prior to the scheduled hearing date, to owners of abutting property that an appeal/request is made, the nature of the appeal/request and the time and place of the public hearing thereon; and
 - ii. Notice of all such actions must also be published in a newspaper of general circulation in the Town at least seven days prior to the

- public hearing.
- b. Failure of any property owner to receive a notice of public hearing will not necessitate another hearing or invalidate any action by the Board of Appeals.
- (3). Notification and timing constraints. Following the filing of an appeal/request, the Code Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation Commission of the filing. The appeal or request must be complete for hearing at a subsequent meeting of the Board of Appeals occurring no less than 10 days after the mailing of notices but within 30 days of the appeal filing date.
 - (4). Decisions of the Board of Appeals.
 - a. The person filing the appeal or request has the burden of proof.
 - b. A minimum of four like votes is required for a decision by the Board of Appeals, except on procedural matters.
 - c. The Board of Appeals must decide the appeal or request within 30 days after the close of the hearing and issue a written decision.
 - d. Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.
 - (5). Order of review.
 - a. Where a special exception request or appeal is necessary as an integral part of a development review process, Board of Appeals action is encouraged prior to Planning Board review where required. The findings of the Board of Appeals as well as any file material must be made available to the Planning Board.
 - b. The Planning Board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request.
 - (6). Special exception referral.
 - a. Before granting any special exception, the Board of Appeals may refer the application to the Planning Board and/or Port Authority for a report prior to any subsequent BOA review of the application.
 - b. The Planning Board and/or Port Authority report must be considered informational in character and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data.
 - c. The Planning Board and/or Port Authority report must be submitted to the BOA for its consideration prior to the officially scheduled time of public hearing on the request.
 - (7). Venue and representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.
 - (8). Code Enforcement Officer attendance. The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs or other material the CEO deems appropriate for an understanding of the appeal/request.
 - (9). Appellant's case first. The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairperson.
 - (10). Expiration of approval.
 - a. Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on

which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.

- b. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the section above.
 - c. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in Subsection J(1) above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.
 - d. Such a request must be submitted in writing to the Code Enforcement Officer prior to the date of said approval expiration.
- (11). Reconsideration. In accordance with 30-A M.R.S. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision.
- a. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
 - b. Appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.
- (12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.
- (13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

Commented [8]: Editor's Note: See § A-23.

F. Basis for decision.

(1). Conditions.

- a. In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.
- b. In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:
 - i. The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
 - ii. The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;
 - iii. The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and
 - iv. The use will be in harmony with and promote the general purposes

and intent of this title.

- (2). Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:
- a. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
 - b. The conservation of property values and the encouragement of the most appropriate uses of land;
 - c. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
 - d. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;
 - e. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
 - f. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
 - g. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
 - h. The necessity for paved off-street parking;
 - i. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;
 - j. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;
 - k. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
 - l. Whether the proposed use will be adequately screened and buffered from contiguous properties;
 - m. The assurance of adequate landscaping, grading and provision for natural drainage;
 - n. Whether the proposed use will provide for adequate pedestrian circulation;
 - o. Whether the proposed use anticipates and eliminates potential nuisances created by its location; and
 - p. The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.
- (3). Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the BOA, including the following:
- a. Front, side or rear yards in excess of minimum requirements;
 - b. Modifications of the exterior features of buildings or other structures;
 - c. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
 - d. Regulation of design of access drives, sidewalks and other traffic features;
 - e. Off-street parking and loading spaces in excess of the minimum

requirements; or

f. Restrictions on hours of operation.

- (4). Findings of fact. After reaching a decision on an appeal/request under this section, the Board of Appeals must verify on the record its findings of fact supporting the basis of its decision.
- (5). Outstanding violations. No variance, special exception or miscellaneous variation request may be granted for premises on which outstanding violations of this title exist, unless the effect of such variance, special exception or miscellaneous variation would remedy all such violations.
- (6). Appeals and variances. The Board of Appeals may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of this chapter. The Board of Appeals may grant a variance from the requirements of Chapter 16.9, Article VIII, Floodplain Management, § 16.9.8.1 et seq., consistent with state law and the following criteria: [Added 9-26-2011 by Ord. No. 11-15]
 - a. Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - b. Variances may be granted only upon:
 - i. A showing of good and sufficient cause; and
 - ii. A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
 - iii. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and
 - iv. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
 - c. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:
 - i. Other criteria of this section and § 16.9.8.8I are met; and
 - ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
 - e. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in Subsection F(1) through (4) of this section.
 - f. Any applicant who meets the criteria of Subsection F(1) through (5) of this section is to be notified by the Board of Appeals, in writing, over the

signature of the Chairperson of the Board of Appeals, that:

- i. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per \$100 of insurance coverage;
 - ii. Such construction below the base flood level increases risks to life and property; and
 - iii. The applicant agrees, in writing, that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- g. The Board of Appeals must submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

16.2.1.13 Violations and Enforcement

When any violation of any provision of this title or **Chapter 16.9, Article VII, Nonstormwater Discharge**, is found to exist, the Town Attorney or the CEO, as provided by Maine Rules of Civil Procedure Rule 80K and any provisions of this title and relevant statute, with the advice and consent of the Town Manager, is authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same to be brought in the name of the Town.

- A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this title, is responsible for the violation and is subject to the penalties and the remedies herein provided.
- B. Applications for permits or approvals involving sites with a violation. An application for a building/regulated activity permit (see **Chapter 16.5**), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.
- C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to **§ 16.4.4** for enforcing and securing compliance with the provisions of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.
- D. Notice of violation and order (notice).
 - (1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and any other person or entity responsible (hereafter termed "violation") for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this title and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in **§ 16.4.5H** and must set forth a fine to be imposed as authorized by **§ 16.4.5I and/or 30-A M.R.S. § 4452**
 - (2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be

imposed, an order of remediation or other corrective action(s) consistent with and in compliance with 30-A M.R.S. § 4452 deemed necessary by the CEO to correct or mitigate the violation to the affected area(s), unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.

- (3). All proposed plans for corrective action submitted by the violator must comply with the standards set forth in this chapter where applicable and 30-A M.R.S. § 4452(3). The acceptance by the CEO of a violator's proposed plan(s) of correction or mitigation will not relieve the violator of the requirement to pay the fine set forth in the notice.
- (4). The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. § 4452 exists for which the violator is responsible.
- (5). Additionally, if there is a violation of Chapter 16.9, Article VII, Nonstormwater Discharge, the enforcement authority will order compliance by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation: **[Amended 5-30-2018 by Ord. No. 04-18]**
 - a. The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;
 - b. The cessation of discharge practices or operations in violation of this section;
 - c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - d. The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

E. Procedure to serve notice of violation and order. The notice pursuant to **§ 16.4.5D** must either:

- (1). Be served in hand to the violator by the CEO or a person duly authorized by the CEO;
- (2). Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
- (3). Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail, if not returned or undeliverable, is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or
- (4). Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

F. Appeal of notice of violation and order.

- (1). The violator served with a notice of violation and order may appeal the notice of violation and order to the Board of Appeals by filing an administrative appeal application in accordance with **§ 16.6.5A**.
- (2). If a completed appeal is not filed within 30 days of receipt of the violation and order, then the notice of violation and order is final, and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the

Board of Appeals (BOA) must hold a public hearing pursuant to § 16.6.5B and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The Board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.

- (3). Any adverse decision of the BOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.
 - (4). Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.4.5J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.
- G. Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.4.5J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.
- H. Time limit for corrective action.
- (1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.4.5D of this section is 30 days following receipt of the notice of the violation and order, unless:
 - a. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
 - b. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
 - c. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.
 - (2). If a violator in a timely fashion files a completed administrative appeal application with the Town Clerk as provided in § 16.4.5F, any period of time from date of receipt of such an appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time period described in this section. If the BOA upholds the CEO's determination, the timeline set forth in the notice of violation and order resumes, beginning the day after the decision is rendered, unless it is extended by the BOA.
- I. Penalties.
- (1). The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the notice:
 - a. Fine imposed: \$200 for the first seven-day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100 per day penalty for each day of the continuing violation

up to a maximum penalty imposed of \$2,500 for each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.

- b. When the violation set forth in the notice involves any cutting of tree(s) or other vegetation in violation of § 16.9.2.2 or 30-A M.R.S. § 4452(3), the penalty provided by this section will be imposed from the date of notification of the violation in writing in addition to the required corrective action set forth in the § 16.4.5D.
 - (2). After the time specified to correct the violation in the notice of violation and order passes, it is the responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been corrected and seek an inspection to verify the violation has been corrected. For the purposes of this section, the violation will be assumed to have continued to exist uncorrected until the violator has informed the Code Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers through inspection of the premises that the violation has been corrected, whichever comes earlier.
- J. Consent agreements.
- (1). In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the Town Manager, with advice of the Code Enforcement Officer, is authorized to enter into a consent agreement with the violator to resolve the violation without further enforcement action or appeal. Consent agreements are not intended to allow a violator to substitute fines for corrective actions.
 - (2). Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to the existing terms and provisions of this title.
- K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and order as provided in § 16.4.5D are payable to the Town and due within 30 days after the notice of violation and order become final. All such civil penalties not paid when due accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S. § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.
- L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor, who violates any provision or requirement of this title will be penalized in accordance with this title and 30-A M.R.S. § 4452.

16.2.1.14 Enforcement and Penalties

- A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.9, Article VIII, Floodplain Management, pursuant to 30-A M.R.S. § 4452.
- B. The penalties contained in 30-A M.R.S. § 4452 apply to any violation of this chapter.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, is to submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration is to consist of:
 - (1). The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 - (2). A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
 - (3). A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 - (4). Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
 - (5). A clear statement that the declaration is being submitted pursuant to Section 1316

of the National Flood Insurance Act of 1968, as amended.

16.3 Definitions

16.1.1.1 Purpose. Except where specifically defined in this chapter, all words used in this title carry their customary dictionary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the words "shall" or "must" are always mandatory; "occupied" or "used" are considered as though followed by the words "or intended, arranged or designed to be used or occupied"; and gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

16.1.1.2 As used in this title, the following terms shall have the meanings indicated:

ABUTS

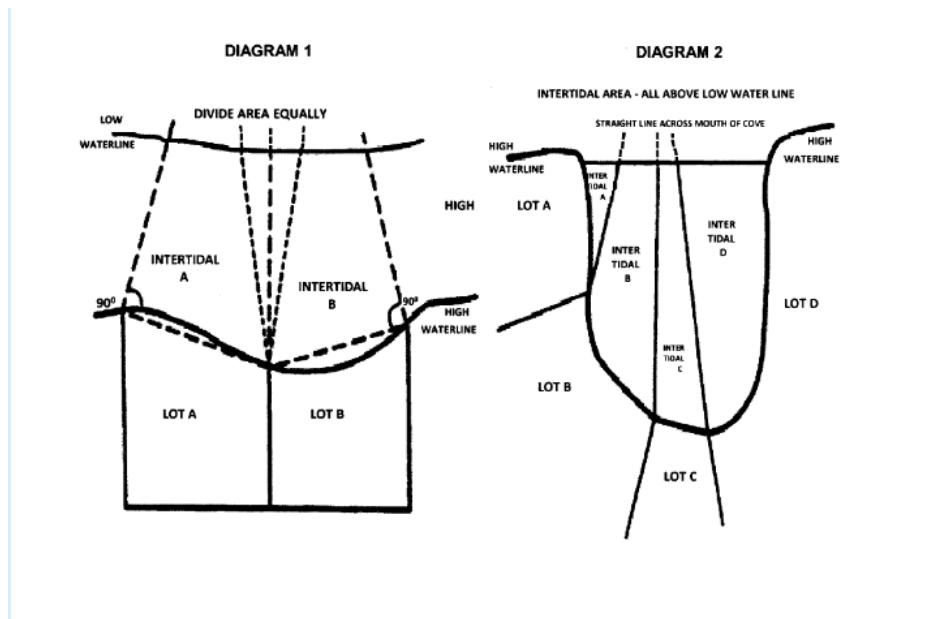
That which is contiguous to, or shares, a common boundary line. [The owner of a property that is contiguous to or shares a common boundary line is an abutter. See section X.X.X on abutter notification process when a new development or redevelopment is proposed.](#)

ABUTTER

The owner of a property that is contiguous to or shares a common boundary line.

ABUTTING PROPERTY

As used herein, relates solely to the notification of property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies). This notification must include intertidal land below the normal high-water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water line, or that land below the normal low-water line. Where question exists regarding ownership of intertidal lands, consult Figure 1 for Chapter 16.2, entitled, "Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters," attached to this chapter.



ACCESSORY BUILDING

A subordinate building on the lot, the use of which is incidental to that of the main or principal building.

Commented [SD9]: Move to performance standards??

ACCESSORY DWELLING UNIT (ADU)

An apartment which is part of an existing structure on the property where the owner of the property occupies one of the units. See § 16.5.1.2 B ~~The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.~~

Commented [SD10]: Performance Standard

ACCESSORY STRUCTURE

A structure that is subordinate to and serves a principal building or use on the lot.

ACCESSORY USE

A use customarily incidental and subordinate to the principal use and located on the same lot with such principal use. See Principle Use.

~~ACRE~~

~~A unit of area equal to 43,560 square feet (about 4,047 square meters).~~

~~[ADDED 9-28-2015 BY ORD. NO. 15-05]~~

~~ACREAGE~~

~~Land area measured in acres.~~

~~[ADDED 9-28-2015 BY ORD. NO. 15-05]~~

ADJACENT GRADE

The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

ADULT ENTERTAINMENT ESTABLISHMENT

- A. Any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials, actions, and/or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities, including but not limited to:
- (1). Live entertainment, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities," or
 - (2). Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."
- B. For the purpose of this definition, "specified sexual activities" means:
- (1). Human genitals in a state of sexual stimulation or arousal;
 - (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

AGGRIEVED PARTY

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

AGRICULTURE

The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance for sale, lease, or personal use or lease of plants and/or animals, including but not

Commented [SD11]: Add that this USE excludes "sawmill, piggery or the raising of poultry for commercial purposes" and add definitions to

limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products. ; fruits and vegetables; and ornamental and greenhouse products.

Agriculture does not include forestry or sawmills, as defined in this Ordinance. See section 16.5.1.3 forest management and timber harvesting activities.

AGRICULTURE, PIGGERY

A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. See section 16.5.1.4

AGRICULTURE, POULTRY FACILITY

A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. See section 16.5.1.5

ALTERNATIVE TOWER STRUCTURE

Includes but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers, referred to by the industry as "stealth" technology.

ANTENNA

Any apparatus designed for telephonic, radio, television or similar communications through the sending and/or receiving of electromagnetic waves.

APARTMENT UNIT

A room or set of rooms for rent, fitted especially with housekeeping facilities and used as a single dwelling unit.

Commented [SD12]: Edit definition based off KLIC decision for dwellings

APARTMENT BUILDING

A building arranged, intended or designed to be occupied by three or more families, each living in its own separate dwelling unit.

AQUACULTURE

The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.

AREA OF A SHALLOW FLOODING

A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM), with a one-percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain having a one-percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in § 16.9.8.3, Establishment.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

ART STUDIO/GALLERY

Enclosed place for the exhibition, production and sales of art.

BANNER

Any sign of lightweight fabric or similar material that is mounted for display at one or more edges.

BASAL AREA

The area of a tree stem derived by measuring the diameter of a standing tree measured 4.5 feet from ground level and inclusive of bark.

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year, commonly called the one-hundred-year flood.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

BASEMENT

An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of its volume below the existing ground. ~~Basements will not be permitted for use as sole living quarters within a dwelling, but may be used as living area, storage or garage space.~~

Commented [SD13]: Performance standard

BED-AND-BREAKFAST

A home occupation in a single-family dwelling in which lodging or lodgings with meals served before noon are offered to the general public for compensation, offering no more than six bedrooms for lodging purposes.

BEST MANAGEMENT PRACTICES ("BMP")

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water bodies. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BILLBOARD

The surface of any building or structure which is available for hire for advertising goods or services not provided on the premises. Official business directional signs (OBDS) are not considered billboards.

BOARD OF APPEALS

The Board of Appeals of the Town of Kittery; may be referred to as the BOA.

BOAT LAUNCHING FACILITY

A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Commented [SD14]: Can this be combined with Boat Yard or Boathouse? Is this a use? If so, not permitted anywhere currently

BOAT YARD

A business or gainful occupation where boats are hauled, stored, repaired and/or constructed.

BOATHOUSE

A building used exclusively for the keeping, repairing and maintenance of boats.

BREAKAWAY WALL

A wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

BROOK

A channel between defined banks, including the floodway, associated floodplain wetlands, where the channel is created by the action of surface water and characterized by the lack of upland vegetation

or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock.

BUFFER

A combination of physical space and vertical elements, such as plants, berms, fences or walls, the purpose of which is to separate and screen incompatible land uses from each other.

~~BUFFER AREA~~

~~A neutral area separating conflicting areas.~~

BUILDING

Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or property. Each portion of a building separated from other portions by a fire wall is considered as a separate structure.

BUILDING COVERAGE

The aggregate or the maximum horizontal area of all buildings on the lot including accessory buildings but excluding cornices, eaves or gutters projecting not more than 24 inches. Pet shelters, playground equipment, tree houses, and structures that are not also "buildings" are not used in calculating building coverage. Additionally, this is not to be construed to mean the aggregate of floors in a multilevel building.

[ADDED 5-22-2017 BY ORD. NO. 17-05]

BUILDING FRONTAGE

Linear footage along the face of the building containing the main public entry, commonly labeled "front elevation" on building plans.

BUILDING MATERIALS AND GARDEN SUPPLY

A retail establishment primarily engaged in selling lumber and other building materials; paint, glass, floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or nursery stock, lawn and garden supplies; modular homes and mobile homes.

BUSINESS

For the purposes of the sign regulations, any corporation, trust, partnership or other verifiable legal entity with the object of gain, benefit or advantage.

BUSINESS AND PROFESSIONAL OFFICES

A building, or portion thereof, in which there are located the offices of a profession or business, including, but not limited to, banks, insurance, realtors, attorneys, appraisers, engineers, architects, landscape architects, accountants, dentists, optometrists and physicians.

BUSINESS FACILITY

For the purposes of the sign regulations, a workplace of a business other than an employee's or employer's personal residence.

BUSINESS SERVICES

Establishments primarily engaged in providing services to business enterprises on a fee or contract basis, including, but not limited to, advertising, credit agencies, photocopying, commercial graphics, computer programming, cleaning and maintenance services, employment agencies, data processing, consulting and public relations, security and business equipment rental.

CAMPGROUND

Any area or tract of land use to accommodate two or more visitors, including tents, trailers or other camping outfits, not to be used as permanent residence.

CANNABIS

All parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin including cannabis concentrate. This term does not include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination or any ingredient combined with cannabis to prepare topical or oral administrations, food, drink or any other product. Cannabis also means marijuana.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

CANOPY, TREE (TREE CANOPY)

The more or less continuous cover formed by tree crowns in a wooded area.

CEMETERY ~~AND BURYING GROUND~~

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

[ADDED 9-28-2015 BY ORD. NO. 15-05]

CERTIFICATE OF COMPLIANCE

A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of § 16.9.8.1 et seq.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

CERTIFICATE OF OCCUPANCY

A permit issued by the Code Enforcement Officer that authorizes the recipient to make use of property in accordance with the requirements of this title and applicable state and federal requirements.

CHARACTER

The main or essential nature, especially as strongly marked and serving to distinguish.

CLEAN WATER ACT

The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

CLEAR-CUT

Any timber harvesting on a forested site greater than one acre in size which, over a ten-year period, results in an average residual basal area of trees over six inches in diameter of less than 30 square feet per acre, unless one or both of the following conditions exist:

- A. If after harvesting the average residual basal area of trees over one inch in diameter measured at 4.5 feet above the ground is 30 square feet per acre or more, a clear cut does not occur until the average residual basal area of trees six inches or larger measured at 4.5 feet above the ground is less than 10 square feet per acre; or
- B. After harvesting, the site has a well-distributed stand of trees at least five feet in height that meets the regeneration standards applicable under 12 M.R.S. Chapter 805, § 8869(1).

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CLUSTER MIXED-USE DEVELOPMENT

A form of land use improvements and/or change, with residential and commercial elements in mixed-use or single-use buildings, in which the dimensional requirements are reduced below that normally required in the applicable zone in return for a requirement providing traffic improvements, utility extensions, permanent open space, and other such improvements that the Planning Board may determine contribute to the enhancement of the project and/or the surrounding environment.

CLUSTER RESIDENTIAL DEVELOPMENT

A form of land use improvements and/or change in which the dimensional requirements are reduced below that normally required in the zoning district in which the land use improvements and/or change is located in return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the Town, or a land conservation organization.

COASTAL WETLAND

All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

~~CODE ENFORCEMENT OFFICER (CEO)~~

~~The person duly authorized by the Town to carry out the duties as prescribed herein and in the Town Administrative Code.~~

Commented [15]: Editor's Note: See Title 2.

CO-LOCATION

The location of more than one telecommunications facility (use) on a tower or alternative tower structure.

COMMERCIAL FISHERIES/MARITIME ACTIVITIES (USE)

The active use of lands, buildings, wharves, piers, floats, docks or landings with the principal intent of such activity being the production of income by an individual or legal business entity through the operation of a vessel(s). This activity may be either a principal or accessory use as herein defined.

COMMERCIAL GREENHOUSE

A building or structure made primarily of transparent or translucent material used by a business or in the production of income, which is designed and/or used for the indoor propagation and/or cultivation of plants.

COMMERCIAL KENNEL

A commercial operation that: 1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or 2) has at any one time eight or more animals for the purpose of commercial breeding.

COMMERCIAL MARINA USE STRUCTURE

A structure which is used by a business entity to serve the general public by providing marine-related services.

COMMERCIAL OR HOME OCCUPATION VESSEL

The vessel is used for commercial or home occupation use when its principal purpose or use is in the pursuit of one's business or trade for the purpose of earning a livelihood. The burden of proof in establishing the commercial or home occupation use of a vessel lies with the vessel owner.

COMMERCIAL USE

The use of lands, buildings or structures, other than a "home occupation" defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or

services, exclusive of rental of residential buildings and/or dwelling units.

COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE STRUCTURE

A structure which is used by a business entity, Port Authority or municipality having frontage on navigable water and, as its principal use, provides for hire to the general public offshore mooring and/or docking facilities for vessels used for any marine-related commercial, industrial or fisheries use.

COMMUNITY

The Town of Kittery and its people.

COMPACT OR BUILT-UP SECTION

The "compact or built up section" of the Town means a section of the highway where structures are nearer than 200 feet apart for a distance of 1/4 mile.

COMPREHENSIVE PLAN

Any part or element of the plan or policy for the development of the Town, as defined in Title 30-A M.R.S. § 4301, as issued in the Kittery Comprehensive Plan as approved by the Town Council, or subsequent revisions or additions thereto.

CONFERENCE CENTER

A facility used for conferences, seminars and meetings, including accessory accommodations for food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms.

CONSTRUCTION DRAWINGS

Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, pavements, of streets, miscellaneous structures, etc.

CONSTRUCTION SERVICES

The performance of work and/or the furnishing of supplies to members of the building trades, such as, but not limited to, plumbing, painting, building, well drilling, carpentry, masonry or electrical installation, which requires, or customarily includes, the storage of materials and/or the location of commercial vehicles at the site.

CONTIGUOUS LOTS

Lots which adjoin at any line or point or are separated at any point by a body of water less than 15 feet wide.

CONTRACTOR, EXCAVATION

An individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

[ADDED 10-26-2015 BY ORD. NO. 15-12]

CONVALESCENT CARE FACILITY

A facility that is licensed by the State of Maine to provide nursing care to persons during periods of recovery or rehabilitation. The facility provides nursing care and related rehabilitation services. The facility does not provide hospital services except as incidental to the delivery of nursing care. A convalescent care facility does not include any facility that is defined as an elder-care facility.

CONVENIENCE STORE, NEIGHBORHOOD GROCERY FACILITIES

A retail store containing less than 2,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages and other household supplies to customers who purchase only a relatively few items (in contrast to a grocery store). It is designed to attract and depends upon a large volume of stop-and-go traffic. Supplementing these uses with accessory gasoline sales requires

Commented [16]: Editor's Note: Added at time of adoption of Code (see Ch. 1.1, Code Adoption).

additional parking and traffic considerations.

CORNER LOT

A lot or parcel of land abutting on two or more streets at their intersection or on two parts of the same street forming an interior angle of less than 135 degrees. See section XXX

In zones where yards are required:

- A. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard may not be less than the front yard requirements of uses located on the side street.
- B. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a rear yard between the principal building and the abutting property on the side street. Such side yard may not be less than the side yard requirements of uses located on the side street.
- C. All such side yards described above must conform to the specific regulations related to yard space and related building height contained in the district provisions of this title.

COVERAGE (LOT, BUILDING)

See definition for "building coverage."

[AMENDED 5-22-2017 BY ORD. NO. 17-05]

CUTOFF FIXTURE

A lighting fixture or luminaire that controls glare by directing light well below the horizontal. A cutoff fixture limits the direction of light so that a maximum of 2 1/2% of the total lamp lumens shine above 90° or a line parallel to the surface of the ground and a maximum of 10% of the lamp lumens shine above 80°, including any above 90°, as shown in the following sketch.

[Image]

DAY

A calendar day unless otherwise indicated.

DAY-CARE FACILITY

A house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under 16 years of age, who are unattended by their parent(s) or guardian(s), for any part of a day. ~~There must be a minimum of 50 square feet of fenced outside play area for each child enrolled.~~ Any facility, the chief purpose of which is to provide education, is not considered a day-care facility.

DECK

An unenclosed, unroofed exterior platform structure, with or without railings, which is elevated above ground and is typically of wood construction, whether attached to a building or freestanding. A deck is not a water-dependent structure.

DESIGNATED HISTORIC BUILDING

A building listed on or located within a historic district listed on the National Register of Historic Places or a list of historic buildings or local historic districts published by the Maine Historic Preservation Office, or contained in the Town's adopted Comprehensive Plan.

DESIGN HANDBOOK

A handbook which is intended to supplement, illustrate and amplify various sections of this Title 16, Land Use and Development Code, and which is on file in the Town offices.

Commented [17]: Editor's Note: This ordinance also repealed the former definition of "coverage (lot, structure)," which immediately followed this definition.

[ADDED 5-30-2018 BY ORD. NO. 04-18]

DEVEGETATED AREA

The total area of all existing and proposed structures, driveways, parking areas and other nonvegetated surfaces located in the Shoreland Overlay and Resource Protection Zones.

[ADDED 7-25-2016 BY ORD. NO. 16-03]

DEVELOPER

Any person, firm, corporation or other legal entity that makes application for any type of development within the Town.

DEVELOPMENT

[AMENDED 7-25-2016 BY ORD. NO. 16-02]

- A. A change in land use involving alteration of the land, water or vegetation; or
- B. The addition or alteration of structures or other construction not naturally occurring.

DEVELOPMENT PLAN

See "master site development plan."

DIMENSIONAL REQUIREMENTS

Numerical standards relating to spatial relationships, including, but not limited to, setbacks, lot width and area, shore frontage, percent of lot coverage and height.

DISABILITY

Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or, in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

DISCHARGE

For the purposes of stormwater regulation, means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

DISTURBED AREA

Land altered by the clearing of vegetation, grading, excavation and redevelopment. The cutting of trees without grubbing, stump removal, and the disturbance or exposure of soil is not considered to be disturbed area. Work performed in order to continue the original line and grade, hydraulic capacity, and the original purpose of the land or the improvements thereon is not considered to be disturbed area.

DOCK

The slip or waterway extending between two piers or projecting wharves or cut into the land for the reception of vessels.

DRAINAGE DITCH

A man-made, regularly maintained channel, trench or swale for conducting water that has a direction

of flow to remove surface water or groundwater from land by means of gravity. For the purposes of this title, any new activity that reroutes a streambed or dredges a wetland is not considered to be a "drainage ditch." Where a drainage ditch widens out into a larger wetland, a route no more than 12 feet in width can be considered to be the drainage ditch. The remainder is considered wetlands unless it is demonstrated that the originally developed drainage ditch was designed to be greater than 12 feet in width.

DREDGE

To move or remove, by digging, scraping, scooping or suctioning, any earth, sand, silt, mud, gravel, rock or other material from the bottom of a water body or wetland surface.

DRIVEWAY

A vehicular accessway less than 500 feet in length serving two lots or less.

DWELLING

A building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer or structures solely used for transient or overnight occupancy.

DWELLING UNIT

A room or group of rooms forming a habitable unit for one family, with facilities used or intended to be used for living, sleeping, cooking, eating and sanitary facilities. It comprises at least 650 square feet of habitable floor space, except for elderly housing, an accessory dwelling unit or a temporary, intrafamily dwelling unit. The term does not include a trailer.

DWELLING UNIT (IN THE SHORELAND AND RESOURCE PROTECTION OVERLAY ZONES)

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.

Commented [SD18]: How does this differ from above "Dwelling Unit"

[ADDED 1-28-2015 BY ORD. NO. 15-01]

EASEMENT

The authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

EAVE

The projecting lower edges of a roof overhanging the wall of the building.

ELDER-CARE FACILITY

A residential facility occupied principally by residents who are at least 55 years of age (or in the case of a couple, at least one of whom is at least 55 years of age) that provides a program of services to its residents. Occupants of the facility may also include handicapped individuals of any age. ~~The facility includes shared community space and shared dining and kitchen facilities that are used on a daily basis by at least some of the residents of the facility. The housing accommodations in the facility can be either dwelling units or residential care units or a combination of the two. The facility may include facilities for allied health services, social services and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. The service component can vary to meet the needs of the residents but must include at least one meal a day for some of the residents of the facility.~~ The definition of elder-care facility includes a variety of accommodations that provide both housing and supportive services for the residents, including facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice

units, but does not include housing units that do not provide supportive services or a nursing care or convalescent care facility that provides nursing services. [See section XXX.](#)

ELDERLY DAY-CARE FACILITY

A facility that provides short-term care, supervision and recreation and social activities for elderly and handicapped individuals, in which the participants do not stay overnight.

ELDERLY HOUSING

A residential use occupied principally by residents who are at least 55 years of age (or in the case of a couple, at least one of whom is at least 55 years of age) in which the accommodations are all dwelling units with private bathrooms and cooking facilities. Occupants of this residential use may also include handicapped individuals of any age. [Elderly housing does not include elder-care facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units or hospice units, or a nursing care or convalescent care facility that provides nursing services. See section XXX.](#)

~~This housing does not provide a regular program of services to all of its residents although individual residents may arrange for the provision of services within the facility. Elderly housing includes very limited shared community space and shared dining and kitchen facilities but may include limited facilities for allied health services, social services and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. Elderly housing does not include elder care facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units or hospice units, or a nursing care or convalescent care facility that provides nursing services.~~

ELEVATED BUILDING

[ADDED 9-26-2011 BY ORD. NO. 11-15]

- A. A nonbasement building:
 - (1). Built, in the case of a building in Zone A1 — 30, AE, A, A99, AO or AH, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers or "stilts"; and
 - (2). Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.
- B. In the case of Zone A1 — 30, AE, A, A99, AO or AH, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of floodwaters.

ELEVATION CERTIFICATE

An official form (FEMA Form 81-31, 05/90, as amended) that:

[ADDED 9-26-2011 BY ORD. NO. 11-15]

- A. Is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and
- B. Is required for purchasing flood insurance.

EMERGENCY OPERATIONS

Operations conducted by or on behalf of the municipality for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement and operations to rescue human beings, property and livestock from the threat of destruction or injury.

ESSENTIAL SERVICES

The construction, alteration or maintenance of gas, electrical or communication facilities; steam,

fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms, all police call boxes, traffic signals, hydrants and similar accessories, but do not include service drops or buildings which are necessary for the furnishing of such services.

EXEMPT PERSON OR DISCHARGE

For the purposes of stormwater regulation, means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority, municipal separate storm sewer systems, or a general permit for the discharge of stormwater from state or federally owned authority, municipal separate storm sewer system facilities, and any nonstormwater discharge permitted under a National Pollutant Discharge Elimination System permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency (EPA) or the Maine Department of Environmental Protection (DEP).

[ADDED 5-22-2017 BY ORD. NO. 17-06]

EXPANSION OF STRUCTURE

An increase in the floor area or volume of a structure, including all extensions, such as, but not limited to, piers or attached decks, garages, porches and greenhouses.

EXPANSION OF USE

The addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

FAA

The Federal Aviation Administration.

FAMILY

One or more persons occupying premises and living as a single housekeeping unit.

FAST-FOOD OUTLETS, DRIVE-IN RESTAURANT, OR SNACK BAR

Any establishment whose principal business is the sale of foods, frozen desserts or beverages in ready-to-consume individual servings, for consumption either within the building or for carry-out, and the establishment includes a drive-up or drive-through service facility, a takeout window, or offers curb service.

Commented [SD19]: Not permitted in any zones currently. Is this accurate?

FCC

The Federal Communications Commission.

FILL

Materials such as select soils, rock, sand and gravel added to a land area or wetland area.

FILLING

The act of adding and/or placing fill into or upon a land area or wetland area.

FINAL SUBDIVISION PLAN

The final drawings on which an applicant's plan of a subdivision is presented to the Planning Board for approval and which, if approved, must be filed for the record with the Municipal Clerk and York County Registry of Deeds.

FINGER FLOAT

A float extending from the main float of a pier, ramp and float system that creates slips and/or

increases the pier or float edge available for mooring boats.

FLAG

Any fabric containing distinctive colors, patterns or symbols, used as a symbol of a government or recognized political subdivision.

FLOAT

A platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOOD HAZARD ZONE

That portion of land which has one-percent chance of flooding in any given year, as designated on Flood Insurance Rate Maps issued by the Federal Insurance Administration, if available, or on Flood Hazard Boundary Maps issued by the Federal Insurance Administration.

FLOOD INSURANCE RATE MAP (FIRM)

An official map of a community on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOOD INSURANCE STUDY

See "flood elevation study."

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOOD OR FLOODING

[ADDED 9-26-2011 BY ORD. NO. 11-15]

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1). The overflow of inland or tidal waters; or
 - (2). The unusual and rapid accumulation or runoff of surface waters from any source.
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) of this definition.

FLOOD, ONE-HUNDRED-YEAR

The highest level of flood that, on the average, is likely to occur once every 100 years (that has a one-percent chance of occurring in any given year).

FLOODPLAIN MANAGEMENT

The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOODPLAIN MANAGEMENT REGULATIONS

Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOODPLAIN OR FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source (see "flood").

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOODPROOFING

Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOODWAY

See "regulatory floodway."

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOODWAY ENCROACHMENT LINES

The lines marking the limits of floodways on federal, state and local floodplain maps.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FLOOR AREA

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

FOOD STORE

A retail establishment primarily engaged in the selling of a limited line of food items for home consumption, such as, but not limited to, meat and seafood markets, fruit and vegetable markets, and retail bakeries.

FOREST MANAGEMENT ACTIVITIES

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

FORESTED WETLAND

A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

FOUNDATION

The supporting substructure of a building or other structure, including, but not limited to, basements, slabs, sills, posts or frost walls.

FREEBOARD

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

FRESHWATER WETLAND

Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs and similar areas.

FRESHWATER WETLAND (IN THE SHORELAND AND RESOURCE PROTECTION OVERLAY ZONES)

- A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: [Added 5-22-2017 by Ord. No. 17-04]
 - (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
 - (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
- B. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria in this definition.

FUNCTIONALLY WATER-DEPENDENT USES

Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding recreational boat storage buildings, shipyards and boat-building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

GAMBLING

That process in which one stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his/her control or influence, upon an agreement or understanding that he, she or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guaranty and life, health or accident insurance.

GAMBLING CASINO

A building, structure or other facility used to allow, conduct, hold, maintain or operate a game of chance, game of skill, electronic video machine, roulette, high-stakes beano or bingo, slot machines, or any other type of gambling activity. A gambling casino does not include a building structure or other facility when used incidentally by any bona fide nonprofit charitable, educational, political, civic, recreational, paternal, patriotic or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct of any beano, bingo, raffles, games of chance, or other activities specifically permitted by Maine State Statute, provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of state statute, including all requirements for licensing by the Chief of the Maine State Police, are

strictly met.

GAMBLING DEVICE

Any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

GAME OF CHANCE

- A. Any game, contest, scheme or device in which:
- (1). A person stakes or risks something of value for the opportunity to win something of value;
 - (2). The rules of operation or play require an event, the result of which is determined by chance, outside the control of the contestant or participant; and
 - (3). Chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill.
- B. As used in this definition, "an event the result of which is determined by chance" includes, but is not limited to, a shuffle of a deck or decks of cards, a roll of a die or dice, or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers, or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects, or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance.

GAME OF SKILL

Any game, contest, scheme or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

Commented [SD20]: Do we need all these definitions? Can we consolidate

GASOLINE SALES

The retail sales of fuel for motor vehicles, including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods and services. The gasoline sales can be the principal use or accessory to another principal use, such as a convenience store or other retail or service use.

GASOLINE SERVICE STATION-

An establishment for the retail sales of fuel for motor vehicles, including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane and hydrogen, and related goods and services, and may provide service and minor repairs for motor vehicles.

~~GLARE~~

~~Excessive brightness that makes it difficult to see or that causes discomfort. Glare includes direct glare, disability glare, and discomfort glare, as follows:~~

- ~~A. **DIRECT GLARE** Glare resulting from insufficiently shielded light sources or areas of excessive luminance within the field of view.~~
- ~~A. **DISABILITY GLARE** The effect of stray light in the eye whereby visibility and visual performance are reduced.~~
- ~~A. **DISCOMFORT GLARE** Glare producing discomfort. It does not necessarily interfere with visual performance or visibility.~~

GRADE PLANE

A reference plane representing the average of finished ground level adjoining the building at all

exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane is to be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1,829 mm) from the building, between the building and a point six feet (1,829 mm) from the building.

GROCERY STORE

A retail establishment primarily selling prepackaged food products and household items for home preparation and consumption.

GROSS FLOOR AREA

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof, plus the horizontal area of portions of the site used for customer seating, display of merchandise, or outdoor sales.

GROUND COVER

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

HAZARDOUS WASTE

As defined in 38 M.R.S. § 1319-O, a waste substance or material in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S. § 1303-C.

Commented [21]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

HEIGHT OF BUILDING

The vertical measurement from the average grade between the highest and lowest elevation of the original ground level to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level 2/3 of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose, the level of the eaves is taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves. This is not intended to include weather-vanes or residential antennas that protrude from a roof, but does include all towers, excepting those utilized for amateur radio communications, and other structures. Building height restrictions do not apply to roadside utility poles approved by the Town Council of less than 45 feet in height above ground.

HEIGHT OF STRUCTURE

The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas and similar appurtenances which have no floor area.

HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES

The distance measured from ground level to the highest point on the tower or other structure, even if such highest point is an antenna.

HIGH INTENSITY SOIL SURVEY

A map prepared by a certified soil scientist using the guidance defined and prepared by the Maine Association of Professional Soil Scientists. The soils must be identified in accordance with the National Cooperative Soil Survey. The map must show the location of all test pits used to identify the soils, and be accompanied by a log of each sample point, identifying the textural classification and the depth to seasonal high-water table or bedrock at that point. Evaluations of single soil test pits for subsurface waste disposal do not meet the requirements for high intensity soil surveys and are not suitable replacement.

HISTORIC STRUCTURE

Any structure that is:

[ADDED 9-26-2011 BY ORD. NO. 11-15]

- A. Listed individually on the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1). By an approved state program as determined by the Secretary of the Interior; or
 - (2). Directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

Any activity carried out for gain by a resident of the premises with the permission of the property owner and conducted as an accessory use to the principal residential use.

HOME OCCUPATION, MAJOR

A type of home occupation that fails to meet all of the standards for a "minor home occupation" established in § 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in § 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.

HOME OCCUPATION, MINOR

The least intensive type of home occupation that meets the standards established in § 16.8.22.2 to ensure compatibility with the surrounding neighborhood.

HOSPITAL

An institution specializing in providing inpatient and outpatient treatment and emergency services of a medical nature to human patients. A hospital may include the offices or facilities of independent service providers and/or a freestanding outpatient clinic or diagnostic facility that operates as part of, or an adjunct to, the main facility.

HOTEL

A building in which lodging or boarding and lodging capabilities are provided for more than 20 persons, and offered to the public for compensation, and in which ingress and egress to and from rooms are made primarily through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a rooming house or a motel, which are separately defined in this section.

HYDRIC SOIL

A soil that in its undrained condition is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic, Sebago, Vassalboro, Naumberg, Raynham and Waskish. All hydric soils listed in the Natural Resources Conservation Service list entitled "National Hydric Soils List by State" are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

HYDROPHYTIC VEGETATION

Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydrophytic vegetation includes plants classified as obligate wetland, facultative wetland, or facultative in the U.S. Fish and Wildlife Service publication National List of Plant Species That Occur in Wetlands: 1988 – Maine, as amended or superseded. This publication is available at the municipal offices for inspection.

ILLICIT DISCHARGE

For the purposes of stormwater regulation, means any discharge to the small municipal separate storm sewer system (MS4) that does not consist entirely of stormwater or authorized nonstormwater discharges.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

IMPROVEMENT PLANS

Maps, plans, profiles, studies, cross sections and other required details for the construction of all improvements.

INDIVIDUAL PRIVATE CAMPSITE

An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and no more than two recreational vehicles, and which involves site improvements which may include but not be limited to gravel pads, parking areas, fireplaces or tent platforms.

~~INDUSTRIAL~~

~~The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.~~

INDUSTRIAL ACTIVITY

The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals. For the purposes of stormwater regulation, means activity or activities subject to National Pollutant Discharge Elimination System industrial permits as defined in 40 CFR 122.26(b)(14).

[Added 5-22-2017 by Ord. No. 17-06]

INDUSTRY, HEAVY

A facility and/or site used in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

INDUSTRY, LIGHT

A facility used in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, blending, packaging, inside an enclosed structure. Basic industrial processing, such as paper manufacturing, petroleum processing, manufacture of explosives, production of chemicals or fertilizer, are not light industrial uses.

INN

A commercial place of lodging which contains a dwelling unit occupied by an owner or resident manager, which has 12 or fewer guest rooms, and may include a restaurant which also serves non-guests. Rentals to the same party for more than 12 weeks in a calendar year are prohibited.

INTERMITTENT STREAM

A channel of a stream, river or brook that is without flowing surface water for at least one month of a year.

INVASIVE NONNATIVE PLANT

Grasses, forbs, shrubs or trees not native to the State of Maine and which proliferate in and dominate vegetation to the exclusion or elimination of native plants.

JULY 13, 1977

That date upon which a complete revision of the first zoning ordinances was adopted by the Town and upon which certain existing nonconforming conditions are considered to be protected (grandfathered).

JUNKYARD

A lot or part thereof exposed to the elements, which is used for the sale or for the storage, keeping or abandonment of junk or scrap materials, or the storage, dismantling, demolition, abandonment or sale of construction equipment or machinery, or parts thereof or of unregistered automobiles or other vehicles not in condition for use on the public highway.

LANDING

A place for loading or discharging persons or goods, as from a vessel.

LANDSCAPE PLANTER STRIP

A vegetated area (naturally vegetated and/or landscaped) located adjacent and parallel to a road or street and designed to visually and functionally separate the roadway from the abutting property upon which it is located.

LARGE, HEALTHY TREE

A tree with a diameter at breast height (dbh) of at least 12 inches and which does not exhibit any indicators of stress, damage, disease or decay that will limit its expected additional life to less than 20 years.

LEGALLY NONCONFORMING

It was lawfully created but became nonconforming due to a change in the Town Code.

LEGISLATIVE BODY

Town Council.

LIGHT FIXTURE HEIGHT

The vertical distance between the surface that will be illuminated by the fixture and the bottom of the light source (see "cutoff fixture" diagram).

LOCALLY ESTABLISHED DATUM

For purposes of Article VIII of Chapter 16.9, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level is too far from a specific site to be practically used.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

LOT

A parcel of land, legally created and recorded, having frontage upon an approved public or private street; or a tract of land legally created and recorded prior to July 13, 1977.

LOT AREA

The area of land enclosed within the boundary lines of a lot, minus:

- A. Land below the normal high-water line of a water body or upland edge of a coastal wetland;
- B. Areas beneath Planning Board-approved right-of-way; and
- C. Land within public street rights-of-way.

LOT WIDTH

The horizontal distance between the side lot lines, measured at the setback lines.

LOW INTENSITY RECREATION

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.

LOWEST FLOOR

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements described in § 16.9.8.8.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

LUMEN

A standard measure of light energy generated by a light source, normally reported by the manufacturer of the lamp or bulb.

MANUFACTURED HOUSING

A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported by the use of its own chassis, or placed on an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing, and may be purchased or sold by a dealer in the interim. For purposes of this Code, two types of manufactured housing are included: mobile homes and modular homes. For floodplain management purposes, the term "manufactured housing" also includes park trailers, travel trailers, and other similar vehicles placed on a site for more than 180 consecutive days.

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[AMENDED 9-26-2011 BY ORD. NO. 11-15]

MARIJUANA

Cannabis.

[Added 5-22-2017 by Ord. No. 17-08]

MARIJUANA MEDICAL USE

The cultivation, manufacturing, or distribution of cannabis by a medical marijuana cultivation facility, a medical marijuana dispensary, a medical marijuana testing facility, or a primary caregiver, as defined in § 16.2.2 of this Code. This definition is not intended to restrict a caregiver that is a licensed hospice provider, long-term nursing care facility or convalescent care facility from distributing cannabis to their qualifying patients, per 22 M.R.S., Maine Medical Use of Marijuana Act.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

MARIJUANA RETAIL USE

The cultivation, manufacture, distribution or selling of cannabis by a retail marijuana establishment or retail marijuana social club, as referenced in 7 M.R.S. § 2442.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

MARINA

A facility for the storing, servicing, fueling, berthing, and securing of boats and which may include eating, sleeping, and retail facilities for owners, crews, and guests. A principal marine use as listed in

[~~§§ 16.3.2.17B and 16.8.15.1 of this title.~~](#)

MARKET VALUE

The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

MASS TRANSIT STATION

A place where people transfer between modes of transportation or any premises for the transient housing or parking of buses, trains or ride-sharing vehicles and the loading and unloading of passengers.

MASTER SITE DEVELOPMENT PLAN

A conceptual, integrated design and infrastructure plan for the development of a master planned property, in which:

- A. The development standards are applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided; and
- B. The standards are applied to the zone rather than to individual lots, tracts and parcels within the zone.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

MECHANICAL SERVICE

Establishments primarily engaged in mechanical or electronic repair or maintenance of motorized or mechanical equipment, such as, but not limited to, welding repair, small engine repair, tool sharpening, and refrigeration and air-conditioning repair, but excluding repair garages.

MEDICAL MARIJUANA CULTIVATION FACILITY

A facility registered in accordance with 22 M.R.S. § 2428 that cultivates and manufactures marijuana or related supplies for a registered medical marijuana dispensary under common management and operating under the same state and local license(s).

[ADDED 5-22-2017 BY ORD. NO. 17-08]

MEDICAL MARIJUANA DISPENSARY

A not-for-profit entity registered under 22 M.R.S. § 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients who have designated the dispensary to cultivate marijuana for their medical use, and the primary caregivers of those patients.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

MEDICAL MARIJUANA QUALIFYING PATIENT or PATIENT

A person who has been diagnosed by a medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana, as defined under 22 M.R.S. § 2422.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

MEDICAL MARIJUANA TESTING FACILITY

A public or private laboratory that:

[ADDED 5-22-2017 BY ORD. NO. 17-08]

- A. Is licensed, certified or otherwise approved under 22 M.R.S. § 2423-A to analyze contaminants in, and the potency and cannabinoid profile of, samples; and
- B. Is accredited pursuant to standard International Standards Organization/International Electrotechnical Commission 17025 of the International Organization for Standardization by a third-party accrediting body or is certified, registered, or accredited by an organization approved by the state.

MINERAL EXTRACTION

Any operation within any twelve-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and to transport the product removed away from the extraction site.

MINERAL/EARTH MATERIAL EXPLORATION

Hand sampling, test boring or other methods of determining the nature or extent of mineral/earth resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

MINI STORAGE

A commercial facility for the storage of consumer or business property on a rental basis in which the tenant receives the exclusive use of a storage unit or locker and can access the unit to drop off or retrieve property at designated times.

MINIMUM LAND AREA PER DWELLING UNIT

Minimum land area referenced in Chapter 16.3, Article II, Zoning Definitions, Uses and Standards, of this title means the gross area of a parcel not subject to subdivision regulations minus the land area listed below. Where land areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision, see "net residential acreage."

[ADDED 9-28-2015 BY ORD. NO. 15-05]

- A. All land located below the highest annual tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most-current year.
- B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds, streams and other water bodies.
- C. All land located on filled tidal lands, per the definition of "tidal land, filled."
- D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.

MIXED-USE BUILDING

A building occupied by two or more types or categories of principal uses (for example, residential and office, or office and retail) in which any category of uses occupies at least 10% of the gross floor area of the building.

MOBILE HOME PARK

A parcel of land under unified ownership approved by the Planning Board for the placement of three or more manufactured homes.

MOBILE HOME PARK LOT

The area of land on which an individual mobile home may be situated within a mobile home park and which is reserved for use by the occupants of that home.

Commented [SD22]: Combine

[AMENDED 9-24-2012 BY ORD. NO. 12-11]

MOBILE HOMES

Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development (HUD) standards; meaning structures, transportable in one or more sections, which, in the traveling mode, are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundation, when connected to the required utilities, including the plumbing, heating, air-conditioning or electrical systems contained therein; except that the term includes any structure which meets all the requirements of this paragraph, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the HUD Secretary and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, Title 42 U.S.C. § 5401 et seq.

MODULAR HOME

A unit commonly called a "modular home," which the manufacturer certifies is constructed in compliance with the State of Maine's Manufactured Housing Act and Regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning, or electrical systems contained therein.

[AMENDED 9-24-2012 BY ORD. NO. 12-11]

MOTEL

A building or group of detached or connected buildings designed, intended or used primarily to provide sleeping accommodations without cooking facilities for travelers for compensation and having a parking space adjacent to a sleeping room. An automobile court or a tourist court with more than one unit or a motor lodge is deemed to be a motel.

MULTIUNIT RESIDENTIAL

A residential structure containing three or more residential dwelling units.

MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4

A conveyance or system of conveyances designed or used for collecting or conveying stormwater [other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer], including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district. Maine Department of Transportation (MaineDOT), Maine Turnpike Authority (MTA), state agency or federal agency or other public entity that discharges directly to waters of the state other than groundwater. See also "regulated small MS4" and "small MS4."

[AMENDED 5-22-2017 BY ORD. NO. 17-06]

MUNICIPALITY

Town of Kittery, Maine.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORMWATER DISCHARGE PERMIT**

A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

NAVIGABLE WATERS

The "waters of the United States including territorial seas" as defined in the Federal Clean Water Act and 33 CFR Part 328, as amended.

NET RESIDENTIAL ACREAGE

The land area subject to subdivision that is identified for regulatory purposes as developable and is the gross available acreage minus land area identified in Article VIII, Net Residential Acreage, of Chapter 16.7, unless otherwise exempt in § 16.7.8.4, Exemptions to net residential acreage calculations.

[AMENDED 9-28-2015 BY ORD. NO. 15-05]

NET RESIDENTIAL DENSITY

The number of dwelling units in a subdivision per net residential acre. This is calculated by dividing the net residential acreage by the square feet specified as minimum land area per dwelling unit in the dimensional standards in Chapter 16.3, Article II, for the relevant base zone or overlay zone(s) where applicable.

[AMENDED 9-28-2015 BY ORD. NO. 15-05]

NEW CONSTRUCTION

Structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community, and includes any subsequent improvements to such structures.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

NEW MOTOR VEHICLE SALES

A commercial establishment whose primary business is the buying and selling or offering to negotiate a sale of new motor vehicles, including related service activities, and has a franchise from a distributor or manufacturer. An establishment is "engaged in the business of buying, selling or offering to negotiate the sale of a vehicle" if that business buys motor vehicles for the purpose of resale, sells or offers to negotiate the sale of more than five motor vehicles in any twelve-month period, or displays or permits the display of three or more motor vehicles for sale at any one time or within any thirty-day period upon the premises, unless that person has owned and registered each vehicle for at least six months.

NONCONFORMING LOT OF RECORD

A single lot of record which was created prior to July 13, 1977, or subsequently created by legislative or judicial decision, which does not meet the area and/or frontage requirements of the district in which it is located; or is the result of legally authorized development created between July 13, 1977 and April 26, 1990, and became nonconforming as a direct result of the implementation of this title.

NONCONFORMING STRUCTURE

A structure that does not meet one or more of the following dimensional requirements: setbacks, yard, height or lot coverage. It is allowed solely because it was lawful when created and became legally nonconforming as a direct result of a change in the provisions of this title.

NONCONFORMING USE

Use of buildings, structures, premises, land or parts thereof which is not allowed in the district and/or zone in which it is situated, but which is allowed to remain solely because it was in lawful existence when created or became legally nonconforming as a direct result of a change in the provisions of this title.

NONCONFORMING, LEGALLY

See "legally nonconforming."

NONSTORMWATER DISCHARGE

Any discharge to an MS4 that is not composed entirely of stormwater.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

NORMAL HIGH-WATER LINE

The line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

NURSERY SCHOOL

A house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three or more children in accordance with 22 M.R.S. § 8401, provided that:

[AMENDED 5-30-2018 BY ORD. NO. 04-18]

- A. No session conducted for the children is longer than 3 1/2 hours in length;
- B. No more than two sessions are conducted per day;
- C. Each child in attendance at the nursery school attends only one session per day; and
- D. No hot meal is served to the children.

NURSING CARE FACILITY, LONG-TERM

A facility that is licensed by the State of Maine to provide nursing care to persons who are unable to care for themselves. The facility provides long-term residential and nursing care to its residents. The facility does not provide hospital services except as incidental to the delivery of nursing care. A long-term nursing care facility does not include any facility that is defined as an elder-care facility.

OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)

Any sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which complies with the requirements of this title.

[AMENDED 5-30-2018 BY ORD. NO. 04-18]

OFFICIAL MAP

The map adopted by the municipality showing the location of public property, ways used in common by more than two owners of abutting property, and approved subdivision or site plan, and any amendments thereto adopted by the municipality or additions thereto resulting from the approval of a subdivision or site plan by the Planning Board and the subsequent filing for record of such plan.

[AMENDED 9-26-2011 BY ORD. NO. 11-15]

OFFICIAL SUBMITTAL DATE

The date upon which the Town Planner receives a complete application and issues a receipt so indicating.

ONE-HUNDRED-YEAR FLOOD

See "base flood."

[ADDED 9-26-2011 BY ORD. NO. 11-15]

OPEN SPACE

Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area, except where

required by the management plan in place to govern the open space and as approved by the Planning Board. ~~Vegetated surfaces of outdoor commercial uses may be used to satisfy up to 50% of the required open space on any parcel, except those parcels within a cluster residential or cluster mixed-use development.~~

Commented [SD23]: Site plan?

[ADDED 9-24-2012 BY ORD. NO. 12-10]

OPEN SPACE, COMMON

Usable land within or related to a development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complementary structures, improvements and uses approved by the Planning Board. Such uses may include active or passive recreation or agriculture, where permitted.

[ADDED 9-24-2012 BY ORD. NO. 12-10]

OPEN SPACE, PUBLIC

Land accessible or dedicated for public use.

[ADDED 9-24-2012 BY ORD. NO. 12-10]

OPEN SPACE, RESERVED

Dedicated land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board as part of cluster residential and cluster mixed-use developments.

[ADDED 9-24-2012 BY ORD. NO. 12-10]

OUTDOOR SERVICE AREAS

Areas located outside of a building or structure that are used for the delivery, handling, storage or processing of materials, goods or wastes, including areas used for the servicing, repairing, washing or fueling of motor vehicles and equipment.

OWNER

Any person, corporation or other legal entity having record title ownership to the property or the expressly authorized agent or designee thereof.

PARAPET

The extension of the wall(s) of a building above the roof eave and/or roofline.

~~PARCEL~~

~~See "tract or parcel of land."~~

~~PARKING AREA~~ ~~PARKING LOT~~

~~Any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets. An area, other than part of a road or residential yard space, which is allocated for the parking of motor vehicles for compensation and is able to be used for such purposes.~~

Commented [SD24]: Unsure about including "private driveways, and legally designated areas of public streets"

~~PARKING SPACE~~

~~A design-dependent area as indicated in Figure 2 for Chapter 16.8. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of~~

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~~passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year-round.~~

PATIO

An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or concrete, situated no higher than 18 inches above ground level, accessory to a dwelling and serving as an area for outdoor living.

PERSON

Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more individuals having a joint or common interest, state agency or federal agency or other legal entity.

PERSONAL SERVICES

Establishments primarily engaged in providing services generally involving the care of one's personal appearance or apparel, including, but not limited to, barbers and beauty shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

PIER

A structure built out into the water generally with piles for use as a landing place.

POLLUTANT

Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN

An inspection and maintenance plan as required by rule for projects that require approval by the Maine Department of Environmental Protection (MDEP) under Chapter 500, Stormwater Management; or a plan to inspect and maintain best management practices (BMPs) and stormwater management facilities employed by a new development or redevelopment, not subject to MDEP Chapter 500 rules, to meet the stormwater standards of this Code.

[AMENDED 7-25-2016 BY ORD. NO. 16-06]

PRACTICABLE

Available and feasible, considering cost, existing technology, and logistics, based on overall project purposes.

PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS

Legally existing prior to December 21, 1997, wireless communication system facility (WCSF), towers/antennas and alternative tower structures. Enlargements of WCSF, accessory use towers/antennas legally existing prior to December 21, 1997 must conform to the requirements of this title.

PRELIMINARY SUBDIVISION PLAN

The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

PREMISES

For the purposes of stormwater regulation, means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

PRIMARY CAREGIVER

A person or an employee of that person, a licensed hospice provider or licensed nursing facility that provides care for a qualifying patient and is registered under 22 M.R.S. § 2425 and receives Board of Appeals approval for a major home occupation.

[ADDED 5-22-2017 BY ORD. NO. 17-08]

PRINCIPAL BUILDING

The primary building on a lot or a building that shelters or encloses the principal use on a lot.

PRINCIPAL STRUCTURE

The primary structure on a lot or a structure that supports, shelters or encloses the principal use on the lot.

PRINCIPAL USE

The primary or predominant use. An activity that is conducted in conjunction with the principal use and such activity that either constitutes only an incidental or insubstantial part of the total activity that takes place on a lot; or is commonly associated with the principal use and integrally related to it, is regarded as "accessory to the principal use." An accessory to the principal use is regarded as "incidental or insubstantial" if it is both incidental and insubstantial in and of itself, and in relation to the principal use. Quantitative measures for consideration in this determination include the percentage and total amount of square footage attributed to the accessory to the principal use and sales or income derived from the accessory to the principal use.

PRIVATE MARINA USE STRUCTURE

A structure which is owned and/or used by a private group, club, association or other legal entity's organization, and is used by its members only, and has frontage on navigable water, and as its principal use provides offshore moorings and/or docking facilities for vessels for use by its members and/or guests. The private marina may also provide accessory boating services. These accessory boating services may be provided to the boating public, members or guests.

PRUDENT AVOIDANCE

In any case where aboveground electrical utilities are approved, the plan is to be designed to avoid human residences as distant as possible without prohibitive cost.

PUBLIC FACILITY

Any facility, including, but not limited to, buildings, property, recreation areas and roads which are owned, leased or otherwise operated, or funded by a governmental body or public entity.

PUBLIC RECREATION

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

PUBLIC UTILITY

As defined in Title 35-A M.R.S. § 102, as amended.

PUBLIC UTILITY FACILITY

Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

Commented [SD25]: Development Definitions(Moskowitz 2017)

QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR

A person who conducts post-construction stormwater management facilities inspections for compensation and who has received the appropriate training for the same from the Maine Department of Environmental Protection.

RECENT FLOODPLAIN SOILS

The following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Sunday and Winooski.

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.

RECREATIONAL VEHICLE

A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground and must be registered with the State Division of Motor Vehicles.

REGULATED SMALL MS4

Any small municipal separate storm sewer system (MS4) regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" dated July 2013 ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s. The Town of Kittery is a regulated small MS4.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

REGULATORY FLOODWAY

[ADDED 9-26-2011 BY ORD. NO. 11-15]

- A. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; and
- B. In riverine areas, is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the normal high-water mark to the upland limit of the floodplain.

REPAIR GARAGE

An establishment providing for the repair or servicing of motor vehicles. A repair garage does not include activities that are defined as mechanical service or a junkyard.

REPAIR SERVICE

A business providing for the repair of personal or small business property, such as radios and televisions, household or office electrical or electronic equipment, watches, clocks and jewelry, furniture and upholstery, sporting equipment, and similar items, but not including items included under mechanical services or automotive services and repair.

REPLACEMENT SYSTEM

A system intended to replace:

- A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or
- B. Any existing overboard wastewater discharge.

RESEARCH AND DEVELOPMENT

A building or group of buildings in which are located facilities for technical or scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products,

except as incidental to the main purpose of the facility.

RESIDENTIAL CARE UNIT

A type of residential accommodation in an elder-care facility that has private sleeping and bathroom facilities but does not have permanent complete cooking facilities within the unit. The occupant of a residential care unit typically eats all or most of meals in a shared dining room. Residential care units may have a portable or removable kitchen or partial kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be an apartment with a separate bedroom, a suite or a room. A residential care unit is distinct from a dwelling unit that is defined separately.

RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM

A pier and/or ramp and float system which is used in common by lot owners or residents of a subdivision or residential planned development. The purpose is to provide waterfront access to the owners of lots in a residential development that has the potential for more than one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting from new development.

RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM

A pier and/or ramp and float system which is used for the residential home occupation workers in an approved functionally water-dependent home occupation (minor or major) in addition to its customary residential accessory use.

RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM

A pier and/or ramp and float system which is used by the owners of not more than four residential shorefront lots, at least one boundary of whose building lot lies within 1,000 feet of the lot on which the joint/shared-use pier is constructed.

RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM

A pier and/or ramp and float system which is used by the owner(s) of a single residential shorefront lot.

RESIDUAL BASAL AREA

The sum of the basal area of trees remaining on a harvested site.

RESIDUAL STAND

A stand of trees remaining in the forest following timber harvesting.

RESTAURANT

An establishment where food or food and drink are prepared and sold for consumption on the premises by the public and includes cafes, coffee shops and similar establishments that serve food.

RESUBDIVISION

The division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision, or any changes thereto.

RETAIL USE

Any business engaged primarily in the sale of goods for personal or household consumption and/or use, and not for resale. The term "retail use" does not include specific types of retail uses that are individually listed in Chapter 16.3.

RIGHT-OF-WAY, PRIVATE

A platted and dedicated access route normally to back lot(s); and as approved by the Planning Board and recorded in the York County Registry of Deeds.

RIPRAP

Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

RIVER

A free-flowing body of water, including its associated floodplain wetlands, from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

RIVERINE

Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

ROAD

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

ROOMING HOUSE

A residential use in which the owner or manager of the facility resides on the premises and in which more than three persons who are not part of the owner's/manager's family are housed in rooms for compensation with or without meals. This includes fraternities and sororities.

ROULETTE

A game of chance in which players bet on the compartment of a revolving wheel into which a small ball will come to rest.

Commented [SD26]: Do we need this?

SALT MARSH

Areas along coastal waters (most often along coastal bays) which support salt-tolerant species, and where, at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass and Sago pondweed.

SALT MEADOW

Areas which support salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season, but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

SCREEN

A method of significantly reducing the impact of noise and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

SCREENING

Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type that will grow to a year-round dense screen at least six feet high in three years; or 2) an opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of either type must be maintained in good condition at all times.

Commented [SD27]: Should this be moved?

SELECTED COMMERCIAL RECREATION

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:

- A. Indoor commercial recreation limited to billiards and pool, bowling alley, dance hall, 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
- B. 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.

- C. Types of commercial recreation not listed are not considered to be included within the definition of "Selected Commercial Recreation."

Commented [SD28]: Change after conversation with KLIC

SEPTIC SYSTEM

See "subsurface wastewater disposal system."

[ADDED 10-14-2015 BY ORD. NO. 15-10]

SERVICE DROP

Any utility line extension which does not cross or run beneath any portion of a water body, provided that:

A. In the case of electric service:

- (1). The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway at the right-of-way; and
- (2). The total length of the extension is less than 1,000 feet.

B. In the case of telecommunications service:

- (1). The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or
- (2). The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

SETBACK

The minimum horizontal distance from an identified object, line, boundary or feature to the nearest part of a regulated object, use or feature. (Note: See Chapter 16.7, for setbacks from water bodies and wetlands. See Article IV of Chapter 16.7 for applying setbacks in special situations.)

SETBACK FROM STREAMS, WATER BODIES AND WETLANDS

The minimum horizontal distance allowed from the upland edge of a wetland and/or from the normal high-water line to the nearest part of a structure (excluding cornices, eaves or gutters projecting not more than 24 inches), roads, parking areas, or other regulated activities. See Table 16.9. Minimum Setbacks from Wetlands and Water Bodies, for required horizontal distances, and Article IV of Chapter 16.7 for applying setbacks in special situations. Adjacent to tidal waters, setbacks are measured from the upland edge of the coastal wetland.

Commented [SD29]: Check shoreland overlay PS

SHOP IN PURSUIT OF TRADES

An establishment occupied by a business or craftsman in a skilled trade, including, by way of example only, plumbing, carpentry or electrical work. Not more than 10 people may be employed at and/or work from the shop. The shop may include work space, storage space and/or office space. A shop in pursuit of trades does not include "construction services," which is separately defined.

SHORE FRONTAGE

The width of a lot as it fronts the shore as measured in a straight line between the point of intersection of the side lot lines with the shoreline at normal high-water elevation.

SHOREFRONT DEVELOPMENT PLAN

A plan for any development extending into or within 100 feet of the upland edge of a coastal wetland, or into or within 100 feet of the upland edge of a fresh water wetland shown on the Zoning Map, including but not limited to public and private access paths; piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact and controls to assure continuing conformance to the plan.

SHORELINE

The normal high-water line or upland edge of a wetland.

SIGN

Any structure or part of the structure attached thereto or painted or represented thereon, which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark, logo, device or representation used as, or which is in the nature of, any announcement of the purpose of a business, entity or person, direction or advertisement. The term "sign" does not include a flag.

SIGN AREA

The enclosed space within a geometric figure which contains the advertising message, illustration, insignia or display, together with any frame, color or other material which comprises the display and is used to differentiate or draw attention to the sign and away from the background. Each face of a sign is considered a separate sign for area computations, but supporting brackets and posts are not included.

SIGN, CHANGEABLE MESSAGE

Any sign or portion thereof designed to allow characters, letters and numbers on the face of the sign to be changed or rearranged.

SIGN, FREESTANDING

Any sign supported by a structure or supports that are permanently anchored in the ground and that is independent from any building.

SIGN, REAL ESTATE

Any sign advertising real estate for sale, lease or rent.

SIGN, TEMPORARY

A sign that is intended to remain where it is erected or placed for a period of time not to exceed 21 days in any calendar quarter.

SIGN, TRAILER

A portable sign mounted on a chassis and wheels or supported by legs.

SLOT MACHINE

Any machine which operates by inserting a coin, token or similar object, setting the internal mechanism of the machine in motion and, by the application of the element of chance, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets or something of value.

Commented [SD30]: Do we need this?

Commented [SD31]:

SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4

Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state or federally owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities. The Town of Kittery is a small MS4.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

SOILS

A soil's drainage class must be determined by a Maine certified soil scientist and based on the most-recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes. The Key includes, among other terms, the following:

[AMENDED 9-28-2015 BY ORD. NO. 15-05]

- A. **VERY POORLY DRAINED**Water is removed from the soil so slowly that the water table remains at or above the surface most of the year. A seasonal high water table is at or above the surface from at least October through July and sometimes throughout the year. In August and September, the water table may recede below 12 inches. The high water table severely limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.
- B. **POORLY DRAINED**Water is removed from the soil so slowly that the soil remains wet most of the year. A seasonal high water table is at or near the surface from October through June. In July, August and September, it may recede below 16 inches. The seasonal high water table limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.
- C. **SOMEWHAT POORLY DRAINED**Water is removed from the soil slowly enough to keep it wet for significant periods of time but not the entire year. A seasonal high water table is at seven inches to 16 inches in depth from October through May and sometimes June. From July to October, it may recede below 30 inches in depth. A seasonal water table limits the use of these soils for some agricultural, forestry and urban activities. These soils are not hydric in Maine and are commonly found in the transitional landscape positions between wetland and upland soils.

SOMETHING OF VALUE

1) Any money or property; 2) any token, object or article exchangeable for money, property, amusement or entertainment; or 3) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

SPECIAL EXCEPTION

A use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3.

SPECIAL FLOOD HAZARD AREA

See "area of special flood hazard."

[ADDED 9-26-2011 BY ORD. NO. 11-15]

SPECIALTY FOOD AND/OR BEVERAGE FACILITY

A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis, distributed, and/or consumed on the premises. This may include, but not be limited to, a brew pub, microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or nonalcoholic beverages and/or artisan food.

[ADDED 6-10-2013 BY ORD. NO. 13-02]

START OF CONSTRUCTION

The date the building/regulated activity permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

STORM DRAINAGE SYSTEM

The entire Town's storm drainage system.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

STORMWATER

Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

STORY

That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. For any building that contains no floors in the vertical plane, every 10 feet or portion thereof counts as a floor.

[AMENDED 9-24-2012 BY ORD. NO. 12-11]

STORY ABOVE GRADE

Any story having its finished floor surface entirely above grade, except that a basement is considered as a story above grade where the finished surface of the floor above the basement is:

- A. More than six feet (1,829 mm) above the grade plane;
- B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the total building perimeter; or
- C. More than 12 feet (3,658 mm) above the finished ground level at any point.

STREAM OR BROOK

A channel between defined banks, including the floodway and associated floodplain wetlands, where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock.

STREET

A way established or maintained under public authority, or a minimum forty-foot-wide private way constructed to Town standards as contained in Chapters 16.8 and 16.9, approved by the Planning Board and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the Planning Board. Also included are such ways as alleys, avenues, boulevards, highways, roads, streets and other rights-of-way.

STREET FRONTAGE

A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of the lot. When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that the lot meets the frontage requirement on that street, front, side and rear yard setbacks, and that the principal building is numbered on that street.

STREET LINE

The exterior line of a street right-of-way which separates it from abutting lots.

STRUCTURALLY ALTERED

Any work which requires or contemplates any changes to the structural capabilities of a building.

STRUCTURE

Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. The term includes decks. The term does not include fences less than eight feet in height, nor any required by the Planning Board or Town Planner to be taller; flagpoles no higher than 50 feet in height; signs located in conformance with Article X of Chapter 16.8; and electricity generators and propane and oil tanks for residential use only and the pads on which they are located, provided the pad is less than 20 square feet in size.

SUBDIVIDER

Any person, firm, corporation or other legal entity making application for the subdivision of land or buildings within the Town.

SUBDIVISION

The division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, building or otherwise. The term "subdivision" also includes the division of a new structure of structures on a tract or parcel of land into three or more dwelling units within a five-year period, the construction or placement of three or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five-year period, as set forth in 30-A M.R.S. § 4401, as amended.

Commented [32]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

SUBDIVISION, MAJOR

Any subdivision containing more than four lots or any subdivision requiring any new public street extension or the extension of public or municipal facilities.

SUBDIVISION, MINOR

A subdivision containing not more than four lots.

Commented [33]: Editor's Note: the definition of "subsurface sewage disposal system," which immediately followed this definition, was repealed 10-14-2015 by Ord. No. 15-10.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

SUBSTANTIAL IMPROVEMENT

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)

Any system designed to dispose of waste or wastewater on or beneath the surface of the earth. These

include, but are not limited to, septic tanks, disposal fields, holding tanks, pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition does not include any discharge system licensed under 38 M.R.S. § 414, any surface wastewater disposal system or any municipal or quasi-municipal sewer or wastewater treatment system. (See also "wastewater" and "domestic wastewater.")

[ADDED 10-14-2015 BY ORD. NO. 15-10]

SUSTAINED SLOPE

A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

TEMPORARY, INTRAFAMILY DWELLING UNIT

A temporary accessory dwelling unit to a dwelling that is designed for and occupied by either a:

- A. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
- B. Personal care provider(s) to an occupant of the property;
- C. Personal care receiver(s) from an occupant of the property; or
- D. Person(s) with a demonstrably familial type relationship to an occupant of the property.

TEMPORARY STRUCTURE

A structure which by type and materials of its construction is erected for not more than 30 days with a permit from the CEO. Such structures include tents, portable bandstands, bleachers, reviewing stands, a mobile home, tractor trailers or structures of a similar character. Temporary structures erected in conjunction with licensed circuses are not construed to be temporary structures under this title.

THEATER

A building or portion of a building for the showing of motion pictures or the presentation of dramatic, musical or other live performances.

TIDAL LAND, FILLED

Portions of the submerged and intertidal lands that have been rendered by human activity to be no longer subject to tidal action or below the natural low-water mark after October 1, 1975.

[ADDED 9-28-2015 BY ORD. NO. 15-05]

TIDAL WATERS

All waters where the high-water line is affected by the ebb and flow of tidal action.

TIMBER HARVESTING

- A. **TIMBER HARVESTING** Selective cutting or removal of 10 or more cords, or the equivalent thereof, but no more than 40% of the total volume of trees four inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period for the purpose of selling or processing forest products. Clearing of land necessary for approved construction is not considered as timber harvesting.
- B. For the purposes of this title, timber harvesting activities taking place outside the shoreland overlay zone on land classified by the Town Assessor as enrolled in the state tree growth program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance with a forest management and harvest plan prepared by a licensed professional forester, is not considered timber harvesting.

TOWER

Any structure, whether freestanding or in association with a building or other permanent structure,

that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

TRACT OR PARCEL OF LAND

All contiguous land in the same ownership, except that lands located on opposite sides of a public or private street are considered separate tracts or parcels of land unless the street was established by the owner of land on both sides of the street after September 22, 1971.

TRAILER

Any vehicle, including campers, used or so constructed as to permit its being used as a conveyance on the public streets and highways and may be duly licensed as such, and constructed in such a manner as will permit occupancy thereof as a temporary dwelling for one or more persons. A trailer is not construed as a mobile home for the purposes of this title.

TRAILER PARK

An area occupied or designed to be occupied by trailers for seasonal use only from May through October.

TRANSPORTATION TERMINAL

Land and buildings used as a relay station for the transfer of a load from one vehicle to another. The terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks associated with the terminal.

TRAVELED WAY

That portion of a road or driveway designed for vehicle travel. Where a road or driveway surface is paved, the traveled way is that portion of the road surface between the edges of the paved width.

TRIBUTARY STREAM

A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil, containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this title and only applies to that portion of the tributary stream located within the shoreland or resource protection overlay zones of the receiving water body or wetland.

UPLAND EDGE

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the elevation being six feet above mean sea level based on the North American Vertical Datum of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a time period sufficient to support wetland vegetation or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller; whichever is more restrictive.

URBANIZED AREA (UA)

The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

[ADDED 5-22-2017 BY ORD. NO. 17-06]

USED CAR LOT

A lot exposed to the elements which is used for the sale of secondhand automobiles or trucks which can pass the state inspection tests in their existing conditions.

VARIANCE

- A. A relaxation of the terms of this title where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.
- B. As used in this title, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone.

VEGETATION

All live trees, shrubs, ground cover and other plants.

VETERINARY HOSPITAL

A commercial establishment, operated by a licensed veterinarian, for the medical and surgical care of sick or injured animals.

VIOLATION

The failure of a structure or development to comply with a community's floodplain management regulations.

[ADDED 9-26-2011 BY ORD. NO. 11-15]

VOLUME OF A STRUCTURE

The volume of all portions of a structure enclosed by roof and fixed exterior walls, as measured from the exterior faces of these walls and roof.

WAREHOUSING AND STORAGE

Premises where goods or materials are stored in an enclosed structure or in specific outdoor areas.

WASTE

Any unwanted or discarded substance or material, whether or not such substance or material has any future use, and includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

WASTEWATER

Any domestic wastewater, or other wastewater from commercial, industrial or residential sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or toxic wastes and materials. (Applicable only to Title 16. If there is a conflict with the definition of "wastewater" in Title 13, the Title 13 definition takes precedence.)

[ADDED 10-14-2015 BY ORD. NO. 15-10]

WASTEWATER, DOMESTIC

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

[ADDED 10-14-2015 BY ORD. NO. 15-10]

WATER BODY

Any pond, river, brook, stream, intermittent stream or coastal wetland.

WATER CROSSING

Any project extending from one bank to the opposite bank of a water body, whether under, through or over the watercourse. Such projects include but may not be limited to roads, fords, bridges, culverts, waterlines, sewer lines and cables, as well as maintenance work on these crossings.

WATER-DEPENDENT USE

See "functionally water-dependent use."

WETLAND

Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

WETLAND ALTERATION

Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude:

- A. An activity of installing a fence post or planting shrubs by hand;
- B. Alteration of an existing structure such as a bench or handrail; and
- C. The construction, repair or alteration of a structure with minimal impact such as a nesting box, pasture fence or staff gauge.

WETLAND CREATION

Conversion of a nonwetland area into a wetland, where a wetland never existed.

WETLAND ENHANCEMENT

An activity increasing the value of one or more functions in an existing wetland. Activities may also include improvements to upland buffers where timber harvesting or other activities have degraded the value for wildlife.

WETLAND FUNCTIONS

The roles wetlands serve which are of value to society or the environment, including, but not limited to, floodwater storage, floodwater conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

WETLAND HYDROLOGY

In general terms, a condition where permanent or periodic inundation or prolonged soil saturation is sufficient to create anaerobic conditions in the soil. According to the 1989 Manual, inundation or saturation for one week or more during the growing season and a water table within at least 18 inches of soil surface is required to meet the wetland hydrology criterion.

WETLAND PRESERVATION

The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

WETLAND RESTORATION

An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater wetland acreage or function.

WETLAND VALUE

The importance of a wetland with respect to the individual or collective functions it provides.

WETLAND VEGETATION

Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and Wildlife Service publication, Wetland Plants of the State of Maine, 1986, as amended or superseded.

WETLANDS ASSOCIATED WITH RIVERS

Wetlands contiguous with or adjacent to a river, and which during normal high water are connected by surface water to the river. Also included are wetlands which are separated from the river by a berm, causeway or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high-water line of the river. Wetlands associated with rivers are considered to be part of that great pond or river.

WETLANDS IMPACT

Any disturbance, including but not limited to filling, dredging, draining, bridging and cutting or clearing of vegetation in the wetland and buffer areas.

Commented [SD34]: Do we need all these wetland definitions?

WHARF

A structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can be brought for loading or unloading.

WHOLESALE BUSINESS

The sale of goods not produced on the premises primarily to customers engaged in the business of reselling the goods.

WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)

Any structure, antenna, tower or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services, and associated development. Telecommunications facilities are considered a principal use.

WORK

Activity related to physical change for improvements and not the engineering, production or correction of construction drawings, or real estate marketing.

~~YARD~~

~~An unoccupied space, open to the sky, on the same lot with a building or structure.~~

YARD, ACCESSORY BUILDING SIDE AND REAR

In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that are at least 10 feet, except no building may be closer than 30 feet to a principal building on an adjoining lot.

YARD, FRONT

An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more than 24 inches, on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.

YARD, REAR

An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more than 24 inches, on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

YARD, SIDE

An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more than 24 inches, on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line will be deemed a side line.

A. Attachments:

[Attachment 1 - Figure 1. Formula for Determining Ownership of Intertidal Land](#)