

16.5 General Performance Standards

16.5.1.1 General.

The purpose of this chapter is to outline development design and performance standards to ensure public health, safety and welfare.

16.5.1.2 Accessory Dwelling Units

A. Purpose.

It is the intent of this article to impose standards that enable homeowners to create accessory dwelling units that are compatible with this title and do not negatively impact the character of the existing neighborhood or overburden the existing infrastructure.

B. Applicability.

[Amended 9-26-2011 by Ord. No. 11-15]

An accessory dwelling unit is allowed in all zoning districts where the use is permitted in **Chapter 16.3**. The unit must be located in an existing structure, with a certificate of occupancy issued more than five years prior to the date of the ADU application, on the property where the owner of the property occupies one of the units. 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 unit. The accessory dwelling unit may be attached to, or detached from, the primary dwelling unit. No expansion of a building's footprint is allowed to accommodate an accessory dwelling unit.

C. Application for accessory dwelling unit.

- (1). An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Town Planner and Code Enforcement Officer for review.
- (2). Applications for an accessory dwelling unit that meets the unit size standards and development standards contained in this article may be approved administratively and require approval by both the Town Planner and Code Enforcement Officer.
- (3). An accessory dwelling unit that fails to meet the unit size standards and/or the development standards provided in this article may not receive administrative approval; however, the accessory dwelling unit may still be allowed. See § **16.8.25.4A and B** below. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (4). The Town limits the number of new accessory dwelling unit permits to no more than 22 in the remainder of the calendar year of implementation and no more than 10 per calendar year on a first-come first-served basis.
- (5). One of the units on the property, either primary or secondary, must be occupied by the property owner at all times during the period of permitting. Prior to the issuance of a certificate of occupancy, the property owner must submit a recorded copy of deed restrictions to the Town Planner, outlining the owner-occupancy requirement.

D. Accessory dwelling unit standards.

- (1). Lot standards.
 - a. Legal lot/residence. An accessory dwelling unit is allowed only on lots within the Town that contain a legal, single-family residence as the primary unit.
 - b. Number of accessory dwelling units per lot. No more than one accessory dwelling unit is permitted on a lot.
 - c. Zone lot size and unit density. The property on which an accessory dwelling unit is located must meet the size required by a zone's standards. However, an accessory dwelling unit is exempt from the density requirement of such zone.

- d. Utility connections. Accessory dwelling units must be connected to adequate water and sewer services.
 - i. Public sewer. [Amended 9-26-2011 by Ord. No. 11-15]
 - a. Service: verification, in writing, of adequate service to support the additional flow from the Superintendent of Wastewater Treatment Facilities.
 - b. Fees: Payment of appropriate fees for connection to the municipal sewer system is required prior to obtaining the certificate of occupancy.
 - ii. Septic systems. Verification of adequate sewage disposal for subsurface waste disposal is required. The septic system, existing or proposed, must be verified as adequate or reconstructed as required. Plans for subsurface waste disposal must be prepared by a Maine-licensed site evaluator in full compliance with the State of Maine Subsurface Wastewater Disposal Rules, 10-144 C.M.R. 241.
 - iii. Public water. Verification in writing is required from the Kittery Water District for volume and supply.
 - iv. Wells. Verification of the potable water supply for private wells is required. Tests of the existing well or proposed well, if applicable, must indicate that the water supply is potable and acceptable for domestic use and must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."
 - e. Private road or right-of-way access. Where an applicant seeks to locate an accessory dwelling unit on a privately maintained road or right-of-way the following applies:
 - i. Applicant must provide written consent from the association or parties responsible for street maintenance; and **[Amended 9-26-2011 by Ord. No. 11-15]**
 - ii. Road construction standards must support the additional trips generated.
- (2). Unit standards.
- a. Unit size. The habitable floor space of an accessory dwelling unit must be a minimum of 400 square feet and no larger than 800 square feet.
 - b. Unit location. An accessory dwelling unit:
 - i. Must be fully constructed within the existing footprint of any legal primary residence or accessory building.
 - ii. Will be allowed inside of the primary residence building where the building has nonconforming yard setbacks.
 - iii. Will not be allowed in accessory or detached buildings encroaching on yard setbacks.
 - c. Building code compliance. An accessory dwelling unit must satisfy the requirements contained in the building code and fire code as currently adopted by the Town. **See § 16.5.3E**, Conformance to standards.
- (3). Development standards. Should an accessory dwelling unit fail to meet the development standards listed in this article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a miscellaneous variation request.

16.5.1.3 Agriculture.

- A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination and nutrient enrichment of groundwater and surface waters.

- B. All spreading or disposal of manure must be accomplished in conformance with the Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).
- C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the normal high-water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the Map. Within five years of the effective date of this chapter, all manure storage areas within the Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no-discharge provision within the above five-year period.
- D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in surface area or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are required to submit a soil and water conservation plan to the Planning Board for review and approval. Nonconformance with the provisions of said approved plan will be considered to be a violation of this section.
- E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-water line of tributary streams and freshwater wetlands shown on the Map is prohibited. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.
- F. After the effective date of this section, newly established livestock grazing areas will not be permitted within 100 feet, horizontal distance, of the normal high-water line of any water bodies or coastal wetlands or within 25 feet, horizontal distance, of the normal high-water line of tributary streams and freshwater wetlands shown on the Zoning Map. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provision, may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan that has been approved by the Planning Board.

16.5.1.4 Agriculture, Piggery.

- A. Number of animals. These standards apply to the keeping of two (2) or more pigs that are six (6) months old or older. These standards do not apply to the raising and selling of any number of pigs that are under six (6) months of age.
- B. Setbacks. The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:
 - (1). Structures: 50 ft.
 - (2). Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January 2007, and as this may be amended or superseded.

16.5.1.5 Agriculture, Poultry Facility.

- A. Number of Animals. These standards apply to the keeping of thirteen (13) or more poultry animals that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a permitted use or a special exception use. These standards do not apply to the raising and selling of any number of poultry that are under six (6) months of age.
- B. Setbacks. The following distances are from the identified nearest property not owned or

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controlled by the operator/owner of the poultry facility:

- (1). Structure, including Barn or Coops: 50 ft.
- (2). Feed lots, pens and extensively used areas: 100 ft.

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C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.

~~F.D.~~ Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January 2007, and as this may be amended or superseded.

~~46.5.1.4~~16.5.1.6 Campgrounds and Campsites

A. Campgrounds. Campgrounds must meet the minimum requirements according to state licensing procedures and the following:

- (1). Campgrounds must contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site.
- (2). Land supporting wetland vegetation and land below the normal high-water line of a water body is not to be included in calculating land area per site.
- (3). The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings must be set back a minimum of 75 feet, horizontal distance, from the normal high-water line of water bodies, tributary streams or the upland edge of a wetland.

B. Individual private campsites. Individual private campsites not associated with campgrounds may be permitted in a Shoreland Overlay Zone, provided the following conditions are met:

- (1). One campsite per lot existing on the effective date of this chapter or 30,000 square feet of lot area within the SL-OZ, whichever is less, may be permitted. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (2). Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, must be set back 75 feet, horizontal distance, from the normal high-water line of water bodies, tributary streams or the upland edge of a wetland.
- (3). Only one recreational vehicle is allowed on a campsite. Permanent foundations for recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking are permissible. No structures, other than canopies, are allowed for attachment to the recreational vehicle.
- (4). The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection Overlay Zone is limited to 1,000 square feet.
- (5). A written sewage disposal plan describing the proposed method and location of sewage disposal is required for each campsite and must be approved by the local Plumbing Inspector. Where disposal is off site, written authorization from the receiving facility or property owner is required.
- (6). Recreational vehicles, tents or similar shelters are not allowed to remain on site for a period longer than 120 days per year, unless it can be demonstrated that all requirements for residential structures have been met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules and/or the site is served by public sewage facilities.

~~46.5.1.5~~16.5.1.7 Conservation of Wetlands Including Vernal Pools

A. Purpose.

- (1). Wetlands are a fragile natural resource which, in their natural state, directly and

indirectly benefit the public by serving valuable functions such as pollution filtration systems (i.e., retention of suspended solids, phosphorus and other nutrients), control of floodwaters, erosion control, groundwater recharge, educational and scientific study, wildlife habitat, open space and recreation. Considerable wetland acreage has been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts inconsistent with the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the Town to:

- a. Prevent the development of structures and land uses within wetlands and wetland setback areas that may contribute to the pollution of surface water and groundwater by sewage or toxic substances;
 - b. Prevent the destruction of, or significant changes to, wetlands which provide flood and shoreline protection, recharge groundwater supplies, and augment stream flow during dry periods;
 - c. Protect wetland areas and promote healthy wetland buffers that will preserve and enhance the wetlands;
 - d. Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc., and maintain ecological balances; and
 - e. Establish maintenance responsibility and/or fees to protect and maintain the wetland areas.
- (2). The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices and strategies, such as buffering and the avoidance of wetland alterations that serve to protect functional wetlands and the repair of degraded wetlands, are encouraged. The reviewing authority will review plans for proposed development within 100 feet of a wetland to determine if wetlands of special significance are impacted. The applicant may be required to pay the cost of an independent study. For the reviewing authorities, refer to **Article III of Chapter 16.10**.
- (3). Wetlands of special significance have one or more of the following characteristics:
 - a. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is "critically imperiled" as defined by the Maine Natural Areas Program.
 - b. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S. §480-B(10).
 - c. Location near coastal wetland. The freshwater wetland is located within 250 feet of a coastal wetland.
 - d. Location near a water body. The freshwater wetland is located within 250 feet of the normal high-water line and within the same watershed of a lake or pond.
 - e. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the twenty-thousand or more square foot area is the result of an artificial pond or impoundment.
 - f. Wetlands subject to flooding. The freshwater wetland is inundated with floodwater during a one-hundred-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
 - g. Peatlands. The freshwater wetland is or contains peatlands, except that the Planning Board may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
 - h. River, stream or brook. The freshwater wetland is located within 25 feet of a river, stream or brook.
 - i. Monetary value. An estimation can be determined based on the importance

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

- j. Vernal pools. The wetland contains a particular aquatic habitat as defined by the Maine Department of Environmental Protection (MDEP), including those mapped as significant vernal pools by MDEP.

B. Wetlands boundaries.

The definition of wetland boundaries is as described in this section and in § 16.2.2.

Planning Board approval to alter a wetland area one acre or larger in size will not be issued until the applicant has submitted to the Town a wetlands delineation map and summary prepared by a qualified wetlands scientist or a Maine-certified soil scientist, at the applicant's expense. The qualified wetlands scientist or Maine-certified soil scientist must determine through field investigation the presence, location and configuration of wetlands on the area proposed for use.

- (1). Disturbed areas. An area which has been disturbed or modified such that natural vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event disturbance of a wetland causes the wetland boundary to be altered, a new boundary may need to be delineated in order to determine if the wetland is a regulated wetland. Wetland boundaries are to be delineated according to procedures described in the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987, (1987 Manual). Notwithstanding the above, areas legally disturbed or modified prior to May 13, 1987 will be considered "wetlands" for the purpose of this title if such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.
- (2). Settling disputes over wetland boundaries. If there is a dispute regarding the existence or boundaries of the wetlands, the boundaries of the wetland are to be determined, at the expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified soils scientist agreeable to both the Planning Board and the applicant.
- (3). Permits required from other agencies. The determination of wetlands boundaries for Town jurisdiction by the Town Planning Board, the Conservation Commission, or the Code Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional determinations and/or permits from the Maine Department of Environmental Protection and the United States Army Corps of Engineers when required.

C. Regulated activities within wetlands. [Amended 9-26-2011 by Ord. No. 11-15]

Unless otherwise specified, all new structures and activities within wetlands, including but not limited to dredging and filling and expansions of existing structures and activities, are subject to the provisions of these regulations. Proposed activities and structures within a freshwater wetland smaller than 501 square feet in total size are exempt from the regulations in this article.

D. Permitted activities within regulated wetlands. [Amended 9-26-2011 by Ord. No. 11-15]

The following uses are considered to be compatible within regulated wetlands and are permitted within regulated wetlands without Planning Board approval, provided they are in conformance with all local, federal and state regulations:

- (1). Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such agriculture must not cause or contribute to surface water or groundwater pollution by use of pesticides, toxic chemicals or other pollutants and must not cause soil erosion;
- (2). Conservation areas and nature trails;
- (3). Education and scientific research;
- (4). Forestry, tree farming and timber harvesting using the best management practices in order to protect streams from damage and prevent sedimentation. Timber

harvesting must be conducted during periods when the ground is frozen. The practice known as "clear cutting" is not permitted by right and requires a special permit under § 16.9.5.1;

- (5). Low-intensity recreation;
- (6). Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or utilities. Such repair and maintenance must not negatively impact the wetland or alter the existing watercourse and related hydrology;
- (7). Repair and maintenance of existing permanent structures requiring the addition or removal of 10 cubic yards or less of earth material to (form) a water body or wetland;
- (8). Placement of drainage outfall pipes requiring the addition or removal of less than 10 cubic yards of material;
- (9). Repair in kind, maintenance and necessary upgrade of existing drainage facilities;
- (10). Repair in kind and maintenance of existing transportation facilities;
- (11). Placement of moorings, subject to Harbormaster approval;
- (12). Wilderness areas and natural wildlife refuges;
- (13). Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not involve draining, grading, filling or dredging within the wetland. All such structures must be constructed of nontoxic materials and designed in such a manner to permit the unobstructed flow of waters and must preserve the natural contour and hydrology of the wetland, unless otherwise authorized by special permit as per § 16.9.3.4;
- (14). Emergency public safety operations; and
- (15). Any other activity as determined by the Planning Board that does not result in a measurable alteration of the wetland.

E. Prohibited uses within regulated wetlands.

The following structures and activities are considered to be incompatible with protecting wetlands and are prohibited within regulated wetlands:

- (1). Disposal or storage of waste and/or hazardous materials;
- (2). Manure stockpiles;
- (3). Road salt stockpiles;
- (4). Topsoil removal except as permitted in § 16.9.3.4 or with Planning Board approval;
- (5). Bulk fuel storage;
- (6). Herbicidal spraying;
- (7). Invasive nonnative wetland plants; and
- (8). Snow dumping.

F. Procedures for wetlands alteration application.

- (1). Application and review process. The application and review process for the review of proposals within regulated wetlands must conform to the procedures explained in Article **III** of this chapter, except where specifically stated otherwise in this section.
- (2). Submission requirements. An application to alter a wetland must be made in accordance with the submission requirements in § 16.9.3.12 to the Town Planner, or designee, accompanied by a fee as determined in Appendix A. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (3). Advisory opinion. The Planning Board may request the Town Planner to acquire more specific data and analysis from qualified sources and/or the opinion of the Conservation Commission concerning the proposed activity.
- (4). Timing after Board acceptance. The Planning Board will issue its decision within

35 days of receipt of the completed wetlands alteration application, unless a public hearing is necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor that it will not significantly affect the wetland or that the hearing will not produce additional information useful to the review. A decision may be rendered at the scheduling hearing if the Board determines that a complete application has been received and no public hearing is necessary. If a public hearing is held, the Planning Board is required to issue its decision within 35 days of completion of the public hearing.

- (5). Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed alteration must be notified by first class U.S. Mail of any public hearing on the application for wetlands alteration.
- (6). Coordination. Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the Planning Board.

G. Wetlands alteration approval criteria. [Amended 9-26-2011 by Ord. No. 11-15]

- (1). In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.
- (2). It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this title and the specific standards listed below to gain Planning Board approval to alter a wetland. The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with this title.
- (3). In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.
- (4). When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan (see § 16.9.3.9) and not prior to the completion of all performance guaranties for the project (see § 16.10.8.2B).
- (5). The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the Planning Board will consider the following:
 - a. The proposed use:
 - i. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;
 - ii. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
 - iii. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact;

- and
 - iv. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.
- (6). In determining if the proposed development plan affects no more wetland than is necessary, the Planning Board will consider if the alternatives discussed above in **Subsection A** of this section accomplish the following project objectives:
- a. The proposed use will not:
 - i. Unreasonably impair or diminish the wetland's existing capacity to absorb, store and slowly release stormwater and surface water runoff;
 - ii. Unreasonably increase the flow of surface waters through the wetland;
 - iii. Result in a measurable increase in the discharge of surface waters from the wetland;
 - iv. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
 - v. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
 - vi. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands; or
 - vii. Result in a measurable alteration or destruction of a vernal pool.
- H. Expiration of wetlands alteration approval. [Amended 1-28-2015 by Ord. No. 15-01]
- (1). Wetlands alteration approval will expire if work has not commenced within one year of the Planning Board date of approval. Where work has commenced within one year of approval, such approval will expire unless work is complete within two years of the original approval date.
 - (2). Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five years for a subdivision plan and three years for all other development plans.
- I. Mitigation plan.
- (1). Mitigation activities are actions taken to offset potential adverse environmental impact, as well as the remittance of fees and a plan for the preservation of buildable/usable upland areas when the applicant has proven to the Planning Board's satisfaction that there are no practical alternatives to impacting a wetland.
 - (2). Required fees and compensation.
 - a. For activities which in total will alter or fill less than 501 square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.
 - b. For activities which in total alter or fill a five-hundred-and-one-square foot to twenty-thousand-square-foot wetland, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the Planning Board.

- c. In addition, a wetlands preservation fee for each square foot of altered wetland area, as determined in Appendix A, will be deposited into the account of the Town to achieve one or more of the following objectives related to the conservation of Kittery wetlands, with the Planning Board's recommendation and release of funds by the Town Council: **[Amended 9-26-2011 by Ord. No. 11-15]**
 - i. Restoration and preservation of wetlands;
 - ii. Purchase of buffer areas for wetlands deemed at risk;
 - iii. Monitoring and improvement of water quality;
 - iv. Environmental and conservation projects, such as, but not limited to, education;
 - v. Matching grant funds;
 - vi. Open space land purchases in conjunction with the Open Space Committee;
 - vii. Assistance to the Kittery Land Trust; and/or
 - viii. Purchase of signage to denote sensitive and wetland areas.
- d. Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in § 16.9.3.12C. The assessment must demonstrate the existing wetland functions and functional value and summarize the impairments, degradation and/or loss of function due to the proposed development.
 - i. When required. Fees for deposit to the wetlands preservation account are required whenever wetland areas or wetland functions will be lost or degraded due to the project, as identified by the functional assessment.
 - ii. Where required. Fees for deposit to the wetlands preservation account must be used on the proposed site or on parcels adjacent to the project site when possible. If not possible, the fees must be used within the same watershed as the proposed alteration, or within the project vicinity, except as allowed for mitigation banking approved in writing by the Maine Department of Environmental Protection. In all cases, use of the fees must occur within the boundaries of the Town.
 - iii. Wetland impact mitigation process. Fees or developable land, or a combination thereof, as determined by the Planning Board, will be used to replace lost wetlands and wetland functions. Where the Maine Department of Environmental Protection and this title require and the Planning Board has approved a mitigation plan, such plan is deemed to satisfy Town standards.
- e. Homeowners' association documents, deed covenants, maintenance agreements, and easements must establish responsibility for the maintenance of wetlands. The association documents must stipulate periodic maintenance of the surface and subsurface stormwater system, including but not limited to catch basins, stormwater manholes, pipes, ditches, curbs, settling basins and other structures designed to direct, retain and/or discharge stormwater runoff. In the event the Code Enforcement Officer and/or the Town's Engineer finds the wetlands are not in a natural healthy state, the association will be required to hire a qualified wetlands scientist or a Maine-certified soils scientists to evaluate all wetlands within the development at the association's expense.

J. Coordination.

To reduce delays, the applicant may, upon written notice to the Town Planner, simultaneously apply to the Army Corps of Engineers and the Maine Department of

Environmental Protection for permits during the Town review process. In addition, the applicant may simultaneously apply for other local land use regulation approvals while applying for wetlands alteration approval.

K. Enforcement.

The provisions of this Article **III, Conservation of Wetlands Including Vernal Pools**, are to be administered and enforced pursuant to the provisions of **Chapter 16.4, Administration and Enforcement**.

L. Submission requirements for wetland alteration application.

- (1). Minimum requirements. Unless specifically waived by the Planning Board, all applications must contain the following information:
 - a. Fifteen copies of the narrative, the site plan and the vicinity map required in this subsection. **[Amended 9-26-2011 by Ord. No. 11-15]**
 - b. A copy of the official documents showing legal interest of the applicant in the property to be affected.
 - c. A narrative, describing:
 - i. The purpose of the project;
 - ii. The type of alteration to the wetland (fill, culvert, dredge, etc.);
 - iii. Why there is no practicable alternative to impacting the wetland; and
 - iv. How the proposed activity has been designed to minimize the impact on the wetland.
 - d. A plan view showing the site as viewed from above is required. The plan view must:
 - i. Be drawn at an appropriate scale, but no smaller scale than one inch equals 100 feet, and show the proposed activity, the location and size of all existing and proposed structures, roads, parking areas and sewage treatment facilities.
 - ii. Contain a code block in the lower right-hand corner. The block must contain the:
 - a. Name(s) and address(es) of the applicant or owner;
 - b. Name and address of the preparer of the plan, with professional seal, if applicable;
 - c. Name of plan, date of plan preparation, and a revision number and date, if applicable; and
 - d. Map and lot number(s), according to Kittery tax maps, shown in the lower right-hand corner in bold lettering and 1/4 inch high.
 - iii. Show a North arrow.
 - iv. Show property boundaries.
 - v. Show the location of any wetlands, shorelines and floodplains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987," (1987 Manual).
 - vi. Show the location (tied by measurement to identifiable structures or boundary points) of all proposed draining, fill, grading, dredging and vegetation removal, including specification of amount of materials to be added or removed and procedures to be used.
 - vii. Indicate the square footage of wetlands to be affected by the proposed activity.
 - viii. Show the direction of natural water flow over the land, in the wetland, and in the proposed alteration area.

- ix. Show the location of the one-hundred-year floodway and flood hazard boundaries as shown on the current effective National Flood Insurance Program maps, if applicable.
 - x. Specify the number of cubic yards and type of material to be used as fill, if fill material is involved.
 - xi. Specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, if dredge material is involved.
 - a. Show all owners of property within 150 feet of the proposed alteration, together with their mailing addresses and map and lot designations from the Assessor's records.
 - e. A vicinity map, utilizing a topographic map at a scale no smaller than one inch equals 600 feet, showing the boundary of the proposed activity.
 - f. One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.
- (2). Additional requirements. In its consideration of an application, the Board may at any point in the review require the applicant to submit additional materials, studies, analyses and agreement proposals that the Board may deem necessary for a complete understanding of the application. Such material may include the following items:
- a. A site plan showing existing and proposed topographic contours at two-foot intervals;
 - b. A hydrologic analysis in accordance with the requirements of this chapter;
 - c. Cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations; and
 - d. An evaluation, by a qualified wetlands scientist or a Maine-certified soils scientists, assessing the functions of the wetland and the impact of the proposed activity on these functions.
- (3). Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than 500 square feet of wetlands.
- a. The wetland mitigation plan and report must contain the following:
 - i. Plan at a scale of one inch equals 100 feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all off-site wetlands being extensions of the wetland to be altered;
 - ii. Existing wetland characteristics, including water depth, vegetation and fauna;
 - iii. Functional assessment, conducted by a qualified wetlands scientist or a Maine-certified soils scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The Wetland Evaluation Technique (WET) methodology, published by the U.S. Army Corps of Engineers, is one acceptable methodology. Other comparable assessment techniques may be accepted, provided the applicant submits documentation of how the methodology was developed, how the wetland functions and values are determined, and how much field testing the technique has undergone; and
 - iv. Photographs of the wetland to be altered which show its characteristics.
 - b. Description of the overall proposed activity with particular reference to its

impact on the wetland, including the precise location of the activity, its dimensions, the amount and type of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts. The Planning Board may require certain fill areas (such as stormwater storage basins, solid waste landfills, fill behind retaining walls, etc.) to be structurally engineered.

- c. Plan for the proposed wetlands work, if any, including a topographic plan at the scale of one inch equals 100 feet, showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:
 - i. Proposed boundaries and characteristics of the mitigation site, including elevation, sources of water, and proposed vegetation;
 - ii. Narrative describing the specific goals in terms of particular wetland functions and values. These goals must be related to those of the original wetland;
 - iii. Narrative describing the available literature or experience to date (if any) for carrying out the mitigation work;
 - iv. Proposed implementation and management procedures for the wetlands work;
 - v. Description of the short-term and long-term sources of water for this wetland, including the water quality of these sources;
 - vi. Plans for replanting, including a description of plant species, sizes and sources of plant material, as well as how, when and where seeding or planting will take place;
 - vii. Proposed buffers or protective measures, such as sediment control methods;
 - viii. Plans for monitoring the wetlands work, showing capability for mid-course corrections; and
 - ix. Plans, if any, for control of nonindigenous plant species.
- d. For wetlands work involving creation, restoration and/or enhancement of degraded wetlands, a maintenance agreement must be approved by the Board and recorded in the York County Registry of Deeds. The maintenance agreement must be conveyed or a deed restriction imposed, and such maintenance responsibility is not dissolvable without Council approval. The maintenance agreement must meet or exceed the criteria listed in § 16.9.3.12C(3).
- e. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.

~~16.5.1.6~~16.5.1.8 Essential Services

- A. Installation.

Where feasible, the installation of essential services will be limited to existing public ways and existing service corridors.
- B. Location in CON or OZ-RP Zone.

The installation of essential services is not permitted in a Conservation Zone or Resource Protection Overlay Zone, except to provide services to a permitted use within said zone, or except where the applicant demonstrates no reasonable alternative exists. Where permitted, such structures and facilities must be located to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- C. Replacement of equipment without permit.

Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

~~16.5.1.7~~16.5.1.9 Floodplain Management [Added 9-26-2011 by Ord. No. 11-15]

A. Statement of purpose and intent.

- (1). Certain areas of the Town are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of federally subsidized flood insurance as authorized by the National Flood Insurance Act of 1968.
- (2). Therefore, the Town has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.
- (3). It is the intent of the Town to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards. This body has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

B. § 16.9.8.2 Definitions.

Unless specifically defined in Chapter 16.2, words and phrases used in this article have the same meanings as they have in common law to give this article its most reasonable application.

C. Establishment of areas.

- (1). The Town elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the Town.
- (2). The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference and declared to be a part of this article.

D. Permit required.

Before any construction or other development (as defined in § 16.9.8.2), including the placement of manufactured homes, begins within any areas of special flood hazard established in § 16.9.8.3, a flood hazard development permit is to be obtained from the Code Enforcement Officer. This permit is in addition to any other building/regulated activity permits which may be required pursuant to this title.

E. Application for permit.

The application for a flood hazard development permit is to be submitted to the Code Enforcement Officer and include:

- (1). The name and address of the applicant.
- (2). An address and a map indicating the location of the construction site.
- (3). A site plan showing the location of existing and/or proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
- (4). A statement of the intended use of the structure.
- (5). A statement as to the type of sewage system proposed.
- (6). Specification of dimensions of the proposed structure.
- (7). The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - a. Base flood at the proposed site of all new or substantially improved

structures, which is determined:

- i. In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.9.8.3; or
 - ii. In Zone A, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - b. Highest and lowest grades at the site adjacent to the walls of the proposed building.
 - c. Lowest floor, including basement, and whether or not such structures contain a basement.
 - d. Level, in the case of nonresidential structures only, to which the structure will be floodproofed.
- (8). A description of a base flood elevation reference point established on the site of all new or substantially improved structures.
 - (9). A written certification by a registered land surveyor that the elevations shown on the application are accurate.
 - (10). Certification by a registered professional engineer or architect that floodproofing methods for any:
 - a. Nonresidential structures will meet the floodproofing criteria of Subsection **G(4)** of this section. Subsection **G** of § 16.9.8.8, and other applicable standards in § 16.9.8.8; and
 - b. Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will meet the floodproofing criteria of Subsection **K** of § 16.9.8.8 and other applicable standards in § 16.9.8.8.
 - (11). A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 - (12). A statement of construction plans describing in detail how each applicable development standard in § 16.9.8.8 will be met.

F. Application fee and expert's fee.

- (1). A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk, and a copy of a receipt for the same must accompany the application.
- (2). An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee must be paid in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure to pay the bill constitutes a violation of this title and is grounds for the issuance of a stop-work order. An expert may not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

G. Review of flood hazard development permit applications.

The Code Enforcement Officer must:

- (1). A. Review all applications for a flood hazard development permit to assure that proposed building sites are reasonably safe from flooding and to determine that all pertinent requirements of § 16.9.8.8, Development standards, have or will be met.
- (2). B. Utilize, in the review of all flood hazard development permit applications, the base flood data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.9.8.3. In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer is to obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources, including information obtained pursuant to

§§ 16.9.8.5G(1)(b), 16.9.8.8I and 16.9.8.10D, in order to administer § 16.9.8.8 of this article.

- (3). C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in § 16.9.8.3.
- (4). D. In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required by federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
- (5). E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Office of Community Development prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency.
- (6). F. Issue a two-part flood hazard development permit for elevated structures. Part I is to authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant must provide the Code Enforcement Officer with an application for Part II of the flood hazard development permit and include an elevation certificate completed by a registered Maine surveyor for compliance with the elevation requirements of Subsections F, G, H and K of § 16.9.8.8. Following review of the application, which review must take place within three working days of receipt of the application, the Code Enforcement Officer is to issue Part II of the flood hazard development permit. Part II authorizes the applicant to complete the construction project.
- (7). G. Maintain, as a permanent record, copies of all flood hazard development permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of § 16.9.8.11; and copies of elevation certificates and certificates of compliance required under the provisions of § 16.9.8.9.

H. Development standards.

All developments in areas of special flood hazard are to meet the following applicable standards:

- (1). New construction or substantial improvement of any structure must:
 - a. Be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - b. Use construction materials that are resistant to flood damage;
 - c. Use construction methods and practices that will minimize flood damage; and
 - d. Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other service facilities, that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- (2). All new and replacement water supply systems are to be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (3). All new and replacement sanitary sewage systems are to be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
- (4). On-site waste disposal systems are to be located and constructed to avoid impairment to them or contamination from them during floods.
- (5). All development is to be constructed and maintained in such a manner that no reduction occurs in the flood-carrying capacity of any watercourse.

- (6). New construction or substantial improvement of any residential structure located within:
- Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - Zone AO is to have the lowest floor (including basement) elevated above the highest adjacent grade:
 - At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - At least three feet if no depth number is specified.
 - Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to § 16.9.8.5G(1)(b), 16.9.8.7B or 16.9.8.10D.
 - Zones V1 — 30 and VE is to meet the requirements of Subsection **K** of this section.
- (7). New construction or substantial improvement of any nonresidential structure located within:
- Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, must:
 - Be floodproofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification must be provided with the application for a flood hazard development permit, as required by § 16.9.8.5J, and include a record of the elevation above mean sea level of the lowest floor, including basement.
 - Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - Zone AO is to have the lowest floor (including basement) elevated above the highest adjacent grade:
 - At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - At least three feet if no depth number is specified; or
 - Together with attendant utility and sanitary facilities, be floodproofed to meet the elevation requirements of this section and floodproofing standards of Subsection **G(1)** of this section.
 - Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to § 16.9.8.5G(1)(b), 16.9.8.7B or 16.9.8.10D.
 - Zones V1 — 30 and VE is to meet the requirements of Subsection **K** of this section.
- (8). New or substantially improved manufactured homes located within:
- Zones A1 — 30, AE or AH must:
 - Be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation; and

- ii. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - a. Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or
 - b. By frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - c. All components of the anchoring system described in Subsection H(1)(b)[1] and [2] of this section must be capable of carrying a force of 4,800 pounds.
 - b. Zones AO and AH are to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - c. Zone AO are to have the lowest floor (including basement) elevated above the highest adjacent grade:
 - i. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - ii. At least three feet if no depth number is specified; and
 - iii. Meet the requirements of Subsection H(1)(a) and (b) of this section.
 - d. Zone A are to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to § 16.9.8.5G(1)(b), 16.9.8.7B or 16.9.8.10D.
 - e. Zones V1 — 30 and VE are to meet the requirements of Subsection K of this section.
- (9). Floodways.
 - a. In Zones A1 — 30 and AE, encroachments, including fill, new construction, substantial improvement, and other development, are not permitted in riverine areas, for which a regulatory floodway is designated on the community's "Flood Boundary and Floodway Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - b. In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development, are not permitted unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - i. Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
 - ii. Is consistent with the technical criteria contained in Section 2-7, entitled "Hydraulic Analyses," Flood Insurance Study — Guidelines and Specifications for Study Contractors, FEMA 37/September, 1985, as amended.
 - c. In Zone A riverine areas, in which the regulatory floodway is determined to be the channel of the 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, encroachments,

including fill, new construction, substantial improvement, and other development, are not permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of Subsection **I(2)** of this section.

- (10). New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO, AH and A that meets the development standards of this section, including the elevation requirements of Subsection **F, G or H** of this section, and is elevated on posts, columns, piers, piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the elevation requirements provided all the following criteria are met or exceeded:
- a. Walls, with the exception of crawl spaces less than three feet in height, must not be part of the structural support of the building; and
 - b. Enclosed areas are not "basements" as defined in **§ 16.9.8.2**; and
 - c. Enclosed areas are to be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
 - i. Be certified by a registered professional engineer or architect; or
 - ii. Meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - b. The bottom of all openings may be no higher than one foot above the lowest grade; and
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the entry and exit of floodwaters automatically without any external influence or control, such as human intervention, including the use of electrical and other nonautomatic mechanical means; and
 - d. The enclosed area may not be used for human habitation; and
 - e. The enclosed area may be used for building maintenance, access, parking vehicles, or storing of articles and equipment used for maintenance of the building.
- (11). Coastal floodplains.
- a. All new construction located within Zones V1 — 30 and VE is to be located landward of the reach of the highest annual spring tide.
 - b. New construction or substantial improvement of any structure located within Zones V1 — 30 or VE must:
 - i. Be prohibited unless the following criteria are met:
 - a. The area is zoned for general development or its equivalent, as defined in the Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S. § 438-A; or
 - b. The area is designated as densely developed as defined in 38 M.R.S. § 436-A, Subsection 3.
 - ii. Be elevated on posts or columns such that:
 - a. The bottom of the lowest structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood level;
 - b. The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building

- components; and
 - c. Water loading values used must be those associated with the base flood. Wind loading values used must be those required by applicable state and local building standards.
 - iii. Have the space below the lowest floor:
 - a. Free of obstructions; or
 - b. Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or
 - c. Constructed with nonsupporting breakaway walls which have a design safe loading resistance of not less than 10 nor more than 20 pounds per square foot.
 - c. A registered professional engineer or architect must:
 - i. Develop or review the structural design, specifications and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual (FEMA-55/February, 1986); and
 - ii. Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Subsection **K(2)** of this section.
 - d. The use of fill for structural support in Zones V1 — 30 and VE is prohibited.
 - e. Human alteration of sand dunes within Zones V1 — 30 and VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
 - f. The enclosed areas may be used solely for parking vehicles, building access, and storage.
- I. Certificate of compliance.

No land in a special flood hazard area may be occupied or used and no structure which is constructed or substantially improved may be occupied until a certificate of compliance is issued by the Code Enforcement Officer subject to the following provisions:

 - (1). The applicant must submit an elevation certificate completed by:
 - a. A registered Maine surveyor for compliance with **Subsection F, G, H or K of § 16.9.8.8**; and
 - b. A registered professional engineer or architect in the case of:
 - i. Floodproofed, nonresidential structures, for compliance with **§ 16.9.8.8G**; and
 - ii. Construction of structures in the coastal floodplains for compliance with **§ 16.9.8.8K(3)**.
 - (2). The application for a certificate of compliance is to be submitted by the applicant in writing, along with a completed elevation certificate, to the Code Enforcement Officer.
 - (3). The Code Enforcement Officer is to review the application within 10 working days of receipt of the application and issue a certificate of compliance, provided the building conforms with the provisions of this article.
- J. Review of subdivision and development proposals.

The Planning Board must, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations, and all projects on five or more acres, or in the case of manufactured home parks divided

into two or more lots, assure that:

- (1). All such proposals are consistent with the need to minimize flood damage.
- (2). All public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damages.
- (3). Adequate drainage is provided so as to reduce exposure to flood hazards.
- (4). All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- (5). Any proposed development plan must include a statement that the developer will require that structures on lots in the development be constructed in accordance with § 16.9.8.8 and that such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including, but not limited to, a time-share interest. The statement must clearly articulate that the municipality may enforce any violation of the construction requirement and that fact is also to be included in the deed or any other document previously described. The construction requirement must also be clearly stated on any map, plat or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

~~16.5.1.8~~ 16.5.1.10 Home Occupation

A. Purpose.

- (1). It is the intent of these regulations governing home occupations to balance the economic and community benefits of allowing home-based businesses with the goal of protecting the quality of life of the surrounding residential neighborhood from unreasonable or unsafe intrusions and nuisances inappropriate to a residential setting. The regulations attempt to ensure that any home-based business operates in a manner that respects the neighborhood in which it is situated.
- (2). Regulation of home occupations should not prohibit beneficial and unobtrusive uses and should provide standards to protect the health, safety and general welfare of the surrounding neighborhood. A home occupation should not degrade the residential character of the neighborhood.
- (3). These regulations take a two-tier approach to regulating home occupations. At the least intrusive level are business activities that by their nature and intensity will be compatible with a residential location. These types of businesses are considered minor home occupations and require only review by the Code Enforcement Officer for compliance with the standards. A major home occupation in a residential district has the potential to be incompatible with its neighborhood setting. Therefore, a public hearing with notification to abutting property owners and BOA approval is necessary.
- (4). A more extensive business activity that does not satisfy the standards for a major home occupation is treated as a type of commercial use and does not qualify as an acceptable type of home occupation. Such businesses should be located in an appropriately zoned area of the Town.

B. Minor home occupation standards.

- (1). Compliance with the definition of a "home occupation."
 - a. An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.
 - b. As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors

include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

- (2). Number of workers. There must be no more than three persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.
- (3). Prohibited uses. The following uses are categorically prohibited as minor home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking; processing and/or cleaning; bait sales; marijuana retail use; and marijuana medical use. **[Amended 5-22-2017 by Ord. No. 17-09]**
- (4). Business hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally water-dependent use.
- (5). Nuisances.
 - a. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.
 - b. When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.
- (6). Parking. A plan must be submitted showing sufficient and safe parking for customers', clients' and workers' use during normal business operations. To the maximum extent practicable, parking should be arranged so as to avoid vehicles backing out into the street. In addition to parking required for the residence, the following parking is required: **[Amended 9-26-2011 by Ord. No. 11-15]**
 - a. One parking space per nonresident worker at the site during the peak shift;
 - b. One parking space if clients or customers frequently visit the site;
 - c. One parking space per adult student up to the maximum class size; or
 - d. One parking space per rental unit.
- (7). The parking design standards in Table 2 of this chapter, set out at the end of **Article IX, Parking Loading and Traffic (e.g., aisle width, stall size, etc.)**, may be modified for parking by workers if the parking arrangement will still provide for practical off-street parking adequate to prevent parking from overflowing the site.
- (8). With the exception of a bed-and-breakfast with more than three rooms for rent, three additional off-street parking spaces should satisfy the parking demand for a minor home occupation. Any recurring observed parking overflow is a violation of these standards.
- (9). The CEO may approve the joint use of a parking area where it is clearly demonstrated that the parking area will be available for use by customers or workers during the hours of operation due to the variation in time of use.
- (10). Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment associated with the home occupation is prohibited except for the following:
 - a. One vehicle used in conjunction with the home occupation;
 - b. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
 - c. Vehicles owned by residents of the premises with valid license plates.
 - d. All bait must be stored indoors and must be kept refrigerated or otherwise

stored to prevent offensive odors.

- (11). Business conduct. All business activities on the site must take place within the dwelling or enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or functionally water-dependent uses.
 - (12). Refuse and recyclables. All refuse and recyclables must be stored within an enclosed building. No outdoor dumpsters are allowed. All waste materials from the home occupation must be removed from the premises on at least a monthly basis.
 - (13). Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed axle, thirty-foot total length truck is prohibited.
 - (14). Retail sales. Retail sales in which customers do not come to the premises are permissible, such as mail order or telephone sales. On-site retail sales are limited to the following:
 - a. Sales of products grown, raised or produced on the premises. For the purposes of this subsection, the term "produced" is not to be construed to allow the assembly of a product from components produced elsewhere; and
 - b. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon.
 - c. All other on-site retail sales are prohibited as a minor home occupation.
 - (15). Health and safety. The proposed use must not create a health or safety hazard.
- C. Major home occupation standards.
- [Amended 5-22-2017 by Ord. No. 17-10]**
- (1). Compliance with the Definition of a "Home Occupation."
 - a. An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.
 - b. As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.
 - (2). Number of workers. There must be no more than five persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.
 - (3). Prohibited uses. The following uses are categorically prohibited as major home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard; auto salvage yard; marijuana retail use; and marijuana medical use except the activities of a primary caregiver registered under 22 M.R.S. § 2425.
 - (4). Business hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of 7:00 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally water-dependent use. This limitation may be modified by the BOA provided the proposal satisfies the intent of this section.
 - (5). Nuisances.
 - a. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, obnoxious fumes or odors, traffic, or electrical interference detected at the

- property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.
- b. When reviewing a functionally water-dependent use, the above standards allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting properties.
- (6). **Parking.** A plan must be submitted that provides safe and sufficient off-street parking to meet the needs of the business to prevent parking from overflowing off the site. Any recurring observed parking overflow is a violation of these standards. The creation of more than four off-street parking spaces must be located, designed, screened and landscaped to minimize adverse impact on abutting properties.
 - (7). **Outdoor storage.** All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for the following:
 - a. One vehicle used in conjunction with the home occupation;
 - b. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
 - c. Vehicles owned by residents of the premises with valid license plates.
 - d. All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.
 - (8). **Business conduct.** All business activities on the site must take place within an enclosed building or be screened from view of abutting properties and from all publicly maintained streets, except for outdoor recreational uses, agriculturally oriented uses or functionally water-dependent uses. This standard may be modified by the BOA provided the proposal satisfies the intent of this section.
 - (9). **Refuse and recyclables.** All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets. No emptying of dumpsters is allowed before 8:00 a.m. or after 7:00 p.m.
 - (10). **Traffic.** The home occupation must not result in creating or significantly exacerbating a traffic hazard. Furthermore, the home occupation must not create an objectionable increase in vehicle traffic considering the type, time and amount of vehicle traffic generated and the design and capacity of the roads to the site and traffic normal for the neighborhood.
 - (11). **Retail sales.** Retail sales on the premises are limited to the following:
 - a. Sales in which customers do not come to the premises, such as mail order or telephone sales;
 - b. Sales of products grown, raised or produced on the premises;
 - c. Sales of seafood harvested by the residents of the premises;
 - d. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon; and/or
 - e. Sales by appointment only for which any signage identifying the business states a "by appointment only" policy.
 - (12). **Health and safety.** The proposed use must not create a health or safety hazard.
 - (13). **Neighborhood compatibility.** The proposed use is determined to be compatible with the surrounding neighborhood. In reaching this determination, the following factors are to be considered:
 - a. The nature of the property;
 - b. The physical characteristics of the neighborhood, including the amount of nonresidential activity;
 - c. Hours of operation;
 - d. Intensity of the activity;

- e. Potential to degrade the quality of life for residents of the surrounding neighborhood; and
 - f. The cumulative impact of existing home occupations and other accessory uses both on the premises and in the surrounding neighborhood.
 - g. Medical marijuana use is restricted to single-family residences only.
- (14). Large lots. When a seventy-five-foot-deep buffer yard is provided between all business activities (including storage and parking, except a driveway) and contiguous properties, and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the home occupation activities from an abutting property, the BOA may relax the above standards, except those pertaining to nuisances and prohibited uses, if the use is considered to comply with the intent of this subsection.
- (15). Annual renewal.
- a. Upon approval of a major home occupation by the Board of Appeals, the Code Enforcement Officer is authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer. Operation of a major home occupation with an expired certificate of occupancy is a violation of this Code.
 - b. The annual permit may be renewed only if the Code Enforcement Officer finds the major home occupation complies with all applicable standards of this Code and any conditions required by the Board of Appeals in the original approval.

~~16.5.1.9~~ 16.5.1.11 Junkyards and/or Automobile Salvage Yards

- A. Buffering.
Buffering will be 100 feet on all sides except on the street, where 200 feet will be the minimum. Trees, shrubbery and fencing not less than eight feet in height, or all three, may be required by the Board to restrict visibility of the area from the road and neighbors. Land contour is to be taken into consideration. Approval of the junkyard plan is required by the Police, Highway and Fire Departments before any permit is presented to the Town Council for consideration.
- B. Buildings.
Office, control or storage building must be inside the buffered area and no more than a maximum of 30 feet in height. The adequacy of buffering is to be considered in allowing heights over 20 feet.
- C. Junk piles.
Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- D. Waste.
No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State Plumbing Code will apply for sanitary waste and any state laws regulating toxic waste. Separate storage must be maintained for toxic waste, including but not limited to oil, grease, gasoline and solvents. This waste must be removed at least twice a year by an accredited dealer in such wastes. All tanks of vehicles must be drained and contents properly disposed of.
- E. Drainage.
Provision must be made for proper drainage of stormwater or other wastewater, so that contaminated, rusted or other noticeable effluent does not go beyond actual junk area or into buffering. Special attention is to be given to acceptable drainage of normal stormwater. **Article VII** of this chapter also applies.
- F. Hours of operation.
Work in connection with demolishing or wrecking cars or purchasing or selling items is permitted only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.

G. Signs.

One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to the property.

H. Cleanliness.

Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or other nuisance permitted outside of the buffered area.

I. Permits.

A permit for not more than one year's operation is required in addition to the state permit. The Town fee is as set by the Town Council. Periodic inspections must be made by the Code Enforcement Officer during the year to ensure compliance with the state and local ordinances.

J. Other standards application.

All other applicable standards of this chapter not specifically mentioned here, such as parking, noise, etc., also apply to this use.

~~16.5.1.10~~ 16.5.1.12 Lots

[Amended 9-28-2015 by Ord. No. 15-06]

A. Dimensions.

The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate for the location of the development and for the type of development and use contemplated. The lot configuration should be designed to maximize access to solar energy for building sites with suitable orientation.

B. Lot shape.

- (1). The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are prohibited. Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are also prohibited.
- (2). Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than 5:1.

C. Double/reverse-frontage lots.

Double-frontage and reverse-frontage lots are to be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet, across which there may be no right of access, is to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.

D. Side lot lines.

Side lot lines must be substantially at right angles or radial to street lines.

E. Substantially larger lots.

Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards.

F. Multiple frontages.

When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to be located only on the least-traveled way.

G. Divided lots.

If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size unless in conformance with Article II of Chapter 16.7.

H. Off-street parking.

Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated.

I. Access to arterial street.

Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of any lot with frontage on the arterial street.

J. Land subdivision.

The subdividing of land must conform to the requirements of Chapter 16.3.

~~16.5.1.11~~ 16.5.1.13 Manufactured Housing

A. Standards.

Standards for manufactured housing include the following:

- (1). All mobile home units must be manufactured after June 15, 1976, and shall have a manufacturer-installed sticker indicating HUD approval.
- (2). All units must be manufactured with a pitched, shingled roof, with a minimum slope three inches on 12 inches (3:12).
- (3). All units must have residential-type siding, such as clapboards, shakes, horizontally applied aluminum, or vinyl resembling clapboards.
- (4). All units, excluding individual mobile home park installations, must have a permanent foundation, which may be either a full basement or a poured or block frost wall.
- (5). All other sections of this title must be adhered to.

~~16.5.1.12~~ 16.5.1.14 Mineral/earth material exploration and removal.

A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this title, only after a special permit for such operations has been issued by the Code Enforcement Officer, upon approval and review of plans by the Planning Board in accordance with the provisions of this title, and provided that nothing herein may be deemed to apply to normal excavation operations incidental to construction activities for which a valid permit is held. The following standards must be met:

- (1). The applicant must submit to the Code Enforcement Officer plans of the proposed extraction site, showing the property lines and names of all abutting owners and ways, indicating by not greater than five-foot contour intervals related to U.S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation; proposed fencing; buffer strips; signs; lighting; parking and loading areas; entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.
- (2). Said plans and statement are to be promptly submitted with the recommendations of the Code Enforcement Officer to the Planning Board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the Town, upon existing or approved land uses which might be affected by the operations. The Planning Board may recommend changes to the applicant for resubmission to the Planning Board. The Planning Board is to promptly call and hold a public hearing upon the final application in the same manner as provided for any final plan review.
- (3). The Planning Board shall render a written decision as to whether, and under what conditions, the proposed operation may be permitted, consistent with public health and safety; the preservation of attractive natural features; compatibility, despite temporary and reasonable disturbance, with existing or approved land uses which might be affected; and implementation of the Comprehensive Plan. If the Planning

Board approves the application, it may condition the special permit upon such alterations in the proposed operation or upon the performance or omission of such acts as it may deem proper to assure attainment of the objectives set forth in the preceding sentence, and it may require filing of a performance guaranty in an amount and form acceptable to the Town Manager to indemnify the Town against any claims arising from the proposed operations and to assure satisfactory performance of all conditions imposed or otherwise applicable.

- B. Mandatory restrictions. All extraction operations and sites within the Town must be conducted and maintained in accordance with, and the Planning Board shall impose, such conditions upon any special permit issued under this subsection as it deems necessary or desirable to assure compliance with the following requirements:
- (1). Mineral exploration to determine the nature or extent of mineral resources must be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer is required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, must immediately be capped, filled or secured by other equally effective measures so as to restore disturbed areas and to protect the public health and safety.
 - (2). Mineral extraction, including sand and gravel extraction, is prohibited within the Conservation, Shoreland Overlay and Resource Protection Overlay Zones.
 - (3). No part of any extraction operation may be permitted within 100 feet of any property or street line, and natural vegetation must be left and maintained on the undisturbed land. Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven feet for construction in an urban residential zone. Topographical change will not result in cuts or fills exceeding seven feet.
 - (4). No standing water may be permitted in any extraction site during or after extraction operations; except that, during or after extraction operations, standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count, and treatment to prevent breeding of insects so as to assure the public health and safety, as determined by the Town Health Officer.
 - (5). No slopes steeper than three feet horizontal to one foot vertical may be permitted at any extraction site unless a fence at least three feet high is erected to limit access to such locations.
 - (6). Before commencing removal of any earth materials, the owner or operator of the extraction site must present evidence to the Planning Board of insurance against liability arising from the proposed extraction operations and maintain such insurance throughout the period of operation.
 - (7). Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for restoration, be stripped from the locations of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased.
 - (8). Upon completion of active extraction operations, the land must be left so that natural storm drainage and watercourses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.
 - (9). The hours of operation at any extraction site are to be limited as the Planning Board deems advisable to ensure operational compatibility with residents of the Town.
 - (10). Loaded vehicles must be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods are subject to approval by the Chief of Police.
 - (11). All access roads leading from the extraction site to public ways must be treated with stone, calcium or other suitable materials to reduce dust and mud for a distance of at least 100 feet from such public ways.
 - (12). No equipment, debris, junk or other material is permitted at an extraction site

except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith must be removed within 30 days following completion of active extraction operations.

- (13). Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades must be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials must be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be revegetated and properly restored to a stable condition adequate to meet the provisions of the "Maine Erosion and Sediment Control BMPs," March 2003.
- C. Issuance and renewal of permits. Special permits may be issued in accordance with the foregoing provisions for a period not to exceed one year, and they are renewable only upon application by the owner, after a finding by the Planning Board that the conduct of the operation has been substantially in accordance with any and all conditions imposed or material representations made in connection with the original special permit, and upon such additional and altered conditions as the Board may deem necessary in accordance with Subsection A(3) of this section.

~~16.5.1.13~~ 16.5.1.15 Mobile Home Parks, Seasonal Trailer Parks and Campgrounds

- A. Permit required. No person, firm, corporation or other legal entity may establish or maintain a mobile home park, seasonal trailer park or campground within the Town without a permit issued in conformity with the provisions of this title. It is the park operator's responsibility to obtain the permit.
- (1). Application. Application for a mobile home park, seasonal trailer park or campground permit must be filed with the Code Enforcement Officer, who will present said application to the Planning Board for review as a subdivision, except that permit renewals are not subject to Board review. The Board must review the proposal in accordance with the standards contained herein and inform the CEO of its decision. The CEO shall then act on the application as required.
 - (2). Fee and expiration. Each application for a permit or a renewal thereof must be accompanied by a fee as established by the Town Council for a mobile home park, seasonal trailer park or campground designed for the accommodation of no more than 10 mobile homes, trailers or tent sites and an additional fee, as established by the Town Council, for each additional mobile home, trailer or tent site located at the site. (See Appendix A for annual mobile home park fee schedule.) Permits expire on the first day of April next following date of issuance. Before any permit is renewed, the premises are subject to inspection by the Health Officer and CEO. If all requirements of this and other federal, state and local laws have been complied with, the same is to be certified and the permit renewed.
 - (3). Permit display. Permits issued under this section must be conspicuously posted on the premises at all times and are not transferable.
 - (4). Revocation. The CEO is authorized to revoke any permit issued under this section pursuant to the terms of this title if, after due investigation, it is determined the holder thereof has violated any of the provisions of this or any applicable code, law or statute.
- B. Compliance. Applications for development of mobile home parks, seasonal trailer parks or campgrounds must comply with all state laws and local ordinances and meet the requirements of subdivision law, except as stipulated below. Such developments in existence prior to adoption of this title may be enlarged only if the extension complies with the terms specified herein.

C. Trailer parks and campgrounds.

In any district where campgrounds or trailer parks are permitted under the terms of this title, the following regulations and minimum standards apply:

- (1). A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for all other periods. No trailers or mobile homes other than such as are camping units, as defined herein, are permitted within any camper park, temporarily or otherwise.
- (2). A campground or trailer park may not be constructed on less than five acres of land.
- (3). Each tent site must be provided with a masonry or metal fireplace approved by the Fire Chief.
- (4). Spaces in campgrounds and trailer parks may be used by travel trailers, equivalent facilities constructed in or on automotive vehicles, tents or other short-term shelter devices.
- (5). A trailer park or campground must provide water and sewerage systems, sanitary stations and convenience facilities in accordance with the regulations of the State Plumbing Code and the Maine Department of Human Services. In no case may less than one toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites or major portion thereof.
- (6). Trailers must be parked on sites containing a minimum of 2,500 square feet and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and aisles.
- (7). Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30 feet between tents.
- (8). Trailers must be so parked in spaces that:
 - a. There will be a minimum of 15 feet between vehicles.
 - b. There will be a minimum of 15 feet between all trailers and the exterior boundary of the park.
 - c. There will be a minimum of 25 feet between all trailers and all public rights-of-way located inside the boundaries of the trailer park or campground. Setbacks from roads outside the trailer park will be a minimum of 150 feet.
 - d. No camping unit or structure may be located less than 100 feet from any residence.
 - e. Buffering: planting, landscaping, disposition and form of building and other improvements, or fencing and screening is to be utilized to integrate the proposed development with the landscape and the character of any surrounding development.
- (9). The storage, collection and disposal of refuse must not create health hazards, rodent harborage, insect breeding areas, accident hazards or air pollution.
- (10). No unoccupied camping unit may be stored or exhibited for sale for commercial purposes within the park.

D. Mobile home parks.

- (1). Mobile home parks, by special exception, may be located as indicated in Chapter 16.3.
- (2). Lots within a shoreland zoning district must meet the lot area, setback and shore frontage requirements for that district.
- (3). Lots in a mobile home park must meet the following lot size, width and density requirements:
 - a. Lots by public sewer.

- i. Minimum lot area: 6,000 square feet.
 - ii. Minimum lot width: 50 feet.
 - b. Lots served by individual on-site subsurface wastewater disposal system.
 - i. Minimum lot area: 20,000 square feet.
 - ii. Minimum lot width: 100 feet.
 - c. Lots served by a central on-site subsurface wastewater disposal system*.
 - * The overall density of a mobile home park served by a central on-site subsurface wastewater disposal system may be no greater than one unit per 20,000 square feet of total park area
 - i. Minimum lot area: 12,000 square feet.
 - ii. Minimum lot width: 75 feet.
 - d. The overall density of the mobile home park is the combined area of its mobile home lots plus:
 - i. The area required for road rights-of-way;
 - ii. The area required for buffer strips, if any;
 - iii. For areas served by public sewer, an open space area for storage and recreation equal to 10% of the combined area of the individual lots; and
 - iv. The area within the municipality's shoreland setback.
 - e. All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, may not cover more than 50% of the lot area.
- (4). The following setback rules apply to all mobile homes and accessory buildings:
 - a. Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these requirements conflict with the requirements of the title, 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, or subsequent amendments or revisions thereto, the stricter standards apply.
 - b. If a lot is on a public road, the setback must conform with the residential setback requirements applicable to other residential dwelling units in the zone.
 - c. So as to avoid monotony and sameness, the Code Enforcement Officer may allow:
 - i. The front setback on a private road within a mobile home park to be varied, provided no mobile home may be closer than 10 feet from the right-of-way and the average distance is at least 20 feet for all units.
 - ii. The replacement and/or relocation of a mobile home to be located no closer to the front yard setback than the existing mobile home or pad.
 - d. Carports of noncombustible materials are not subject to setback requirements.
 - e. The CEO may allow side yard setbacks to be reduced to five feet, provided a distance of 20 feet is maintained between mobile homes for the purpose of providing more usable yard space on one side of the home.
 - f. A minimum twenty-foot separation must be maintained between all mobile homes in all directions.
- (5). All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, may cover not more than 50% of the lot area.
- (6). Where a developer elects to create a mobile home park where all land is under unified ownership, the park plan must demonstrate that the development standards described herein are met.

- (7). Privately owned roads within the mobile home park must be designed by a professional engineer, registered in the State of Maine, and built according to accepted engineering standards.
 - a. The layout and general development plan for major and minor access streets within the mobile home park, together with the location and dimensions of access junctions with existing public streets and rights-of-way must be approved by the Planning Board.
 - b. For mobile home parks expected to generate 200 trips per day or more, there must be at least two entrances from public streets or roads.
- (8). Mobile home park streets which intersect with public roads must meet the following standards:
 - a. Angle of intersection. The desired angle of intersection is to be 90°. The minimum angle of intersection is to be 75°.
 - b. Grade. The maximum permissible grade within 75 feet of the intersection is 2%.
 - c. Minimum sight distance. The minimum sight distance must be 10 times the posted speed limit on the existing road. Sight distance is measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of an object 4 1/4 feet.
 - d. Distance from other intersections. The center line of any street within a park intersecting an existing public street must be at least 125 feet from the center line of any other street intersecting that public street.
- (9). Right-of-way and pavement width are to be as follows:
 - a. Two-way park roads must have a minimum right-of-way of 23 feet and a minimum paved surface of 20 feet. On-street parking is prohibited.
 - b. One-way streets must have a minimum right-of-way of 18 feet and a minimum paved surface of 14 feet. On-street parking is prohibited.
 - c. Parking lanes are to be a minimum of eight feet in width, if provided.
 - d. Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer edge of the pavement, exclusive of any parking areas.
 - e. Curvilinear streets must be utilized wherever possible. No street within the park may be more than 200 feet without a curve or bend.
 - f. If the developer intends to dedicate park streets to the public, such streets must meet municipal standards as contained in Article V of this chapter.
- (10). No mobile home lot may have vehicular access directly onto a state highway.
- (11). A traffic impact analysis is required if the park will generate more than 500 trips/day.
- (12). Parking requirements for mobile home parks areas follows:
 - a. For each mobile home lot there must be provided and maintained at least two off-street parking spaces. This requirement may be waived if an equivalent number of spaces are provided by a parking lane. Each space is design-dependent as indicated in Table 2 of this chapter, set out at the end of **Article IX**, Parking Loading and Traffic. This requirement may be waived if an equivalent number of spaces are provided by a parking lane.
 - b. In addition to occupant parking, off-street guest and service parking must be provided within the boundaries of the park at a ratio of one space for each four mobile home lots. Such parking must be reserved for that sole use. This requirement may be waived if a parking lane provides an equivalent number of spaces.
 - c. On-street parking is prohibited unless an eight-foot parking lane is provided, in which case on-street parking may be permitted on the side of

the road where the parking lane is located.

- (13). The mobile home park must contain pedestrian walkways that link all units and all service and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion of the road surface may be reserved for walkways, provided the street width is increased accordingly. Walkways should be a minimum of width of three feet. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (14). Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent properties and vehicular traffic.
- (15). Open space calculations are as follows:
 - a. For mobile home parks served by a public sewer, an area amounting to 10% of the total area devoted to individual lots must be set aside for open space and/or recreation. Such space is to be accessible and usable by all residents of the park. Parking space, driveways and streets and buffer areas are not considered usable open space but community recreation buildings, pools and courts are considered as open space.
 - b. At least 50% of the required open space must consist of land that is suitable for active recreation.
 - c. All developed open space is to be designed and landscaped for the use and enjoyment of the park residents and maintained for their long-term use. Plans for these areas must be submitted by the developer.
 - d. To the maximum extent possible, undeveloped open space must be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted.
 - e. The developer must submit, as part of the application, a copy of that portion of the proposed park rules and a plan which specify how the open space is to be used and maintained and what conditions apply to its use. The plan must specify the area to be dedicated open space or recreation.
 - f. Open space must be maintained and used for its approved purposes.
- (16). All mobile home parks must provide permanent electrical, water and sewage disposal connections to each mobile home in accordance with applicable state and local rules and regulations. If other than public water is to be utilized, the water system(s) must be capable of delivering 250 gallons per day per lot of water certified to be of primary drinking water standards.
- (17). Signs and advertising devices are prohibited in a mobile home park, except:
 - a. One identifying sign at each entrance of the mobile home park sized in compliance with **Article XII** of this chapter may be installed.
 - b. Directional and informational signs for the convenience of tenants and the public relative to parking, office, traffic movement, etc., are permitted.
 - c. Mobile/manufactured home "for sale" signs, provided that such signs that face a public road may be no more than 10 square feet and limited to two signs per mobile home park.
 - d. Mobile/manufactured homes address signs are permitted when in compliance with **Article XII** of this chapter.
 - e. The styles and location of the identifying sign must not interfere with vehicle sight distance and be constructed in accordance with **Article XII** of this chapter.
- (18). At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided on or near each mobile home lot for the storage of materials and equipment.
- (19). A storm drainage plan must be prepared by a professional engineer, registered in the State of Maine, in accordance with **§ 16.8.8.1**, Stormwater drainage. Such plan

must be approved by the York County Soil and Water Conservation District or found satisfactory and compliant to the Code by the Town's Engineering Peer Reviewer prior to Planning Board approval of the final plan. **[Amended 9-26-2011 by Ord. No. 11-15]**

- (20). Groundwater requirements for mobile home parks are as contained in § 16.9.1.5, which must be complied with for all mobile home park applications.
- (21). Each mobile home lot must be provided with an area for refuse storage. Within a maximum 150 feet from each mobile home lot, there must be a flytight, watertight and rodentproof container capable of storing the amount of refuse that the mobile home park for which it was designed could generate within one week as well as any separation containers as required by the Kittery recycling program. The park management is responsible for disposal of refuse from such containers at least once a week.
- (22). Buffering requirements are as follows:
 - a. A fifty-foot-wide buffer strip must be provided along all property boundary lines that:
 - i. Abut residential land which has a gross density of less than half that proposed in the park; or
 - ii. Abut residential land that is zoned at a density of less than half that proposed in the park.
 - b. Further, no structures, streets or utilities may be placed in the buffer strip, except that they may cross a buffer strip to provide services to the park.
 - c. Within 25 feet of any property line and within the buffer strip, visual screening and/or landscaping must be provided. The visual screening may consist of fences, berms, landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening is to effectively screen at least 80% of the homes from view from the adjacent property and be maintained throughout the life of the project.
- (23). The owner or operator of a mobile home park is responsible for ensuring the maintenance of all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park management must comply with state laws. Compliance with this title does not exempt the park owner, developer or manager from complying with other applicable local, state and federal codes and regulations. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (24). No development or subdivision which is approved under this section as a mobile home park may be conveyed to another use without the approval of the Planning Board and meeting the appropriate lot size, lot width, setback and other requirements contained in this title. The approved final plan is to be recorded at the York County Registry of Deeds and filed with the Town and have noted the following restrictions as well as any other notes or conditions of approval: (1) "The land within this park must remain in a unified ownership and the fee to lots or portions of lots not be transferred." (2) "No dwelling unit other than a mobile home unit may be located within the park."

Commented [1]: Editor's Note: See Ch. 8.1, Solid Waste Collection and Disposal.

~~16.5.1.14~~ **16.5.1.16** Net Residential Acreage [Added 9-28-2015 by Ord. No. 15-05]

- A. Purpose.

To determine for regulatory purposes the land area suitable for dwelling units. This land area, the net residential acreage, is used to determine the maximum number of dwelling units allowed on a parcel that is subject to subdivision. The total number of dwelling units allowed is equal to the net residential acreage divided by the minimum land area per dwelling unit for a given land use zone.
- B. Net residential acreage calculation.

To calculate net residential acreage, the land area listed below must be subtracted from a parcel's gross area. Where land areas to be subtracted overlap, the area therein is subtracted

Commented [2]: Editor's Note: This ordinance also provided for the repeal of former Article VIII, Land Not Suitable for Development.

once.

- (1). 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.
- (2). All land located within the floodplain as defined in the definition of "flood, one-hundred-year" in Chapter 16.2.
- (3). All wetlands as defined in the definition of "wetland" in Chapter 16.2, as well as vernal pools, ponds, lakes, streams and other water bodies, including 50% of the associated setbacks described in other Buildings and Structures, Table 16.9, Chapter 16.9 of this title.
- (4). All land located on filled tidal lands, per the definition of "tidal land, filled" in Chapter 16.2.
- (5). All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.
- (6). All land located within proposed rights-of-way, including parking and travel ways. Driveways are excluded.
- (7). All land isolated from the principal location for development on the parcel by a road/street, existing land uses, or any physical feature, natural or man-made, such that it creates a barrier to the central development of the site and no means of access is proposed nor likely to be provided in the future. However, to demonstrate that identified isolated land may be considered developable for the purpose of this calculation, the applicant must submit a plan and supporting documentation for the Board's consideration.
- (8). All land zoned commercial (C-1, C-2, or C-3).
- (9). All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- (10). All land identified as exposed bedrock, and soils with a drainage class of "poorly drained" and/or "very poorly drained" as defined in the definition of "soils" in Chapter 16.2.
- (11). Fifty percent of all land characterized as drainage class of "somewhat poorly drained," unless public sewer is used, in which case no land area is subtracted.
- (12). All land area within a cemetery and burying ground as defined in Chapter 16.2, including associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation near burial sites.
- (13). All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay Zone not included in Subsection L above.

C. Documentation.

The net residential acreage calculation must be supported by verifiable information and accurate data and be shown on the subdivision plan or other plan when applicable.

D. Exemptions to net residential acreage calculations.

- (1). The maximum number of dwelling units for residential development not subject to subdivision is based on minimum land area per dwelling unit defined in Chapter 16.2, Definitions of this title.
- (2). The creation of dwelling units subject to subdivision within existing buildings that are connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use - Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are exempt from the net residential acreage calculations in § 16.7.8.1. The total number of dwelling units permitted is determined by dividing the gross lot area by the minimum land area per dwelling unit allowed in the zone. The exemption is allowed in the above base zones when subject to the Shoreland Overlay Zone.

No. 17-06]

A. Basis/purpose/objectives.

- (1). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this article as part of the municipality's stormwater management plan.
- (2). The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the municipality's storm drainage system as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the Town's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.
- (3). C. The objectives of this article are:
 - a. To prohibit unpermitted or unapproved nonstormwater discharges to the storm drainage system; and
 - b. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this article.

B. Applicability.

This article shall apply to all persons discharging stormwater and/or nonstormwater discharge from any premise into the storm drainage system.

C. Responsibility for administration.

The Code Enforcement Officer is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

D. Prohibition of nonstormwater discharges.

- (1). Except as allowed or exempted herein, a person may not create, initiate, originate or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited even where the municipality has approved the connections, drains or conveyances through which a person creates an illicit nonstormwater discharge to the storm drainage system.
- (2). The creation, initiation, origination and maintenance of the following nonstormwater discharges to the storm drainage system are allowed as long as they do not cause or contribute to a violation of the state's water quality standards:
 - a. Flow: Landscape irrigation; diverted stream flows; rising groundwaters; uncontaminated groundwater infiltration [as defined at 40 CFR 35.2005(20)]; uncontaminated pumped groundwater; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawlspace pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and firefighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and dechlorinated swimming pool discharges, as defined as having 0.5 ppm or less. Pools may only be emptied a minimum of 48 hours after any chemical treatments were added.
 - b. Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety; and
 - c. Dye testing, with verbal notification to the enforcement authority prior to

the time of the test.

E. Exempt person or discharge.

This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

F. Suspension of access to municipality's storm drainage system.

- (1). The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened nonstormwater discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a nonstormwater discharge to the storm drainage system.
- (2). If the person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons. Only with the consent of the premises' owner, occupant or agent may the enforcement authority enter the premises that are the source of the actual or threatened nonstormwater discharge to the storm drainage system.

G. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

H. Enforcement and penalties.

See §§ 16.4.4 and 16.4.5.

I. § 16.9.7.9 Ultimate responsibility of discharger.

The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the municipality, or any officer agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

~~16.5.1.16~~ 16.5.1.18 Overboard Discharge Systems

A. Treated overboard discharge system defined.

"Treated overboard discharge system" means any sand-filter system, mechanical system or primary treatment with disinfection system designed to State of Maine Department of Environmental Protection specifications which discharges effluent or other liquids into any water body or watercourse.

B. Permit requirement.

No person, firm or corporation may construct, install or maintain any treated overboard discharge system without first obtaining a Town permit for the same. Such permit is in addition to any other permit or license required by state or federal authorities for the same.

C. Permit application.

- (1). Application for permit; fee. All applicants for permits must first apply to the Board of Appeals with a copy of the application given to the Code Enforcement Officer.

The application form for a treated overboard discharge system must include the property owner's name and mailing address and telephone number, the applicant's name and address and telephone number, the location address; tax maps and lot numbers; engineer's scale drawing showing all relevant details of the system; and any other information deemed relevant or necessary by either the Board of Appeals or the Code Enforcement Officer. A fee as set out in Appendix A is required for each application. Application forms are to be available from the Code Enforcement Officer.

- (2). Issuance of permits; fee. The treated overboard discharge permit may be issued by the Code Enforcement Officer only after Board of Appeals approval. A permit issue fee as set out in Appendix A is required for each system.
- (3). Notice of hearing.
 - a. Upon receipt of the completed application, the Board must timely notify the Code Enforcement Officer of the established hearing date, which may be no more than 30 days from the date of the receipted application. The Code Enforcement Officer must also notify the Planning Board, abutters and applicant of the hearing date. The Code Enforcement Officer must also give public notice of the permit hearing date by advertising the same in a newspaper of general circulation within the Town at least seven days prior to the hearing date.
 - b. For the purposes of this section, the abutting owners of property are considered to be the parties listed by the Assessors of taxes for the Town as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing does not necessitate another hearing or invalidate any action by the Board of Appeals.
- (4). Conduct of hearing and standards. The Board must conduct the hearing on the application for a treated overboard discharge system permit by following the same procedures established for the consideration of a special exception under the terms of § 16.6.6.
 - a. The Board may receive oral and documentary evidence and testimony. At the close of the evidentiary portion of the hearing, the Board must consider whether the effluent or discharge from the proposed treated overboard discharge system will have a negative impact on any aquatic or fowl life, will lower the water quality standard or impair the uses designated by the classification of the receiving waters. In addition, the Board may consider any relevant provisions of the performance standards set forth in Chapters 16.8 and 16.9.
 - b. The Board may also consider any relevant state or federal statute, rules or regulations bearing on the same. After applying the standards contained herein, the Board must issue its decision containing its findings of fact and conclusions and approve the application if the Board is satisfied that the standards have been met.
- (5). Notice of decision. The Board of Appeals must notify the applicant in writing of its decision no later than 10 days thereafter.

D. Systems exempted.

The permit requirement of this chapter does not apply to any sewage disposal system in operation at the time this chapter is adopted or the subsequent repair or replacement of any such system, including replacement by treated overboard discharge system, except that any treated overboard discharge system, as defined herein and operating as of the date of the adoption of this chapter or subsequently installed as a replacement for an existing malfunction in-ground or overboard system under license by the State of Maine, is required to conform to the standards of maintenance and monitoring set forth in § 16.9.6.5.

E. Standards of maintenance and monitoring.

Treated overboard discharge systems that are operating by virtue of a permit issued under

the terms of this chapter, or any such system operating as of the date of the enactment of this chapter pursuant to a license issued by the State of Maine, must be maintained and monitored pursuant to the following standards:

- (1). Disinfection. Disinfection is to be provided in a manner acceptable to the Maine Department of Environmental Protection. An approved disinfectant must be used and maintained according to the replacement or renewal schedule established by the Department of Environmental Protection.
 - (2). Septic tanks. Septic tanks which are part of an overboard discharge system must be pumped annually to ensure that the accumulated sludge is never nearer than 12 inches to the invert of the outlet pipe leading from the septic tank to the sand filter.
 - (3). Monitoring.
 - a. The permit holder and/or the property owner must supply to the Code Enforcement Officer, prior to August 1 of each year, a report of the effluent analysis conducted by a recognized testing laboratory. All water samples for evaluation must be obtained and analyzed during the month of July. Each analysis must include the following tests:
 - i. Fecal coliform (number of colonies per milligram of water);
 - ii. Biological oxygen demand (BOD) and suspended solids (mg/l); and
 - iii. Settleable solids (mg/l after a twenty-minute settling period in an Imhoff cone).
 - b. In addition to the requirements contained in this subsection, the Code Enforcement Officer may require periodic operational reports from recognized laboratories in such form and containing such information as the Code Enforcement Officer may require.
 - (4). Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of the Maine Department of Environmental Protection, or when there are other indications of the sand-filter malfunctioning, the sand filter is to be inspected by a qualified professional. If the sand filter is found to be clogged, it must be replaced with new material meeting specifications of the Maine Department of Environmental Protection.
 - (5). Emergency measures. In the event that a treated overboard discharge system is found to be malfunctioning, for any reason, the septic or settling tank must be pumped immediately and continue to be pumped as often as required until the malfunctioning is corrected.
- F. Malfunctioning of systems.
- The permit owner and/or property owner must immediately notify the Code Enforcement Officer of any malfunction of any component of the treated overboard discharge system. In the event that the system malfunctions, the Code Enforcement Officer may order that the effluent discharge cease within a time set by the Code Enforcement Officer.
- G. System construction.
- (1). Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to a permit issued under the terms of this chapter, the permit holder and/or property owner must notify the Code Enforcement Officer and the Department of Environmental Protection (DEP) at least seven days prior to commencement of the system's construction in order that all proper inspections of the proposed construction may be made by the Code Enforcement Officer and the DEP.
 - (2). Certificate of compliance. Upon the completion of the construction of the treated overboard discharge system and prior to its operation, the Code Enforcement Officer is to issue a certificate of compliance, certifying that the system complies with all municipal ordinances, rules and regulations.
- H. Violations and penalties.
- Failure to conform to the provisions of the chapter constitutes a violation. A written notice

of violation must be sent by the Code Enforcement Officer to the permit holder and/or the property owner operating the treated overboard discharge system which is in noncompliance with this chapter.

- (1). This notice is to be sent by certified mail, return receipt requested, and must inform the permit holder and/or property owner of the deadline for correcting the malfunction. The permit holder and/or property owner is to be given a reasonable time, not to exceed 30 days, to correct the malfunction.
- (2). If the violation is not corrected within this specified time period, the Code Enforcement Officer must notify the permit holder and/or the property owner by certified mail, return receipt requested, that the permit is revoked.
- (3). Each day that the system is allowed to discharge after the notice of permit revocation is received constitutes a separate offense. A fine of not more than \$100 will be levied for each such separate offense. In addition to the remedy contained herein, said violation constitutes a nuisance for which the municipality, through its Code Enforcement Officer, may seek adequate remedy.
- (4). Any actual and direct expenses incurred by the Town in abatement of such nuisance may be recovered from the permit holder and/or property owner by civil complaint.

I. Property rights.

The issuance of any permit authorized by this chapter does not convey any property rights to the permit holder. The permit holder and/or the property owner, by accepting the permit under the terms of this chapter, consent to allow the Code Enforcement Officer or authorized agent, at all reasonable and proper times, to enter upon the property for inspection of the system or otherwise enforce the terms of this chapter.

J. Permit expiration date.

Such permit automatically expires within 90 days after the municipal sanitary sewer system becomes available within 200 feet of the property line of the lot or parcel of land on which the treated overboard discharge system is located, as measured along the public way.

~~16.5.1.17~~ 16.5.1.19 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies

A. Standards.

Development involving piers, wharves, marinas and other uses projecting into water bodies must conform to the following standards:

- (1). In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional and other standards (excluding setbacks from water bodies) of this title apply to structures and uses projecting into a water body beyond the normal high-water mark.
- (2). Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer issues permits for construction of boathouses below the normal high-water line due to the adverse environmental impact; therefore, new boathouses must be located on uplands.
- (3). Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-water line.
- (4). Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- (5). The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
- (6). The facility must be located so as to minimize adverse effects on fisheries.
- (7). The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area.

Commented [3]: Editor's Note: Original § 16.9.6.11, Enacting authority, which immediately followed this section, was repealed 5-30-2018 by Ord. No. 04-18.

- (8). No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- (9). No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.
- (10). Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland must not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (11). Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- (12). Proposals for any principal marine structure use, any residential joint- and/or shared-use pier, or any residential-development-use pier require Planning Board approval.
- (13). A residential development containing five or more lots in a zone permitting a residential-development-use pier may construct only one residential development use pier.
- (14). Commercial development of the shorefront must provide for access by the general public as part of a shorefront development plan.
- (15). Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- (16). Marine-related permanent structures located below the mean low-water line require the following permits, leases and approvals:
 - a. Port Authority approval;
 - b. Department of Environmental Protection permit pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C;
 - c. Army Corps of Engineers permit;
 - d. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator approval; and
 - e. Building permit.

~~46.5.1.18~~ 16.5.1.20 Signs

A. Purpose.

The purpose of this article is to balance the need for adequate identification and advertising for land uses to promote the economic well-being of the Town with the need to protect the public safety and maintain and enhance the physical appearance of the community. This objective is to be achieved by:

- (1). Allowing adequate signage for the effective use of signs as a means of identifying, advertising and communication of land uses;
- (2). Establishing the appropriate bounds for location, size, number, type and use of signs to protect traffic safety, preserve property values and to promote visual order and clarity; and
- (3). Establishing procedures and regulations for the fair and consistent administration and enforcement of these sign restrictions.

B. Nonconforming existing signs.

- (1). All signs lawfully existing on October 1, 1997 that do not conform to the terms of this article may be continued and maintained, subject to § 16.8.10.12B, but may

neither be enlarged nor substantially altered except in conformity with this article.

- (2). Lawfully nonconforming signs must be made to conform or be removed if any of the following circumstances occur, individually or in combination, for a consecutive three-year time period:
 - a. The sign has ceased to be accurate by reason of vacancy or closure of the business which the sign advertises.
 - b. The sign face is blank, illegible, obscured, painted over, concealed or otherwise not decipherable.
- (3). In no event may the degree of nonconformity of any sign or type of signage on any lot be increased.

C. General requirements.

- (1). No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except where § 16.8.10.9 provides otherwise. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (2). No exterior sign may be artificially illuminated except where hooded or shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring property.
- (3). No sign may contain a moving message board or intermittent illumination, except where necessary in time/temperature/date signs. **[Amended 9-26-2011 by Ord. No. 11-15; 12-8-2014 by Ord. No. 14-08]**
- (4). Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.
- (5). No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.
- (6). Any changeable message signs must be integrated into a permanently-mounted sign. Such a changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.
- (7). All signs must be maintained in a safe and sound structural condition.
- (8). Advertising. No advertising or signage is permitted on wireless communication services facilities.
- (9). Any sign not expressly permitted herein is prohibited.

D. Sign location.

- (1). All signs must be permanently installed on the premises of the activity to which the advertising message refers, except where § 16.8.10.7 provides otherwise or upon approval by the Town Council.
- (2). All signs must be located outside the full width of the right-of-way of any public way, unless authorized by the Town Council.
- (3). Except for signs authorized in §§ 16.8.10.7 and 16.8.10.9, freestanding signs erected after October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state numbered highway less than 66 feet in width and at least 20 feet from the outside edge of the paved portion of any travel lane of any U.S. or state numbered highway which has both more than two travel lanes and a total paved portion in excess of 24 feet in width.
- (4). Signs must not be placed on or above the roof of any building. All signs must be located below the level of the eaves of the portion of building where the sign is to be erected, except as follows:
 - c. Signage may be located above the eaves on a gable or dormer of a building, providing it does not extend above or beyond the roofline of the gable or dormer; and

- d. Signage may be located on a parapet wall, provided the sign neither extends any more than eight feet above the roof-wall junction of the parapet wall nor extends beyond the height of the parapet wall.

Note: Please see Figure 3 of [Chapter 16.8](#) at the end of this article to assist the reader in understanding acceptable and unacceptable locations of building-mounted signs according to the terms of [§ 16.8.10.3](#)

- (5). Building-mounted signs which extend more than six inches from the surface of the structure must provide a minimum of eight feet of vertical clearance to a walkway, parking area, private drive and ground surface. Such signs must not extend beyond the street right-of-way boundary unless authorized by the Town Council.
- (6). Freestanding signs must not extend higher than 20 feet above the original ground level or the elevation of the center line of the nearest street measured at the closest point to the sign, whichever is greater.
- (7). Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any unpermitted and unallowed sign located in a public road right-of-way may be caused to be removed by the Town without notice to the owner of such sign.
- (8). No sign may be located so that it interferes with the safe sight distances necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets, private roads or driveways.
- (9). All building-mounted signs must be located only on the building that contains the activities or businesses advertised, except that up to 10% of the allowed signage for building-mounted signs in [§ 16.8.10.6](#) may be allocated to signs mounted on fuel pumps and/or fuel pump canopies.
- (10). In cases where multiple freestanding signs are permitted, any additional allowed smaller freestanding sign must face and be located along a separate publicly maintained street.

E. Number of freestanding signs.

- (1). Except as otherwise authorized in this section, as well as [§§ 16.8.10.8 and 16.8.10.9](#), each development is prohibited from having more than one freestanding sign.
- (2). Multisided signs are considered as one sign; however, the square footage of each sign face is calculated to determine total sign area.
- (3). Where a development fronts on two publicly maintained streets and has designed and approved access onto both those publicly maintained streets, the development is allowed one additional freestanding sign that faces and is located along a second publicly maintained street in accordance with [§ 16.8.10.6](#).
- (4). Where a development fronts on three publicly maintained streets and has designed and approved access onto each publicly maintained street, a third freestanding sign facing and located along the third publicly maintained street may be authorized at the Planning Board's discretion if it finds that other freestanding signage is not visible from the third street and that there is a need for a third freestanding sign to adequately communicate the business location to travelers on a third road fronted by the business.

F. Number of building-mounted signs.

To prevent sign clutter, except for those signs authorized by [§ 16.8.10.8 or 16.8.10.9](#), each business facility which is on a site where two or more businesses occupy the same building, lot or development is prohibited from having more than two building-mounted, nontemporary signs.

G. Sign area.

[Amended 9-26-2011 by Ord. No. 11-15]

- (1). Residential Zones. Zones designated Residential - Rural Conservation, Residential - Rural, Residential - Suburban, Residential - Urban, and Residential - Village on the Zoning Map are residential zones for the purpose of this section.
 - a. Accessory uses, including home occupations, are allowed sign area no greater than eight square feet.
 - b. Other permitted uses are allowed sign area no greater than 16 square feet, except as otherwise provided. Residential developments are also allowed 24 square feet, provided that signs are located within the development on premises owned by the developer or an owners' association.
- (2). All other zones.
 - a. A single business situated on a lot of record is allowed a total sign area no greater than 300 square feet or 1 1/2 square feet for every linear foot of building frontage, whichever is smaller. In any case, a single business on a lot of record is allowed a minimum sign area of 72 square feet.
 - b. Where two or more business facilities occupy the same building, lot or development, allowable sign area is calculated as follows:
 - i. Total building-mounted sign area equals 1 1/2 square feet per linear foot of building frontage for each business facility. The total allowed building-mounted sign area may be allocated among individual business facilities at the property owner's discretion.
 - ii. The development is allowed one freestanding sign not greater than 150 square feet in sign area. An additional freestanding sign no greater than 72 square feet in sign area facing and located along that secondary street is allowed if the development fronts on multiple streets and has designed and approved access onto each publicly maintained street. A third freestanding sign may be permitted at the Planning Board's discretion in accordance with **§ 16.8.10.4**.

H. Off-premises signs.

- (1). An individual business or service, upon application, may be assigned no more than three off-premises business directional signs (OBDS). An OBDS must be designed and located so as to avoid conflict with other signs and minimize impact on the scenic environment through the following standards:
 - a. Dimensions: 12 inches by 48 inches.
 - b. Coloring: state standard blue background, white lettering, logo may be any color.
 - c. Reflectorization: optional.
 - d. Location: on existing assemblies (posts) where possible. No more than two assemblies per intersection approach.
 - e. Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic circle within 400 feet of its outer perimeter, or adjacent to points of scenic or historical interest, including but not limited to federal, state and local parks and reserves, recognized historic sites and buildings, water bridges and cemeteries.
- (2). An off-premises sign which advertises commercial or other activity without advertising any specific enterprise (generic signs) may be approved by the Planning Board at size and location to be specified.

I. Temporary signs.

All temporary signs must be installed on the premises of the activity to which the advertising message refers. Moveable signs are prohibited as temporary signs. The following types of temporary signs are allowed with an approved sign permit:

- (1). The use of one temporary sign, other than a trailer sign, at any one time per business, that is mounted to the building or attached to a freestanding sign structure

for the purpose of advertising special events, provided that such signs are displayed for no longer than a combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be permitted. Total sign area for a temporary sign must not exceed 72 square feet. The allowed twenty-one-day display period may be divided into no more than three separate, nonoverlapping temporary periods of not less than seven days.

- (2). One additional temporary sign, other than a trailer sign, mounted to the building or to a freestanding sign structure, is permitted per legally participating site for the duration of each Town Council-approved sidewalk sales event.

J. Signs allowed without sign permit.

The following types of signs, in sizes and under conditions stated, are allowed without a Town sign permit, but must conform with all other provisions of **Article X** of this chapter except for the provisions restricting the number of signs (§§ 16.8.10.4 and 16.8.10.5) and limiting the total sign area (§ 16.8.10.6).

- (1). Public information signs. Signs for the control of traffic and other regulatory purposes, route markers, street signs, warning signs, utility, danger or warning signs, signs which indicate direction to hospitals, churches or other places of worship, or other public facilities.
- (2). General information signs. Signs which provide direction or instruction, such as location of telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances and exits, open and closed signs, where installed entirely upon the property to which they pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general information signs must not exceed two square feet in size. Except for identifying approved off-premises parking stalls, no logos, trademarks or names of businesses are permitted on general information signs. The Planning Board may approve increased sizes and/or the use of logos or names of businesses on general information signs when considered necessary to promote safety or eliminate confusion.
- (3). Memorial tablets. Grave markers, signs commemorating a historical figure or event, names or dates of buildings to which a sign is attached.
- (4). Public notices and community signs. Official notices posted by public employees in performance of their duties, and any sign for Town sponsored or supported events or facilities as approved by the Town Council.
- (5). Flags of any government or recognized political subdivision. The flag of any government or recognized political subdivision is allowed, provided it is displayed no higher than 50 feet above the original ground level or the elevation of the center line of the nearest street measured at the closest point to the flag, whichever is greater. A single memorial flagpole installation sponsored by private funding not to exceed 129 feet in height installed on Town-owned or regulated property at Memorial Circle is allowed. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (6). Religious symbols.
- (7). Building street numbers. In accordance with the street-numbering map on file with the Town Assessing Department;
- (8). Political campaign signs. Signs bearing political messages relating to an election, primary or referendum, provided these signs may be displayed on: **[Amended 9-26-2011 by Ord. No. 11-15]**
 - a. Public property not earlier than 30 days prior to the election, primary or referendum to which they relate and are removed not later than two days thereafter.
 - b. Private property without time constraints.
- (9). Interior signs. Signs placed inside a building which are located at least 10 feet inside the building or otherwise not oriented to be viewed from outside the building;

- (10). Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where such signs are clearly incidental to the regular transportation function of the vehicle.
 - (11). Service club signs. Service club signs may be placed within the right-of-way of a street with approval of the Commissioner of Public Works. Such signs are encouraged to be consolidated on a single designated assembly structure at major entranceways to the Town. In addition, such signs not exceeding four feet in size may be erected at locations where meetings of such service clubs are convened.
 - (12). Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
 - a. Each sign does not exceed 12 square feet;
 - b. Each sign is located on the property being advertised, except one sign may be located as an off-premises directional sign, provided the sign does not restrict safe sight distances or impair safety;
 - c. No more than two signs are erected per property being advertised; and
 - d. Each sign is removed within 60 days of transfer of title.
 - (13). Window signs. Any sign that is placed inside a window and is visible from the exterior of the window, provided such signage covers no more than 50% of the area of any window.
 - (14). Legally required signs. Any sign required by local, state or federal law with sign area no greater than two square feet or the minimum size required by law, whichever is larger.
 - (15). Food menu signs. Up to two signs advertising food items for sale on the premises at a legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed, provided that:
 - a. The total sign area of each such food menu sign on the site must not exceed 32 square feet; and
 - b. Such food menu signs must either be building-mounted or comply with the front yard requirements for structures and be located within 75 feet of the restaurant.
 - (16). Undercanopy, pedestrian-oriented signs. One building-mounted business identification sign per business facility, not to exceed 10 square feet in size per sign, where two or more businesses occupy the same building with a pedestrian walkway and canopy that parallels and connects the front entrances of the business facilities. The sign must be oriented toward pedestrians using the walkway, be located under the canopy near the main entrance to the business advertised and solely identify the business name or logo.
 - (17). Construction phase and contractor signs. Signs, other than trailer signs, identifying the name of a contractor working on the premises or describing a construction project, erected only during the construction phase of a development, provided each sign does not exceed 75 square feet.
 - (18). Garage sale signs as allowed by [§ 5.4.9A\(2\)](#).
- K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.
The following provisions govern signs in the Conservation, Shoreland Overlay and Resource Protection Overlay Zones, except where either is overlaid by the Commercial Fisheries/Maritime Uses Overlay Zone:
- (1). Signs relating to goods and services sold on the premises are allowed, provided such signs do not exceed six square feet in area and do not exceed two signs per premises.
 - (2). Signs relating to goods or services not sold or rendered on the premises are prohibited.
 - (3). Name signs are allowed, provided such signs do not exceed two signs per premises and do not exceed 12 square feet in the aggregate.

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

- (4). Residential users may display a temporary single sign not over three square feet in area relating to the sale, rental or lease of the premises.
- (5). Signs relating to trespassing and hunting are allowed without restriction as to number, provided no such sign exceeds two square feet in area.
- (6). Signs relating to public safety are allowed without restriction.
- (7). Signs higher than 20 feet above the ground are prohibited.
- (8). Signs may be illuminated only by shielded, nonflashing lights.

L. Sign permit application procedures.

- (1). No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance with a permit issued by the Code Enforcement Officer and also approved by the Town Planner. Notwithstanding the above statement, the following signs may be erected or modified without a sign permit: **[Amended 9-26-2011 by Ord. No. 11-15]**
 - a. Signs authorized in § 16.8.10.9.
 - b. Changes to nameplates or "shingles" to reflect occupancy changes on an existing approved freestanding sign identifying individual occupants on the site, provided no change is made to the shape or size of the sign or sign area.
 - c. Characters, letters and numbers may be changed on approved changeable message signs without a sign permit, provided no other change is made to the sign.
 - d. Signs may be maintained, cleaned or repainted, provided no change is made to the shape or size of the sign or to the sign area, and provided no new business name is advertised.
- (2). A complete sign application submission consists of the following items submitted to the Code Enforcement Officer:
 - a. A completed sign permit application form provided by the Town;
 - b. An application fee in accordance with a fee schedule established by the Town Council; and
 - c. A self-addressed, stamped envelope.
- (3). Complete applications must be reviewed by the CEO for compliance with this title. Complete sign permit application submissions must be returned by the CEO after rendering a decision to the applicant if accompanied by an SASE. Incomplete sign permit application submissions will only be returned to the applicant if accompanied by an SASE.
- (4). Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny or seek a formal Planning Board opinion within 14 working days of receiving a complete sign permit application submission. If either a Planning Board opinion is sought or the proposed sign is located within the Shoreland Zone, the CEO must issue or deny the application within 35 calendar days of receiving a complete sign permit application submission.
- (5). The sign permit must be approved if the proposed sign conforms in every respect with the requirements of this article. In the CEO's absence, or if no action is taken by the CEO within the above time limits, the Town Manager or the Town Manager's designee may approve or deny the sign permit application submission.
- (6). All new signs approved as of October 1, 1997 must display a numbered sign permit sticker provided by the Town in a visible location at the lower right-hand corner of the sign face. Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be considered a violation of this article. Replacement stickers are available from the CEO based on a fee schedule established by the Town Council.

M. Sign violations and appeal.

Commented [5]: Editor's Note: See § A-25A.

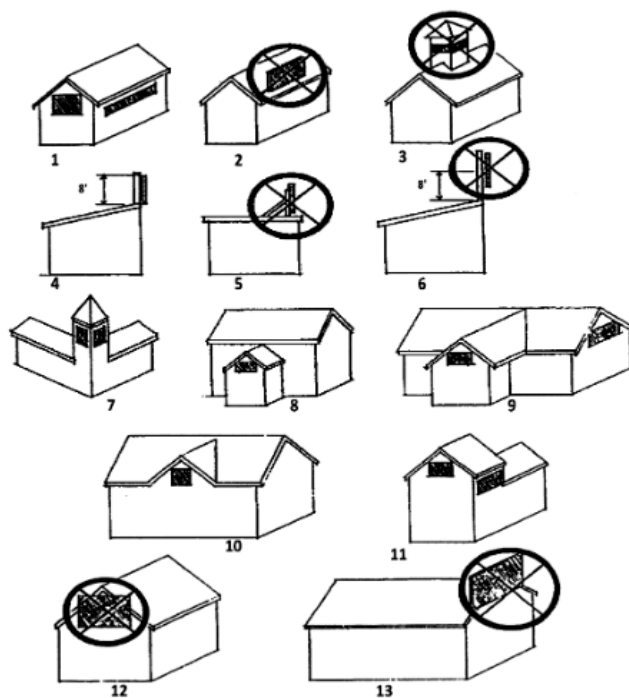
Commented [BWS6]: This appears in the Word version of the ordinance provided by the Town, but is not in the current online version of the ordinance

- (1). The CEO must notify and order the owner to immediately correct any sign that endangers public safety. Signs that endanger public safety include, but are not limited to, those which are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe operation of a motor vehicle.
- (2). A nonconforming sign which is required to conform to the sign regulations per § 16.8.10.12 must be brought into conformity.
- (3). Enforcement of the provisions of this article is in accordance with Chapter 16.4.

Figure 3

Examples of Allowed and Prohibited Sign Placement

These drawings are illustrative and meant to be an aid to the reader; refer to Chapter 8, Article X, for full details.



16.5.1.4916.5.1.21 Single- and Duplex-Family Dwellings

A. Single- and duplex-family dwellings in Resource Protection and Shoreland Overlay Zones. [Amended 1-28-2015 by Ord. No. 15-01]

In addition to the criteria specified in §§ 16.6.6 and 16.10.8.3D, applicable to the granting of a special exception use request, the Planning Board may approve an application for a single- or duplex-family dwelling special exception use request, where applicable, provided the applicant demonstrates all of the following conditions are met:

- (1). There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where a single-family dwelling can be built, or similarly for a duplex in the Shoreland Overlay Zone.
- (2). The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.
- (3). All proposed buildings, sewage disposal systems, other than municipal sewer, and other improvements are located:

- a. On natural ground slopes of less than 20%;
 - b. Outside the floodway of the one-hundred-year floodplain along rivers; and
 - c. Outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.
- (4). The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the one-hundred-year flood, the flood of record or, in the absence of these, the flood as defined by soil types identified as recent floodplain soils.
 - (5). If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the one-hundred-year floodplain.
 - (6). The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation may not be altered by variance.
 - (7). All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent but not less than 75 feet horizontal distance. In determining the greatest practical extent, the Planning Board must consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain and its proximity to the wetlands.

~~16.5.1.20~~16.5.1.22 Sprinkler Systems

A. Requirement.

- (1). An approved automatic sprinkler system must be installed in all areas of new buildings meeting any or all of the following criteria:
 - a. Three or more stories in height; or
 - b. Thirty-six or more feet in height; or
 - c. One hundred thousand cubic feet in volume or 10,000 square feet in floor area; or
 - d. Multiple-family or multiple-occupant dwelling and/or all lodging units; or
 - e. Any single-family attached units, such as garden apartments or townhouse with three or more units attached together; or
 - f. All motels, hotels, rooming houses, inns or other structures containing more than two dwelling or living units, hotel or motel rooms.
- (2). An approved automatic sprinkler system must be installed in new additions to existing buildings and to the existing building(s) meeting any or all of the following criteria:
 - a. When the addition causes the building to become three or more stories in height; or
 - b. When the addition causes the building to become 36 or more feet in height; or
 - c. When the addition causes the building to become 100,000 cubic feet in volume or 10,000 square feet in area;
 - d. When the addition to or renovation of the existing building results in the end use becoming a motel, hotel, rooming house, inn or other structure which contains more than two dwelling or living units, hotel or motel rooms; or
 - e. When the addition to or renovation of the existing building results in the end use becoming single-family attached units, such as garden apartments or townhouses with three or more units attached together.

B. Sprinkler system standards.

- (1). An approved automatic sprinkler system means a system installed in accordance with the National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system otherwise lawfully approved in writing by the State Fire Marshal's office; provided, however, any such system remains subject to the Fire Chief's approval under Subsection C of this section.
- (2). Any structure requiring the installation of a NFPA Standard 13 system must have a Fire Department connection with location approved by the Fire Chief.
- (3). The type of system to be installed and its adequacy of life safety from fire in accordance with the provisions of this title must be reviewed and approved by the Fire Chief or duly authorized designee, provided adequate provision is made for life and property safety.
- (4). All sprinkler systems installed under this title must have the following:
 - a. A tamper-switch alarm at the system shutoff.
 - b. An evacuation alarm for the building that will sound when the sprinkler system is activated; such evacuation alarm is to be audible throughout the entire structure.
 - c. An outside water-flow alarm.
 - d. Butterfly valves will not be allowed on any Standard 13 system.
- (5). Occupied or unoccupied buildings or portions thereof or any under construction having a sprinkler system in place must maintain all sprinklers and standpipe systems and all component parts in a workable condition at all times, and it is unlawful for any owner, occupant or other person whatever to reduce the effectiveness of the protection these systems provide, except that this does not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary for the purposes of conducting tests, repairs, alterations or additions, provided that the test, repairs, alterations or additions are done in such a way as to avoid the creation of a safety hazard.
- (6). For the purposes of this section, the term "building" means any structure excluding single-family dwellings, two-family dwellings and any barn or stable used exclusively for agricultural purposes, having a roof supported by columns or walls and intended for the shelter, storage, housing or enclosure of persons, animals or property. The term "building" also includes any garage, outbuilding or other accessory building used for any commercial or industrial purposes.
- (7). Any building having more than one sprinkler riser must have the risers separately zoned and wired to a local energy alarm panel to provide zone identification upon activation. The energy alarm panel is to be located as near as possible to the main exit door. There must also be a building map located at the energy alarm panel showing each zone of the building.
- (8). A lock box must be provided outside the main entrance to any buildings regulated hereunder, containing a key to allow access to all Fire Department areas. So as to be compatible with existing lock box systems, the type of lock box must be approved by the Fire Chief.
- (9). Any structure containing a sprinkler system is required to have a yearly test completed on the system by a qualified sprinkler technician. A written copy of the yearly test report must be forwarded to the Fire Chief.

C. Permit.

- (1). A permit must be obtained from the Fire Chief before the start of construction of the system and a set of blueprints showing the entire sprinkler system and the rate of flow provided to and approved by the Fire Chief in order to obtain the permit.
- (2). A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may be issued until the system has been properly installed, tested by a

qualified technician and approved by the Fire Chief or duly authorized designee.

D. Fees and fines.

- (1). A sprinkler system permit fee is to be paid with the permit request in such amount as established by Council. The fee for a sprinkler permit is as set out in Appendix A. **[Amended 9-26-2011 by Ord. No. 11-15]**
- (2). Any person, firm or corporation being the owner or having control or use of any building or premises who violates this section of this title will be assessed a penalty under Title 1, Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a separate offense.

E. Sprinkler administrative appeal.

If any party is aggrieved by a determination of the Fire Chief under the requirements of this section, a written appeal may be filed with the BOA within 10 days from the date of notification of such determination by the Fire Chief. Such written appeal must set forth a concise statement of the grounds upon which the party contends the Fire Chief's determination to be in error.

Commented [7]: Editor's Note: Amended at time of adoption of Code (see Ch. 1.1, Code Adoption).

~~16.5.1.21~~ **16.5.1.23** Street Signage

A. Names.

Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to, the names of existing streets within the municipality and are subject to the approval of the Planning Board.

B. Signs provided.

Street name signs are to be furnished and installed by the developer; the type, size and location to be approved by the Commissioner of Public Works.

16.5.1.24 Streets and Pedestrianways/Sidewalks Site Design Standards [Amended 9-24-2012 by Ord. No. 12-11]

A. Purpose.

The design of streets must provide for proper continuation of streets from adjacent development and for proper projection into adjacent undeveloped and open land. These design standards must be met by all streets within Kittery and control street shoulders, curbs, pedestrianways/sidewalks, drainage systems, culverts and other appurtenances.

B. Layout.

- (1). Streets are to be designed to discourage through traffic on minor streets within a residential subdivision.
- (2). Reserve strips controlling access to streets are prohibited except where control is definitely placed with the municipality.
- (3). Any development expected to generate average daily traffic of 201 or more trips per day is to have at least two street connections with existing public street(s).
- (4). Where a development borders an existing narrow street (below standards set herein) or when the Comprehensive Plan indicates plans for realignment or widening of a street that would require use of some of the land in a development, the plans must indicate reserved areas for widening or realigning such streets, marked on the plan "reserved for street widening/realignment purposes." Land reserved for such purposes may not be included in computing lot area or setback requirements of this title.
- (5). Where a development abuts or contains an existing or proposed arterial street, the Board may require marginal access streets (i.e., street parallel to arterial street providing access to adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed arterial street) with screen planting contained in a non-access reservation along the rear property line, or such other treatments as may be necessary for adequate protection of residential properties and to afford

separation of through and local traffic.

- (6). Entrances onto existing or proposed arterial highways/secondary arterials may not exceed a frequency of one per 1,000 feet of street frontage.

C. Street classification.

Streets are classified by purpose, function and use frequency.

- (1). Arterial highways are major traffic ways that provide connections with other thoroughfare or interstate roads and have a high potential for the location of significant community activity centers as well as retail, commercial and industrial facilities. The average daily traffic count (ADT) would be 9,001 or more trip ends.
- (2). Secondary arterials carry relatively high volumes of traffic to or from arterial highways, adjacent communities and through local residential areas, activity centers and minor commercial establishments. The ADT would be 3,001 to 9,000 trip ends.
- (3). Commercial, light industrial and mixed-use zone developments are located in areas where street design is oriented to accommodate community-wide and regional interests with limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional information that may be required by the Board will determine their classification, which may not be lower than a secondary collector.
- (4). Primary collectors may be residential or business, or both, and serve both as collectors to lesser residential streets and as connections to or between arterials. The ADT would be from 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned and maintained by the Town.
- (5). Secondary collectors may be residential or business, or both, and connect to or between streets of a higher classification, and/or may collect traffic from minor streets or private ways. The ADT would be 201 to 800 trip ends.
- (6). Minor streets are predominantly single-family residential short or dead-end streets, which may have branching minor streets, private lanes or private ways and conduct traffic to streets of higher classification. This is the lowest level of public street in the hierarchy and must serve at least four dwelling units. The ADT would be 35 to 200 trip ends.
- (7). Private streets function exclusively as residential streets serving high-density housing developments, including clustered housing, apartments, elderly housing, and mobile home parks, and may not be dedicated for public acceptance. Maintenance and improvements must be controlled by proprietorship, corporation, association or deed covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in accordance with the applicable standards and specifications for minor streets or secondary collectors.
- (8). Private lanes are short low-traffic volume residential dead-end streets which may serve part of a high-density development or other residential uses conforming to the applicable standard residential space requirements enumerated in this title. Private ways may not be dedicated for public acceptance, and improvements must be controlled by proprietorship, corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.
- (9). Private ways are dead-end, very-low-volume residential streets that connect to streets of a higher classification and function similar to an individual driveway by providing a low standard two-way traffic flow. Private ways may not be used in high-density residential developments or subdivisions of four or more lots. Private ways cannot be dedicated for public acceptance, and all maintenance and improvements must be controlled by proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35 trip ends.
- (10). Average daily traffic (ADT) is computed using the latest Institute for Transportation Engineers (ITE) codes and figures.

D. Street design standards.

Design standards for classified streets and sidewalks are those contained in [Table 1 for this chapter](#), which is attached to this chapter.

E. Access control and traffic impacts.

Provision must be made for vehicular access to a development and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. Access and circulation must also conform to the standards and criteria listed below.

- (1). Vehicular access to the development must be arranged to avoid traffic use of local residential streets.
- (2). Where a lot has frontage on two or more streets, the access to the lot must be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
- (3). The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development must have traffic-carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development may increase the volume/capacity ratio of any street above 0.8 nor reduce any intersection or link level of service to "D" or below.
- (4). Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision must be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.
- (5). Accessways must be of a design and have sufficient capacity to avoid hazardous queuing of entering vehicles on any street.
- (6). Where topographic and other conditions allow, provision must be made for circulation driveway connections to adjoining lots of similar existing or potential use:
 - a. When such driveway connection will facilitate fire protection services as approved by the Fire Chief; or
 - b. When such driveway will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street.

F. Center line.

The center line of a roadway must be the center line of the right-of-way.

G. Dead-end streets.

- (1). Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of trees must be maintained within the center of the cul-de-sac.
- (2). The Board may require the reservation of a twenty-foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street.
- (3). The Board may also require the reservation of a fifty-foot easement in line with the street to provide for continuation of the road where future development is possible.

H. Grades, intersections and sight distances.

- (1). Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are minimized while maintaining the grade standards of this title.
- (2). All changes in grade are to be corrected by vertical curves in order to provide the following minimum stopping distance where based on street design speed calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet:

<u>Design speed (mph)</u>	<u>20</u>	<u>25</u>	<u>30</u>	<u>35</u>
<u>Stopping sight distance (feet)</u>	<u>125</u>	<u>150</u>	<u>200</u>	<u>250</u>

Commented [BWS8]: Table

- (3). Intersections of streets are to be at angles as close to 90° as possible, and in no case may two streets intersect at an angle smaller than 60°. To this end, where one street approaches another between 60° and 90°, the former street should be curved approaching the intersection.
- (4). Where new street intersections or curb cuts are proposed, sight distances, as measured along the street onto which traffic would be turning, is based on the posted speed limit and must conform to the table following:

<u>Posted speed limit (mph)</u>	<u>25</u>	<u>30</u>	<u>35</u>	<u>40</u>	<u>45</u>	<u>50</u>	<u>55</u>
<u>Sight distance (feet)</u>	<u>250</u>	<u>300</u>	<u>350</u>	<u>400</u>	<u>450</u>	<u>500</u>	<u>550</u>

Commented [BWS9]: Table

- a. Sight distance is the length of roadway visible to a driver exiting an intersection or curb cut. Such sign distance is measured from a point that is located at the center line of the exit lane and 15 feet back from the edge of the travel way to the center line of the oncoming lane(s), with the height of eye at 3.5 feet and the height of an object 4.25 feet above the pavement.
- b. When the actual traveling speed of normal traffic on a road is substantially higher than the posted speed limit, the sight distance is computed by multiplying the 85th percentile of such speed as measured by a qualified traffic engineer by a factor of 10. The result, in feet, is the minimum sight distance required.
- c. Where necessary, corner lots must be cleared of all growth or other sight obstructions, including ground excavations, to achieve the required visibility.

- (5). Cross (four-cornered) intersections are to be avoided insofar as possible.

I. Side slopes.

Side slopes of all streets must be graded, covered with appropriate compost or loamed, fertilized and seeded in accordance with the specifications of the erosion and sedimentation plan.

J. Right-of-way (ROW) grading.

Streets are to be rough-graded full width.

K. Street construction standards.

- (1). The subgrade of the roadway. On soils which have been identified by the Commissioner of Public Works as not suitable for roadways, the subsoil must be removed from such locations to a depth of two feet below subgrade and replaced with material meeting the specifications for gravel aggregate subbase or a substitute acceptable to the Commissioner of Public Works.
- (2). The aggregate subbase course must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch-square mesh sieve must meet the following grading requirements and contain no particles of rock exceeding four inches in diameter [MDOT Specification 703.06(b) Type D]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve

Commented [BWS10]: Table

<u>1/4 inch</u>	<u>25% to 70%</u>
<u>No. 40</u>	<u>0% to 30%</u>
<u>No. 200</u>	<u>0% to 7%</u>

- (3). The aggregate base course must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch square mesh sieve must meet the following requirements [MDOT Specification 703.06(a) Type A]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve

<u>1/2 inch</u>	<u>45% to 70%</u>
<u>1/4 inch</u>	<u>30% to 55%</u>
<u>No. 40</u>	<u>0% to 20%</u>
<u>No. 200</u>	<u>0% to 5%</u>

Commented [BWS11]: Table

L. Street plantings.

When appropriate, the Board may require a street design that incorporates a green space/planting area within the street's ROW. Said plantings must be installed at the developer's expense according to a plan drawn up by a landscape architect.

M. Sidewalks.

- (1). Where required, sidewalks must be installed to meet minimum requirements as specified in Table 1 of this chapter.
- (2). The position of any sidewalk within the street ROW in relation to the pavement surface is to be determined by the Planning Board.

Commented [12]: Editor's Note Table 1, Design and Construction Standards for Streets and Pedestrianways, is attached to this chapter.

N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.

- (1). Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.
- (2). The following standards apply to the construction of roads and/or driveways and drainage systems, culverts and other related features in the Shoreland and Resource Protection Overlay Zones:
- a. Roads and driveways must be set back:
 - i. At least 100 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland; and
 - ii. Seventy-five feet from the normal high-water line of any water bodies or the upland edge of a wetland on Badgers Island, unless no reasonable alternative exists, as determined by the Planning Board.
 - iii. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Said erosion and sediment control measures for roads and driveways must meet "Maine Erosion and Sediment Control Best Management Practices," March 2003.
 - b. On slopes of greater than 20%, the road and/or driveway setback must be increased by 10 feet, horizontal distance, for each five-percent increase in slope above 20%.
 - c. Existing public roads may be expanded within the legal road right-of-way, regardless of their setback from a water body.
 - d. New roads and driveways are prohibited in a Resource Protection Overlay

Zone, except the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the zone. A road or driveway also may be approved by the Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable alternative route or location is available outside the zone. When a road or driveway is permitted in a Resource Protection Overlay Zone, the road and/or driveway must be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

- e. The maximum slope for road and driveway banks is two horizontal to one vertical (2:1). Bank slopes must be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section.
- f. The maximum slope for road and driveway grades is 10%, except for segments of less than 200 feet.
- g. To prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways must be designed, constructed and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope [50 feet + (2 x S average)], in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream or upland edge of a wetland. Surface drainage that is directed to an unscarified buffer strip must be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- h. Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge must be designed and constructed so that drainage is diverted onto unscarified buffer strips before the flow gains sufficient volume or head. The following criteria should be implemented where possible to deter and prevent excessive erosion:
 - i. Ditch relief culverts, drainage dips and associated water turnouts must be spaced along the road or driveway at intervals no greater than indicated in the following table:

<u>Grade</u>	<u>Spacing</u>
<u>(percent)</u>	<u>(feet)</u>
<u>0 to 2%</u>	<u>250 maximum</u>
<u>3 to 5%</u>	<u>135 to 200 maximum</u>
<u>6 to 10%</u>	<u>80 to 100 maximum</u>
<u>11 to 14% maximum</u>	<u>60 to 80 maximum</u>

Commented [BWS13]: Table

- ii. Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.
- iii. On sections having slopes greater than 10%, ditch relief culverts must be placed at approximately a thirty-degree angle downslope from a line perpendicular to the center line of the road or driveway.
- iv. Ditch relief culverts must be sufficiently sized and properly installed to allow for effective functioning, and their inlet and outlet ends appropriately stabilized with acceptable materials and construction techniques.
- i. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways must be

maintained by the owner(s) on a regular basis to assure effective functioning.

- j. In a Shoreland or Resource Protection Overlay Zone, when replacing an existing culvert the watercourse must be protected so the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.
- k. A permit is not required for the replacement of an existing road culvert, provided the replacement culvert is:
 - i. Not more than one standard culvert size larger in diameter than the culvert being replaced;
 - ii. Not more than 25% longer than the culvert being replaced; and
 - iii. Not longer than 75 feet.

~~16.5.1.22~~

~~16.5.1.23~~ 16.5.1.25 ~~Street Signage~~

A. ~~Names.~~

~~Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to, the names of existing streets within the municipality and are subject to the approval of the Planning Board.~~

B. ~~Signs provided.~~

~~Street name signs are to be furnished and installed by the developer, the type, size and location to be approved by the Commissioner of Public Works.~~

~~16.5.1.24~~ 16.5.1.26 Temporary housing.

- A. Purpose. The intent of this section is to provide temporary housing for resident owners (exclusive of corporations, trusts and estates) and their immediate families who have lost primary dwellings through fire or natural disaster.
- B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages, or renders a dwelling or dwelling unit uninhabitable, the following apply:
 - (1). The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot as a temporary residence for the dwelling owner for a period of six months;
 - (2). The applicant must file such an application within six months from the date of the disaster and agree, in writing, that a time limit of six months is acceptable. Proof of financial ability to reconstruct the building must be furnished;
 - (3). If at the end of six months substantial work has been completed to the satisfaction of the CEO, the permit may be extended for an additional six months. No further extensions may be granted;
 - (4). A multifamily dwelling may be temporarily replaced by a single mobile home unit for the use of the dwelling owner only; and
 - (5). Setback requirements may be waived for temporary mobile homes by the CEO, provided matters of public health and safety are not impaired.

~~16.5.1.25~~ 16.5.1.27 Temporary Intrafamily Dwelling Unit

A. Purpose.

Allowing by special exception a "temporary intrafamily dwelling unit" is intended to relax density requirements per dwelling unit in this title that have the effect of prohibiting persons from establishing temporary living quarters accessory to a residence expressly for a relative(s), a care provider or a care receiver. This section is not intended to allow a property owner to circumvent the general density standards to create an additional apartment for financial gain.

B. Standards.

The following standards must be satisfied to approve a proposed temporary intrafamily

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dwelling unit:

- (1). The temporary intrafamily dwelling unit must be an accessory use to a residential structure.
- (2). The owner of the property must reside on the premises unless the BOA finds that other ownership or tenancy characteristics are consistent with the intent of this section.
- (3). No more than one temporary intrafamily dwelling unit per dwelling unit is allowed.
- (4). Additional off-street parking must be provided if the BOA finds that the proposed use will generate more parking demand than is currently available. Such additional parking must not be located within the required front yard unless the BOA finds that the proposed design and location of such a parking area would not detract from the character of the residential neighborhood.
- (5). Floor plans must be submitted, showing:
 - a. The floor plan of the existing dwelling;
 - b. The proposed floor plan to create the temporary intrafamily dwelling unit; and
 - c. A plan to convert the use of the property to its original dwelling status or another conforming permanent use.
 - d. The above submission requirements may be waived or modified by the BOA, provided the intent of this section is satisfied.
- (6). To assure that a proposed temporary intrafamily dwelling unit does not become an apartment yielding a financial gain, at least one internal accessible connection between the two units must be shown in the floor plan for creation of the temporary intrafamily dwelling unit unless the BOA determines such a connection is not practicable.
- (7). The architectural treatment of constructing the temporary intrafamily dwelling unit must be such as to portray and retain the character of the principal dwelling so as to preserve the land values in the neighborhood. Factors to consider include, but are not limited to, the number and location of entrances, exterior facade materials, pitch of the roof, and the number of driveways.
- (8). The temporary intrafamily dwelling unit must share common utility metering with the dwelling for water and electric services unless preexisting separate metering legally exists.
- (9). Buildings currently nonconforming as per lot coverage may be utilized for a temporary intrafamily dwelling unit as long as the proposed dwelling unit would not increase nonconformity with regard to lot coverage.
- (10). The "minimum land area per dwelling unit" requirement of each zoning district does not apply to a temporary intrafamily dwelling unit.
- (11). The applicant must demonstrate that there is adequate wastewater disposal capacity for the temporary intrafamily dwelling unit.
- (12). The temporary intrafamily dwelling unit must not be used for transient lodging nor may the availability of such dwelling unit be advertised.
- (13). The temporary intrafamily dwelling unit must not be used to yield a financial gain.

C. Conditions.

Any approval of a temporary intrafamily dwelling unit must be subject to the following additional conditions:

- (1). The applicant must annually submit a signed and dated certification by January 15 of each year to both the Code Enforcement Officer and the Board of Appeals that the temporary intrafamily dwelling unit is 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.
 - e. Failure to submit such an annual certification constitutes the expiration of any approval of the temporary intrafamily dwelling unit. Within 45 days of an expiration of the approval, the use of property must be converted to its original dwelling status or another conforming permanent use.
- (2). Upon a permanent vacancy of the temporary intrafamily dwelling unit or the applicant no longer residing on the premises, the use of the property must be converted to its original dwelling status or another conforming permanent use.
 - (3). Reapplication to the BOA upon a change in ownership of the property.
 - (4). Joint signature of submitted floor plans by the applicant and a representative of the BOA signifying the approved design of the temporary intrafamily dwelling unit, and the manner to convert the use of the property to its original dwelling status or another conforming permanent use.

~~16.5.1.26~~ 16.5.1.28 Timber Harvesting

A. Timber harvesting (as permitted in R-RLC and MU Zones).

- (1). Repeal of the timber harvesting regulation. Subsequent to the establishment of the State of Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the state will commence administration of all timber harvesting within the Shoreland Overlay Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be repealed: In § 16.2.2, the definitions of "forest management activities" and "residual basal area."
- (2). Timber harvesting must conform to the following provisions:
 - a. Selective cutting of 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 is permitted. In addition:
 - i. Within 75 feet, horizontal distance, of the normal high-water line of water bodies, tributary streams or the upland edge of a wetland, clear-cut openings are prohibited and a well-distributed stand of trees and other vegetation, including existing ground cover, must be maintained.
 - ii. At distances greater than 75 feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations are limited to single clear-cut openings of 10,000 square feet or less in the forest canopy. Where such openings exceed 5,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such clear-cut openings must be included in the calculation of total volume removal. For purposes of these standards, volume may be considered equivalent to basal area.
 - b. Timber harvesting operations exceeding the forty-percent limitation in § 16.9.5.1B(1) above may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine-licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this title. The Planning Board is required to notify the Commissioner of the Department of Environmental Protection of each exception allowed within 14 days of the Planning Board's decision.
 - c. No accumulation of slash is to be left within 50 feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash must either be removed or disposed of in such a manner that it lies on the ground

and no part thereof extends more than four feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream must be removed.

- d. Timber harvesting equipment is prohibited from using stream channels as travel routes, except when:
 - i. Surface waters are frozen; and
 - ii. The activity will not result in any ground disturbance.
- e. All crossings of flowing water require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- f. Skid trail approaches to water crossings must be located and designed to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts must be removed and areas of exposed soil revegetated.
- g. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil must be located so an unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes up to 10% must be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten-percent increase in slope, the unscarified strip must be increased by 20 feet, horizontal distance. The provisions of this section apply only to a face sloping toward the water body or wetland; provided, however, that no portion of such exposed mineral soil on a back face can be closer than 25 feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

46.5.1.27 16.5.1.29 Wetland Setbacks for Special Situations

- A. Wetland setbacks extending beyond publicly accepted streets.
The required setback distances do not extend beyond the center line of publicly accepted street that generally parallels the normal high-water line of a water body, tributary stream or the upland edge of a wetland.
- B. Newly created wetlands and water bodies.
Setbacks are not required from a wetland or water body created from upland land area, provided the newly created wetland or water body is not part of a required mitigation plan.
 - (1). Wetland setbacks for the zoning district and the Shoreland Overlay District apply.
 - (2). A performance guarantee, such as an escrow or bond, is required to guarantee that new vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written statement from a qualified wetlands scientist that says the vegetation is thriving must be submitted to the Town Manager.
- C. Setbacks from altered wetlands or water bodies. **[Amended 9-26-2011 by Ord. No. 11-15]**
 - (1). The illegal altering of a water body or wetland area, where the surface area of the water body is decreased (lowered), after May 13, 1987, may not be used to change the location from which a setback is measured. The illegal filling of a water body or wetland area, where the normal water surface area of the water body is increased (raised), after May 13, 1987, must be measured from the most recent edge of the normal water surface elevation.
 - (2). Alterations to the wetland boundaries that have been approved by the Planning Board and are in compliance with regulations of the Army Corps of Engineers and the Maine Department of Environmental Protection may be constructed per the Planning Board's approved wetlands alteration plan.
- D. Setbacks for utility poles.
Setbacks for utility poles must be shown and identified on the development plans.

Distances from utility pole structures and the upland edge of wetlands of any type may not have to be set back from the wetland. Such setback distances require Planning Board approval.

E. Utilities within wetland.

Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the applicant's engineer must provide trench details for depth, distance between pipes, if applicable, fill materials, minimum compaction and/or encasement.

- (1). Rotted material, muck and unsuitable soils must be removed from the trench and replaced with select materials that provide the required compaction, pipe support and protection.
- (2). Trenches for shallow-depth pipes (having less than four feet of cover) must be designed to avoid pipe movement that may result in breakage.

Table 16.9

Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]

Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet	501 square feet to 1 acre and Intermittent Streams	Greater than 1 acre
	(feet)	(feet)	(feet)
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width ¹	0	10 from toe of slope	10 from toe of slope
Traveled way of road or driveway greater than 18 feet in width ¹	0	30 or 10 from toe of slope, whichever is greater	30 or 10 from toe of slope, whichever is greater
Parking Areas			
Parking areas for one- and two-family residential uses	0	10	20
1 to 5 stall parking area	0	30	50
6 to 20 stall parking area incorporating BMPs for stormwater management ²	0	40	75
6 to 20 stall parking area without incorporating BMPs for stormwater management ²	0	75	100
21 or more stall parking area ³ incorporating BMPs for stormwater	0	50	75

Table 16.9

Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]

Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
management			
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30	50
Detached residential storage shed no larger than 120 square feet in size	0	30	50
Other Buildings and Structures			
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50	100
Activities and structures permitted within regulated wetlands	0	0	0
Subsurface Sewage Disposal			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50	100
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100	100
Recreational Uses and Structures			
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50	100
Topsoil Removal			
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50	100

Table 16.9

Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]

Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet	501 square feet to 1 acre and Intermittent Streams	Greater than 1 acre
	(feet)	(feet)	(feet)
Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan	0	25	25
Special Uses			
Junkyard ¹	0	100	150
Bulk salt storage not in an enclosed structure ¹	0	100	150
Gravel and mineral extraction or processing ¹	0	100	150
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual households/farms ¹	0	100	150
Commercial painting, wood preserving or furniture stripping ¹	0	100	150
Laundromats, auto wash, printing, dry-cleaning, photographic processing, if not connected to a sanitary sewer ⁴	0	100	150
Metal plating, finishing, polishing ¹	0	100	150

NOTES:

* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

¹ The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.

² Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town's Peer Review Consultant that best management practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the SWCD or the Town's Peer Review Consultant when it finds a

Table 16.9

Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]

Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet	501 square feet to 1 acre and Intermittent Streams	Greater than 1 acre
	(feet)	(feet)	(feet)

drainage plan has adequately protected the wetland from adverse impacts.

3 Parking areas with 21 or more stalls must incorporate BMPs.

4 Wetland setback may be reduced to 100 feet if the YCSWCD or the Town's Peer Review Consultant finds the stormwater management plan incorporates BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater.

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~~16.5.1.28~~ **16.5.1.30** Wireless Communication Services Facilities

A. Purpose. This article is designed and intended to balance the interests of the residents of the Town, telecommunications providers, and telecommunications customers in the siting of wireless communication services facilities (WCSF) within the Town. These standards are also intended:

- (1). To avoid or minimize the adverse impacts of such facilities on visual, environmental, historically significant areas, health and safety, and property value;
- (2). To require the use of alternative structures for the purposes of co-location of carriers and minimize the total number of towers located within the Town;
- (3). To permit the construction of new towers only where all other opportunities have been exhausted;
- (4). To require the users of WCSF and antenna structures to configure them in a way that minimizes the need for additional WCSF in the Town;
- (5). To provide for the removal of WCSF and associated development which are no longer being used for telecommunications purposes;
- (6). These regulations are not intended to place any restrictions on privately operated and licensed amateur radio operators as per FCC regulations.

B. Location, height and setback requirements.

- (1). New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of Dennett Road with Planning Board approval conforming to the performance standards and dimensional requirements. Shared use of preexisting accessory-use towers and alternative tower structures in all zones is permitted with Town Planner's approval, provided the tower or structure height is not increased. Location on existing structures in a manner that camouflages or conceals the presence of antennas or towers, also referred by the industry as "stealth," is permitted with Town Planner's approval in all districts except the Resource Conservation, Shoreland and Resource Protection Overlay Zones. The Town Planner may request Planning Board review of any proposed siting of a WCSF facility.
- (2). Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for those towers expressly satisfying all co-location requirements for four or more carriers, which may be constructed to a maximum height of 199 feet.
- (3). Setbacks.

- h. All telecommunications towers must be set back from the lot lines a distance equal to at least 125% of the tower height.
- i. Tower, guyed wires and accessory facilities must meet the minimum zoning district setback requirements.

C. Aesthetics, landscaping, buffers and fencing.

- (1). Towers and antennas are to have a neutral finish or be painted a neutral color as approved so as to reduce visual impact.
- (2). All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except for the access road. Access roads are to be constructed in a nonlinear manner so as not to provide a direct view corridor to the support structures. The Planning Board/Town Planner may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. The size and quantity of plantings is subject to Planning Board/Town Planner approval.
- (3). At a WCSF, the design of the buildings and related structures must, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the facilities to be compatible with the natural setting and built environment. The building and related structures must be planned in a manner to accept equipment of co-locators. Underground utilities must be used to serve the WCSF.
- (4). Towers may not be artificially lighted.
- (5). Road access to the telecommunications structure is to be the minimum size necessary to allow safe access.
- (6). The base of a telecommunications tower may not be located in wetland, floodplain, Resource Conservation, Shoreland and Resource Protection Overlay Zones.
- (7). A security fence to be approved by the Planning Board/Town Planner of not fewer than eight feet in height from the finished grade is to be provided around the tower and painted a neutral color as approved to minimize visual impacts. Access to the tower is to be through a gate that can be secured.

D. Investigation of existing alternative towers, sites and structures.

Applicants must identify all existing and proposed towers, including their heights, located in the Town and within two miles beyond Town boundaries. Applicants must provide evidence of the lack of antenna space on all such towers and identify alternative tower structures and sites which have been investigated as an alternative to constructing a new tower. Applicant must address the pros and cons of utilizing co-location and other alternative tower structures with respect to their application and demonstrate that they cannot provide adequate communication service utilizing such existing towers or structures.

E. Co-location.

- (1). The applicant and owner must allow other future wireless service carriers, including providing space at no charge to public agencies (including but not limited to police, fire, ambulance, communications and highway if requested at the time of review by the Planning Board), using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a telecommunications tower and site, unless satisfactory evidence is presented and the Planning Board/Town Planner concurs that technical constraints prohibit co-location. Applicant and other wireless service carriers must provide a mechanism for the construction and maintenance of shared facilities and infrastructure and for reasonable sharing of cost in accordance with industry standards. (A reasonable charge for shared use is based on generally accepted accounting principles.
- (2). This charge may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return of equity, depreciation and all of the costs of

adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference, all being pertinent to the southern Maine market area.)

- (3). To ensure co-location, the Planning Board/Town Planner may require co-location on a tower so as to prevent the need for new carriers to build new towers, may deny an application for a telecommunications facility because of inadequate provisions and/or arrangements for co-location, and may require an existing tower to be extended in height (provided that a structural analysis indicates that such extension is structurally feasible and safe) in order to provide for co-location.

F. Performance guarantees.

No building permit may be issued until the applicant has filed a performance guarantee and approved by the Town Manager equal to 125% of the cost of completing the following improvements:

- (1). The construction of any drainage systems involving piping, culverts, or retention or detention facilities;
- (2). The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this article; and
- (3). Other site improvements required by the Board/Town Planner to meet the standards of this article.

G. Removal of abandoned or unused facilities.

- (1). The owner of a telecommunications facility is required to remove the tower and associated facilities should it not be used for the use or uses approved for a period of 90 consecutive days. This period may be extended by the Planning Board/Town Planner if there are extenuating circumstances beyond the control of the applicant. An applicant for a permit under this article must post a performance guarantee approved by the Town Manager with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure. The performance guarantee must be in effect for the life of the WCSF;
- (2). The performance guarantee covering such removal must be reviewed for renewal at a maximum term of five years, to account for cost adjustments. It must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

H. Annual permit renewal.

To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual permit renewal conducted by the Town Planner. The Town Planner at a minimum is to review the continued use of the facility; maintenance of the facility and site improvements; availability for co-location of new service; and review of bonding documents. The documents and permit renewal fee must be submitted to the Town Planner no later than October 1 of each year following the original approval.