Draft 10-14-19

Title 16

Table of Contents

16.1 General Provisions	1
16.2 Administration and Enforcement	12
16.3 Definitions	32
16.4 Land Use Regulations	74
16.5 General Performance Standards	150
16.6 Master Site Development Plan Review	216
16.7 Site Plan Review	219
16.8 Subdivision Review	267
16.9 Shoreland and Marine-Related Development	311

16.1 General Provisions

16.1.1.1 Title; Applicability.

A. This title is known, and may be cited as, the "Land Use and Development Code of the Town of Kittery, Maine."

B. Application of title. The provisions of this title pertain to all the land and water areas as herein defined within the boundaries of the Town.

16.1.1.2 Purpose.

A. This title is designed for all the purposes of zoning embraced in the Maine Revised Statutes and has been created as an integral part of a growth management program, comprehensive planning, and implementation process for the Town to promote the health, safety and general welfare of its residents.

B. Among other things, zoning is designed to:

(1). Encourage the most appropriate use of land and water throughout the Town;
(2). Promote traffic safety;
(3). Provide safety from fire and other elements;
(4). Provide adequate light and air;
(5). Prevent overcrowding of real property;
(6). Prevent development in unsuitable areas;
(7). Promote an adequate transportation and circulation system; **[Amended 9-26-2011 by Ord. No. 11-15]**
(8). Control and manage the coordinated development of unbuilt areas;
(9). Encourage the formation of community units;
(10). Provide an allotment of land area in new developments sufficient for all the requirements of community life;
(11). Conserve energy and natural resources and protect the environment;
(12). Preserve land values; and
(13). Provide for adequate public services.

16.1.1.3 Administration of Title 16 by Planning Board.

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

16.1.1.4 Conflicting requirements.

A. Conflict within this title. Where the requirements of this title are in conflict with each other, the most restrictive or that imposing the higher standards governs.

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

16.1.1.5 Severability.

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

16.1.1.6 Rules of Construction.

A. For the purposes of this Ordinance:

B. The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual;

C. The present tense includes the future tense;

D. Words used in the singular include the plural and words used in the plural include the

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singular;

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

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

G. The word "dwelling" includes the word "residence";

H. The word "lot" includes the words "plot" and parcel"

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

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

16.1.1.7 Amendments.

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

16.1.1.8 General Development Requirements

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

A. Conformity

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

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

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

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

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

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

i. Not prevent the orderly and reasonable use of properties in the adjacent zone;

ii. Be in harmony with the character of the adjacent zone;

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iii. Not adversely affect the property values of adjacent zone's immediate neighborhoods;

iv. Not create any traffic hazards or undue traffic congestion on streets in the adjacent zone;

v. Not give off obnoxious gases, odors, smoke or soot;

vi. Not cause disturbing emission of electrical discharges, dust, light, vibration or noise; and

vii. Be adequately screened and buffered from the adjacent zone.

b. The Planning Board may require a study to be performed or commissioned by the applicant to ensure compliance with the above requirements.

(6). Averaging building setbacks.
Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side.

B. Nonconformance [Amended 9-26-2011 by Ord. No. 11-13; 9-26-2011 by Ord. No. 11-14; 1-23-2012 by Ord. No. 12-01; 1-28-2015 by Ord. No. 15-01; 9-28-2015 by Ord. No. 15-09; 5-22-2017 by Ord. No. 17-04]

(1). Purpose.
The purpose of this title is to promote land use conformities. The purpose of this article is to regulate nonconforming structures, uses, and lots, and to promote the following objectives.

(2). Prohibitions and allowances.

a. Except as otherwise provided in this article, a nonconforming condition must not be permitted to become more nonconforming.

b. Nonconforming vacant lots of record may be developed, maintained or repaired.

c. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

(3). General.

a. Transfer of ownership. Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this title.

b. Repair and maintenance. This title allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this title, and such other changes in a nonconforming use or structure as federal, state, or local building and safety codes may require.

c. Nonconforming parking or loading space. A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this title for both the original and addition or enlargement of the structure or use.

(4). Nonconforming structures.

a. Nonconforming structure relocation. Except where otherwise permitted in this title, relocation of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the relocation must be approved by the Planning Board.

i. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements, to the greatest

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

ii. In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board or Board of Appeals must consider the following conditions:

a. The size of the lot;

b. The slope of the land;

c. The potential for soil erosion;

d. The location of other structures on the property and on adjacent properties;

e. The location of the septic system and other on-site soils suitable for septic systems;

f. The type and amount of vegetation to be removed to accomplish the relocation.

iii. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, replanting of native vegetation to compensate for the destroyed vegetation is required. The Planning Board or Board of Appeals may restrict mowing around and pruning of the replanted native vegetation to encourage a more natural state of growth. Tree removal and vegetation replanting is required as follows, effective 2-28-15:

a. Prior to the commencement of on-site construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. All stakes, caution tape, silt fences, and other materials used during construction must remain until all on-site work is completed. Prior to removal, written permission to remove such materials must be given by the Code Enforcement Officer.

b. Trees removed to relocate a structure must be replanted with at least one native tree, six feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.

c. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.

d. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

iv. If the total footprint of the original structure can be relocated beyond

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

b. Nonconforming structure repair and/or expansion.

i. Except where otherwise permitted in this title, repair and/or expansion of a nonconforming structure must be approved by the Board of Appeals. In cases where the structure is located in the Shoreland or Resource Protection Overlay Zone, the repair and/or expansion must be approved by the Planning Board.

ii. The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming structure provided the proposed expansion meets all of the following criteria:

a. A vertical expansion that follows the existing building footprint;

b. Will not result in setbacks less than those existing;

c. Is not located in the Shoreland Overlay or Resource Protection Overlay Zone.

iii. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies.

a. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this title. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this title, the Board of Appeals or the Planning Board will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board makes its decision per § 16.6.6.B.

b. Except in the Residential - Village (R-V) Zone, minimum setbacks of residential storage sheds that are less than 121 square feet, one-story residential garages that are less than 577 square feet, and decks less than 251 square feet may be one-half the minimum rear and side yard setbacks, providing the lots are legally nonconforming.

c. Where the expansion of the residential use within the Commercial Zones involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this title. If the proposed structure expansion cannot meet the dimensional requirements of this title, the application may be submitted to the Board of Appeals for review as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals must use the criteria established in this section, and then may approve the proposed variations to the dimensional requirements.

d. The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet in size.

e. In addition to the standards in the above § 16.7.3.3B(3)(a) through (d), the expansion of nonconforming structures

DRAFT

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

1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming structure the structure and new foundation must be placed such that setback requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in § 16.7.3.3A(2), Nonconforming structure relocation.
2. Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited.
3. Notwithstanding § 16.7.3.3B(3)(e)[2] above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows:

   [a] The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.

4. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or coastal or freshwater wetland setback requirement. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered as follows:

   [a] For structures located less than 100 feet from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet, or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.

   [b] For structures that are located within the Resource Protection Overlay Zone, the maximum combined total footprint for all structures may not be

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

c. Nonconforming structure reconstruction.

i. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction meets the setback to the greatest practical extent the Planning Board must consider, in addition to the criteria in § 16.7.3.3A(2), Nonconforming structure relocation, the physical condition and type of foundation present, if any.

ii. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and removed, damaged or destroyed by any cause by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within 12 months of the established date of damage or destruction.

iii. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained from the Code Enforcement Officer within 18 months of the date of said removal, damage or destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior nonconforming structure.

iv. Nothing in this section prevents the demolition of the remains of any structure damaged or destroyed. Application for a demolition permit for any structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.

v. In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. If the reconstructed or replacement structure is less than the required setback, it may not be any larger than the original

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

vi. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with § 16.7.3.3A(3), Nonconforming structure relocation.

vii. Except where expressly permitted in this title, in no case may a structure be reconstructed or replaced so as to increase its nonconformity.

(5). Nonconforming uses.

a. Nonconforming use continuance. The use of land, or structure, lawful at the time such use began, may continue although such use may not meet the provisions of this title.

b. Discontinued resumption prohibited. A nonconforming use discontinued for a period exceeding one year, or which is superseded by a conforming use, loses its status as a permitted nonconforming use. The uses of the land or structure must thereafter meet the provisions of this title. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five-year period.

c. Nonconforming use expansion. Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be expanded within existing residential structures. Where the expansion of a nonconforming residential use involves the expansion of a structure, the structure must be expanded in conformity with all requirements as outlined in § 16.7.3.3, Nonconforming structures.

d. Nonconforming use change: review authority and evaluations. The reviewing authority, per Subsections D(1), (2) and (3) below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

i. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland.

ii. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals.

iii. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board.

(6). Nonconforming lots.

a. Nonconforming lots of record.

i. Nonconforming lots. In any district, notwithstanding limitations

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

b. Contiguous nonconforming lots.

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

[Image]

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

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[Image]

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

[Image]

iv. This subsection does not apply:

a. To any Planning Board approved subdivision located entirely outside of the Shoreland Overlay Zone and Resource Protection Overlay Zone, and which was recorded with the York County Registry of Deeds on, or before, July 13, 1977;

b. If one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this title § 16.8.7.1, Septic Waste Disposal, and the State of Maine Subsurface

Wastewater Disposal Rules; and

1. If each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
2. If any lot(s) that do not meet the frontage and lot size requirements of § 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

c. Single lot division of a nonconforming lot. If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title.

d. Adjustment of common boundary line of nonconforming lots.

i. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:

a. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this title; or

b. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and

1. Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or
2. Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer; or

c. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses[1]; and

1. Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage[2,3]; and
2. A lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements[1]; and
3. Common boundary lines may not be adjusted when both subject lots are nonconforming per MDEP Mandatory Shoreland Zoning minimum lot standards.[3]

ii. It is not the intention of the above subsection (Adjustment of

DRAFT

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

NOTES:

1 Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 square feet lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 square feet lot size with 200 feet of shore frontage.

2 Title 16.7.3.5D is allowed only when both subject lots are under the same single or joint ownership.

3 Adherence to State Minimum Lot Size Law (12 M.R.S. §§ 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required.

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16.2 Administration and Enforcement

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

16.2.1.2 Planning Board appointment and powers.

A. Appointment and composition.

(1). The Planning Board is established by the Town Charter, Article VIII, Sec. 8.01, Planning, and applicable state statutes.

(2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.

(3). Members of the Board are appointed by the Town Council.

(4). A municipal officer, or spouse thereof, may not serve as a member of the Board.

(5). Members serve until their successors are appointed and qualified.

(6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.

(7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

(8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

(1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.

(2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.

(3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties.

(4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.

(5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).

(6). The Board is to:

e. Perform duties as provided by law.

f. Hear and decide on required development plans, including special exception use requests, that require Planning Board review, using the development application and review procedures and criteria and other provisions in this title.

g. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

16.2.1.3 Board of Appeals

A. Appointment and composition.

(1). The Board of Appeals is established by the Town Charter, Article VIII, Sec. 8.04, and 30-A M.R.S. § 2691.

(2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.

(3). Members of the Board are appointed by the Town Council.

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(4). A municipal officer, or spouse thereof, may not serve as a member of the Board.

(5). Members serve until their successors are appointed and qualified.

(6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.

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(2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.

(3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties

(4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.

(5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).

(6). The Board is to:

a. Perform duties as provided by law.

b. Administrative decision appeal. Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this title.

c. Variance request. Hear and decide on a variance request within the limitations set forth in this title and 30-A M.R.S. § 4353(4).

d. Miscellaneous variation request. To hear and decide on a miscellaneous variation request to permit variation in:

i. Nonconformance as prescribed in Article III of Chapter 16.7;

ii. Standards contained in Chapter 16.8, Article IX, Parking, Loading and Traffic, or § 16.8.10.13, Sign violation and appeal; or

iii. Accessory dwelling unit standards per Article XXV of Chapter 16.8.

e. Special exception use request. Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the development application and review (Chapter 16.10) procedures and review criteria and other provisions in this title.

16.2.1.4 Port Authority

A. Appointment and composition.

(1). The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as amended, and Town Charter, Article IX.

(2). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.

(3). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.

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(4). The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years.

(5). Members serve until their successors are appointed and qualified.

(6). No member shall serve more than two consecutive terms of five years. Any member who has served two consecutive terms of five years is ineligible to serve on the Board for a period of one year. Computation of term limits commences with the first term of five years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than five years after the effective date.

(7). A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

(8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

(1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority and show the vote of each member upon each question

(2). The Port Authority is to:

a. Perform duties as provided by law.

b. Where Town Council action is required under 38 M.R.S. § 1021 et seq., Wharves and Fish Weirs, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.

c. Water area development powers and duties.

i. The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.

ii. Where Port Authority review is required, such review must be completed prior to Planning Board review.

iii. Port Authority review and approval authority under this title applies to structures extending into a water body beyond the mean high-water line or the upland edge of a coastal wetland and extends from the water body to the mean high-water line or upland edge of a coastal wetland.

iv. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high-water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over, a structure extending into a water body beyond the mean high-water line or the edge of a coastal wetland require Planning Board approval. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.

v. Where the Planning Board is the lead reviewing authority, a shorefront development plan must be submitted for Planning Board approval. A Port Authority ruling on the shorefront development plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to Planning Board approval.

vi. Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-

DRAFT

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

16.2.1.5 Town Planner

A. Responsibilities. The Town Planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The Planner is responsible for all municipal planning functions, including the administration of this title, and the implementation of the Kittery Growth Management Program. These functions include but are not limited to land and water use planning; providing technical assistance and staff support to the Planning Board; researching, developing, coordinating and administering land and water use and planning related projects; maintaining accurate planning records; and interacting with members of the public involved with the planning process.

B. Plan submission.

(1). All plan submission requirements for an application for land/water area use and development are to be submitted to the Planner.

(2). The Planner must review all plan submission contents to ascertain that they meet the requirements of this title before they are delivered for review or consideration by the Planning Board.

(3). The Planner, upon confirmation of a plan's submission contents sufficiency, is to place the application on the Board's agenda for a scheduling hearing.
NOTE: Planner confirmation does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the Planning Board.

C. Staff coordination. The Planner is to coordinate with appropriate municipal department heads to ensure they have received required plan information for the performance of their duties under this title.

D. Reporting. The Planner must report the status of all active plans (received, pending, under review, and approved not built – past expiration date) to the Board monthly

16.2.1.6 Code Enforcement Officer (CEO)

A. Responsibility. It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of this title.

B. Permits. The CEO is to issue required permits for building, occupancy, plumbing, electrical or such other as may be required.

C. Appeal/request initiation. The CEO must initiate the forms required for appeals/requests to the Board of Appeals.

D. Inspection. The CEO must inspect all buildings, developments, subdivisions and such other facilities/uses within the requirements of this title.

E. Business use changes. The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in §§ 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this title.

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

16.2.1.8 Building/Regulated Activity Permits

DRAFT

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

A. Permit. No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.

B. Conformity. No building/regulated activity permit may be issued except in conformity with this title, except after written order of the Board of Appeals.

C. Permit records. The CEO must maintain a public record of all building/regulated activity permits and applications thereof.

D. Permit period. **[Amended 10-26-2015 by Ord. No. 15-11]**

(1). A permit expires if the Code Enforcement Officer determines no substantial work has been commenced within six months from date of issue. A permit expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction. Written request for renewal must be made prior to the permit expiration.

(2). The permit may be renewed one time only for a single six-month period to commence work, upon payment of the base application fee. If the Code Enforcement Officer determines substantial work has not commenced upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted.

(3). The permit may be renewed one time only for a single six-month period to complete work, upon payment of the base application fee. If work is not substantially complete as determined by the Code Enforcement Officer upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted based on the value of the remaining permitted work.

(4). Any work commenced or completed without the issue of a permit as required by this title is subject to an after-the-fact permit with all applicable fees doubled.

E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as determined by the Code Enforcement Officer:

(1). Fair market value of the work is greater than $2,000;

(2). Changes to electric, plumbing or septic systems;

(3). Increase in coverage;

(4). Construction of a building or expansion of a structure;

(5). Structural alteration;

(6). Change in use or new business occupancy;

(7). Erection or expansion of signage;

(8). Installation or expansion of piers and docks;

(9). An activity that requires inspection by the CEO to determine compliance with this title; or

(10). Creates one or more acres of disturbed area.

(11). Structure demolition. **[Added 9-24-2012 by Ord. No. 12-11]**

F. Application.

(1). Plans.

a. All applications for building/regulated activity permits are to be accompanied by plans showing the actual dimensions and shape of the lot

DRAFT

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

b. At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative is to have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or applicant, except when a temporary occupancy permit has been given to the dwelling owner or applicant.

(2). Drainage and sewage disposal. Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal and prior obtainment of a subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the Maine State Plumbing Code and Chapter 16.8.

(3). Fee. Except for municipality permits, application for a building/regulated activity permit must be accompanied by a fee which is established by the Town Council. (See Appendix A, Fee Schedules.) **[Amended 9-26-2011 by Ord. No. 11-15]**

(4). Flood hazard ordinance. Any building or structure that might be erected in an area subject to periodic flooding must meet all conditions of Chapter 15.3, relating to flood hazard permit and review procedure, of this Code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.

(5). Conformance to standards. **[Amended 5-30-2012 by Ord. No. 12-04]**

a. All developments must be in conformance with the procedures, standards and requirements of this title.

b. All work that requires a building/regulated activity permit must conform to the Maine Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 et seq., which is adopted by the Department of Public Safety, Bureau of Building Codes and Standards, Maine Technical Building Codes and Standards Board, by Rule 16-635, Chapters 1 through 6, as may be amended from time to time.

c. The following codes, standards, rules and their amendments are in full force and effect in their entirety and are not affected by the operation of Title 16 or the MUBEC:

i. National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-A.

ii. Maine State Plumbing Codes standards, adopted pursuant to 32 M.R.S. § 3403-B.

iii. Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.

iv. Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32 M.R.S. § 14804.

v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S. § 15104-A.

DRAFT

vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.

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

d. NFPA 1 - Fire Code.

e. NFPA 101 - Life Safety Code.

f. NFPA 54 - Fuel Gas Code.

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

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

16.2.1.9 Certificate of occupancy.

A. Certificate requirement. It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this title and all applicable state and federal requirements.

B. Certificate application requirement. No building/regulated activity permit may be issued until an application has been made for a certificate of occupancy and the certificate of occupancy is issued in conformity with the provisions of this title upon completion of the work.

C. Temporary certificate.

(1). A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants and the public.

D. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all Planning Board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the Planning Board, and certificate of occupancy may be issued by the CEO, when phase conditions have been met.

E. Records. The Code Enforcement Officer must maintain a public record of all certificates of occupancy.

F. Failure to obtain certificate. Failure to obtain a certificate of occupancy is a violation of this title.

G. Minor interior alterations. An occupancy permit is not required for minor interior alterations during which the building would be considered occupied and which, in the judgment of the Code Enforcement Officer, does not constitute a change in use of the building.

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

A. Street-numbering map.

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

DRAFT

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

B. Display of number. The number is to be displayed upon the front of the building and/or on the side facing the street. The number must be plainly visible from the street. Owners of buildings and houses that are set back out of view from the road must place a post or sign at the driveway entrance with the specified numbers. Said post/sign is not considered a structure which must conform to Land Use and Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said post/sign must be placed out of the Town's right-of-way and be six feet in height.

C. Multifamily houses or apartment buildings. For multifamily houses or apartment buildings, the house number is to be displayed as outlined in Subsection **B**. Each individual apartment or living unit must be clearly sublettered.

D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in color with the color of the building or background to which they are attached.

E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of this section within the time limit of not more than 30 days specified in such notice is liable to a fine of not less than $50 nor more than $100 per violation.

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

A. Applicability. This section applies to fees charged by the Town for plumbing and subsurface wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. § 4201 et seq. and pursuant to rules promulgated by the Department of Health and Human Services (DHHS) under the authority of 30-A M.R.S. § 4201 et seq. ("State Plumbing Code"). For purposes of this section, the terms contained in this section have the meanings given to them in the State Plumbing Code.

B. Plumbing permit fees.

(1). At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. § 4201 et seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance with the following schedule and at the rate provided for each classification shown herein:

a. Any person who begins any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is liable to pay double the permit fee fixed by this section for such work. However, this provision does not apply to emergency work when it is proven to the satisfaction of the local plumbing inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days, or else a double permit fee as hereinabove provided is to be charged.

b. For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached is construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings are to be based on the number of plumbing fixtures, water heaters, etc., involved.

c. The following permit fees are to be charged:

i. Minimum fee for all permits, see Appendix A.

ii. Fixture fee, see Appendix A.

iii. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.

DRAFT

iv. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.

v. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.

vi. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.

vii. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stickbuilt structures, and a plumbing fixture fee is to be charged based on this section.

viii. A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

C. Subsurface wastewater disposal system fees.

(1). Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.

(2). Late permit fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in Subsection **A** of this section.

16.2.1.12 Decision Appeal, Variance and Other Requests

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

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

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

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

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

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

D. Appeals/requests to Board of Appeals.
For the purposes of this chapter, an appeal or request means any of the following:

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

DRAFT

decision of the Code Enforcement Officer.

(2). Variance request.

a. A variance may be granted only by the Board of Appeals under the following conditions:

i. For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;

ii. The use is not prohibited by this title; and

iii. Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:

a. The land in question cannot yield a reasonable return unless a variance is granted.

b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

c. The granting of a variance will not alter the essential character of the locality.

d. The hardship is not the result of action taken by the applicant or a prior owner.

b. Notwithstanding § 16.6.4B(1), the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

c. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.

d. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this title to the greatest extent possible and, in doing so, may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.

(3). Miscellaneous variation request. The Board of Appeals may hear, decide and approve variations in:

a. Nonconformance as prescribed in Chapter 16.7, Article III;

b. Parking, loading and traffic standards contained in Chapter 16.8, Article IX;

c. Sign violation and appeal standards contained in § 16.8.10.3; or

d. Accessory dwelling unit standards contained in Chapter 16.8, Article XXV.

(4). Special exception use request.

a. The Board of Appeals will hear, decide and may grant an applicant's special

DRAFT

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

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

E. BOA appeal/request filing procedures.

(1). Making an appeal/request. An administrative decision appeal, variance request or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be submitted within 30 days of the date of the official written decision being appealed. Other requests may be filed at will.

a. The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this title and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:

i. The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.

ii. The appeal or request must include a concise written statement, indicating what relief is requested and why the appeal or request should be granted.

iii. Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the code enforcement office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of 10 sets of all submissions is required.

iv. The Board of Appeals must hold a public hearing on an appeal or request within 35 days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.

b. At any time between the initial acceptance by the Code Enforcement Officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.

(2). Hearing and notice.

a. Before taking any action on any appeal/request, the Board of Appeals must hold a public hearing and provide the following notifications:

i. By mail at least seven and not more than 14 days prior to the scheduled hearing date, to owners of abutting property that an appeal/request is made, the nature of the appeal/request and the time and place of the public hearing thereon; and

ii. Notice of all such actions must also be published in a newspaper of general circulation in the Town at least seven days prior to the

DRAFT

public hearing.

b. Failure of any property owner to receive a notice of public hearing will not necessitate another hearing or invalidate any action by the Board of Appeals.

(3). Notification and timing constraints. Following the filing of an appeal/request, the Code Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation Commission of the filing. The appeal or request must be complete for hearing at a subsequent meeting of the Board of Appeals occurring no less than 10 days after the mailing of notices but within 30 days of the appeal filing date.

(4). Decisions of the Board of Appeals.

a. The person filing the appeal or request has the burden of proof.

b. A minimum of four like votes is required for a decision by the Board of Appeals, except on procedural matters.

c. The Board of Appeals must decide the appeal or request within 30 days after the close of the hearing and issue a written decision.

d. Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.

(5). Order of review.

a. Where a special exception request or appeal is necessary as an integral part of a development review process, Board of Appeals action is encouraged prior to Planning Board review where required. The findings of the Board of Appeals as well as any file material must be made available to the Planning Board.

b. The Planning Board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request.

(6). Special exception referral.

a. Before granting any special exception, the Board of Appeals may refer the application to the Planning Board and/or Port Authority for a report prior to any subsequent BOA review of the application.

b. The Planning Board and/or Port Authority report must be considered informational in character and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data.

c. The Planning Board and/or Port Authority report must be submitted to the BOA for its consideration prior to the officially scheduled time of public hearing on the request.

(7). Venue and representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.

(8). Code Enforcement Officer attendance. The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs or other material the CEO deems appropriate for an understanding of the appeal/request.

(9). Appellant's case first. The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairperson.

(10). Expiration of approval.

a. Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on

DRAFT

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

b. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the section above.

c. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in Subsection J(1) above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.

d. Such a request must be submitted in writing to the Code Enforcement Officer prior to the date of said approval expiration.

(11). Reconsideration. In accordance with 30-A M.R.S. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision.

a. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

b. Appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.

(12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.

(13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

F. Basis for decision.

(1). Conditions.

a. In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.

b. In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:

i. The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

ii. The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;

iii. The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and

iv. The use will be in harmony with and promote the general purposes

DRAFT

and intent of this title.

(2). Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:

a. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;

b. The conservation of property values and the encouragement of the most appropriate uses of land;

c. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;

d. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;

e. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;

f. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;

g. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;

h. The necessity for paved off-street parking;

i. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;

j. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;

k. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;

l. Whether the proposed use will be adequately screened and buffered from contiguous properties;

m. The assurance of adequate landscaping, grading and provision for natural drainage;

n. Whether the proposed use will provide for adequate pedestrian circulation;

o. Whether the proposed use anticipates and eliminates potential nuisances created by its location; and

p. The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.

(3). Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the BOA, including the following:

a. Front, side or rear yards in excess of minimum requirements;

b. Modifications of the exterior features of buildings or other structures;

c. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;

d. Regulation of design of access drives, sidewalks and other traffic features;

e. Off-street parking and loading spaces in excess of the minimum

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requirements; or

f. Restrictions on hours of operation.

(4). Findings of fact. After reaching a decision on an appeal/request under this section, the Board of Appeals must verify on the record its findings of fact supporting the basis of its decision.

(5). Outstanding violations. No variance, special exception or miscellaneous variation request may be granted for premises on which outstanding violations of this title exist, unless the effect of such variance, special exception or miscellaneous variation would remedy all such violations.

(6). Appeals and variances. The Board of Appeals may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of this chapter. The Board of Appeals may grant a variance from the requirements of Chapter 16.9, Article VIII, Floodplain Management, § 16.9.8.1 et seq., consistent with state law and the following criteria: [Added 9-26-2011 by Ord. No. 11-15]

a. Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

b. Variances may be granted only upon:

i. A showing of good and sufficient cause; and

ii. A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

iii. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and

iv. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:

a. That the land in question cannot yield a reasonable return unless a variance is granted; and

b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and

c. That the granting of a variance will not alter the essential character of the locality; and

d. That the hardship is not the result of action taken by the applicant or a prior owner.

c. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

d. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:

i. Other criteria of this section and § 16.9.8.8I are met; and

ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

e. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in Subsection F(1) through (4) of this section.

f. Any applicant who meets the criteria of Subsection F(1) through (5) of this section is to be notified by the Board of Appeals, in writing, over the

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

i. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as $25 per $100 of insurance coverage;

ii. Such construction below the base flood level increases risks to life and property; and

iii. The applicant agrees, in writing, that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

g. The Board of Appeals must submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

16.2.1.13 Violations and Enforcement

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

A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this title, is responsible for the violation and is subject to the penalties and the remedies herein provided.

B. Applications for permits or approvals involving sites with a violation. An application for a building/regulated activity permit (see Chapter 16.5), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.

C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to § 16.4.4 for enforcing and securing compliance with the provisions of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.

D. Notice of violation and order (notice).

(1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and any other person or entity responsible (hereafter termed "violator") for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this title and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in § 16.4.5H and must set forth a fine to be imposed as authorized by § 16.4.5I and/or 30-A M.R.S. § 4452

(2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be

DRAFT

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

(3). All proposed plans for corrective action submitted by the violator must comply with the standards set forth in this chapter where applicable and 30-A M.R.S. § 4452(3). The acceptance by the CEO of a violator's proposed plan(s) of correction or mitigation will not relieve the violator of the requirement to pay the fine set forth in the notice.

(4). The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. § 4452 exists for which the violator is responsible.

(5). Additionally, if there is a violation of Chapter 16.9, Article VII, Nonstormwater Discharge, the enforcement authority will order compliance by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation: **[Amended 5-30-2018 by Ord. No. 04-18]**

a. The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;

b. The cessation of discharge practices or operations in violation of this section;

c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or

d. The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

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

(1). Be served in hand to the violator by the CEO or a person duly authorized by the CEO;

(2). Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;

(3). Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail, if not returned or undeliverable, is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or

(4). Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

F. Appeal of notice of violation and order.

(1). The violator served with a notice of violation and order may appeal the notice of violation and order to the Board of Appeals by filing an administrative appeal application in accordance with § 16.6.5A.

(2). If a completed appeal is not filed within 30 days of receipt of the violation and order, then the notice of violation and order is final, and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the

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

(3). Any adverse decision of the BOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.

(4). Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.4.5J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

G. Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.4.5J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

H. Time limit for corrective action.

(1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.4.5D of this section is 30 days following receipt of the notice of the violation and order, unless:

a. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.

b. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.

c. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.

(2). If a violator in a timely fashion files a completed administrative appeal application with the Town Clerk as provided in § 16.4.5F, any period of time from date of receipt of such an appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time period described in this section. If the BOA upholds the CEO's determination, the timeline set forth in the notice of violation and order resumes, beginning the day after the decision is rendered, unless it is extended by the BOA.

I. Penalties.

(1). The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the notice:

a. Fine imposed: $200 for the first seven-day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of $100 per day penalty for each day of the continuing violation

DRAFT

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

b. When the violation set forth in the notice involves any cutting of tree(s) or other vegetation in violation of § 16.9.2.2 or 30-A M.R.S. § 4452(3), the penalty provided by this section will be imposed from the date of notification of the violation in writing in addition to the required corrective action set forth in the § 16.4.5D.

(2). After the time specified to correct the violation in the notice of violation and order passes, it is the responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been corrected and seek an inspection to verify the violation has been corrected. For the purposes of this section, the violation will be assumed to have continued to exist uncorrected until the violator has informed the Code Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers through inspection of the premises that the violation has been corrected, whichever comes earlier.

J. Consent agreements.

(1). In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the Town Manager, with advice of the Code Enforcement Officer, is authorized to enter into a consent agreement with the violator to resolve the violation without further enforcement action or appeal. Consent agreements are not intended to allow a violator to substitute fines for corrective actions.

(2). Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to the existing terms and provisions of this title.

K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and order as provided in § 16.4.5D are payable to the Town and due within 30 days after the notice of violation and order become final. All such civil penalties not paid when due accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S. § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.

L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor, who violates any provision or requirement of this title will be penalized in accordance with this title and 30-A M.R.S. § 4452.

16.2.1.14 Enforcement and Penalties

A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter16.9, Article VIII, Floodplain Management, pursuant to 30-A M.R.S. §4452.

B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this chapter.

C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, is to submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration is to consist of:

(1). The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;

(2). A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;

(3). A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4). Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5). A clear statement that the declaration is being submitted pursuant to Section 1316

DRAFT

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

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16.3 Definitions

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

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

ABUTS

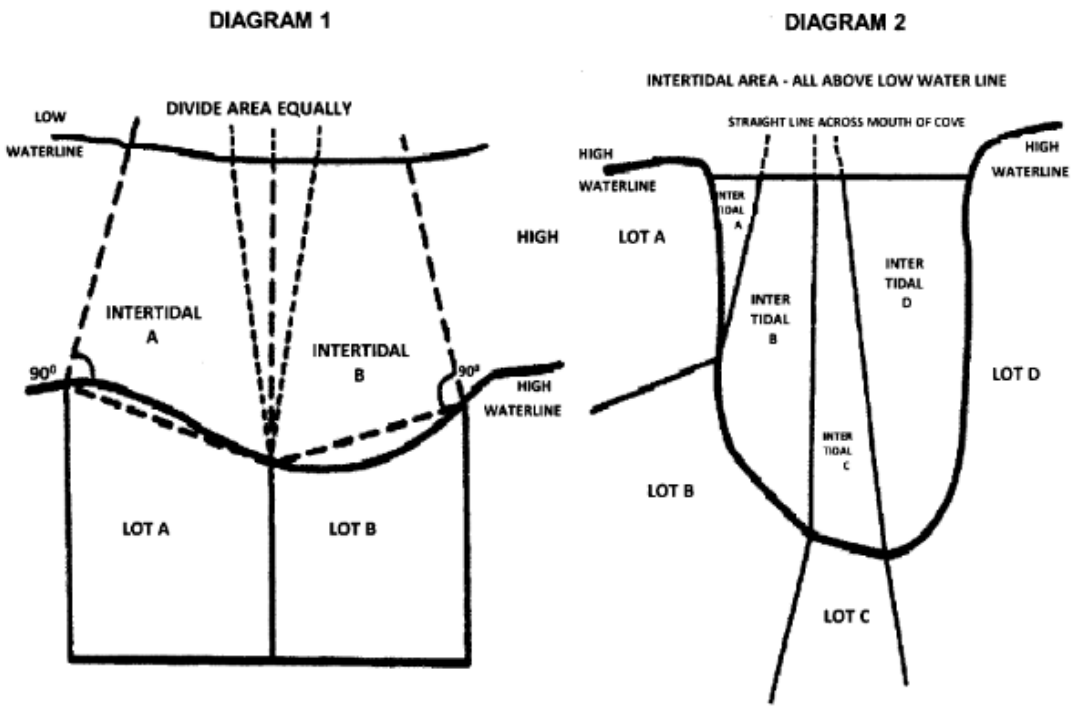
That which is contiguous to, or shares, a common boundary line. The owner of a property that is contiguous to or shares a common boundary line is an abutter. See section X.X.X on abutter notification process when a new development or redevelopment is proposed.

ABUTTER

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

ABUTTING PROPERTY

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



ACCESSORY BUILDING

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

ACCESSORY DWELLING UNIT (ADU)

An apartment which is part of an existing structure on the property where the owner of the property occupies one of the units. See § 16.5.1.2 B

ACCESSORY STRUCTURE

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

ACCESSORY USE

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

ADJACENT GRADE

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

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

ADULT ENTERTAINMENT ESTABLISHMENT

A. Any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials, actions, and/or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities, including but not limited to:

   (1). Live entertainment, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities," or

   (2). Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

B. For the purpose of this definition, "specified sexual activities" means:

   (1). Human genitals in a state of sexual stimulation or arousal;

   (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

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AGGRIEVED PARTY

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

AGRICULTURE

The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance for sale, lease, or personal use of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any mutations or hybrids therof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products. Agriculture does not include forestry or sawmills, as defined in this Ordinance. See section 16.5.1.3

AGRICULTURE, PIGGERY

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

AGRICULTURE, POULTRY FACILITY

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

ALTERNATIVE TOWER STRUCTURE

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

ANTENNA

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

APARTMENT UNIT

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

APARTMENT BUILDING

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

AQUACULTURE

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

AREA OF A SHALLOW FLOODING

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

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

DRAFT

AREA OF SPECIAL FLOOD HAZARD

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

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

ART STUDIO/GALLERY

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

BANNER

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

BASAL AREA

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

BASE FLOOD

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

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

BASEMENT

An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of its volume below the existing ground..

BED-AND-BREAKFAST

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

BEST MANAGEMENT PRACTICES ("BMP")

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

BILLBOARD

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

BOARD OF APPEALS

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

BOAT LAUNCHING FACILITY

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

BOAT YARD

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

BOATHOUSE

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

BREAKAWAY WALL

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

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

BROOK

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

BUFFER

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

BUILDING

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

BUILDING COVERAGE

The aggregate or the maximum horizontal area of all buildings on the lot including accessory

DRAFT

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

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

BUILDING FRONTAGE

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

BUILDING MATERIALS AND GARDEN SUPPLY

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

BUSINESS

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

BUSINESS AND PROFESSIONAL OFFICES

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

BUSINESS FACILITY

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

BUSINESS SERVICES

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

CAMPGROUND

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

CANNABIS

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

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

CANOPY, TREE (TREE CANOPY)

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

CEMETERY

A private or public place set apart for the interment of the dead. In the absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery

DRAFT

Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is determined by starting with a ten-foot distance from existing tombstones and expanded, where necessary, to form a final rectilinear area.

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

CERTIFICATE OF COMPLIANCE

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

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

CERTIFICATE OF OCCUPANCY

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

CHARACTER

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

CLEAN WATER ACT

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

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

CLEAR-CUT

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

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

CLUSTER MIXED-USE DEVELOPMENT

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

CLUSTER RESIDENTIAL DEVELOPMENT

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

COASTAL WETLAND

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

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National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

CO-LOCATION

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

COMMERCIAL FISHERIES/MARITIME ACTIVITIES (USE)

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

COMMERCIAL GREENHOUSE

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

COMMERCIAL KENNEL

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

COMMERCIAL MARINA USE STRUCTURE

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

COMMERCIAL OR HOME OCCUPATION VESSEL

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

COMMERCIAL USE

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

COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE STRUCTURE

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

COMMUNITY

The Town of Kittery and its people.

COMPACT OR BUILT-UP SECTION

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

COMPREHENSIVE PLAN

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

CONFERENCE CENTER

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

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CONSTRUCTION DRAWINGS

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

CONSTRUCTION SERVICES

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

CONTIGUOUS LOTS

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

CONTRACTOR, EXCAVATION

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

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

CONVALESCENT CARE FACILITY

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

CONVENIENCE STORE, NEIGHBORHOOD GROCERY FACILITIES

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

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CORNER LOT

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

In zones where yards are required:

A. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard may not be less than the front yard requirements of uses located on the side street.

B. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a rear yard between the principal building and the abutting property on the side street. Such side yard may not be less than the side yard requirements of uses located on the side street.

C. All such side yards described above must conform to the specific regulations related to yard space and related building height contained in the district provisions of this title.

COVERAGE (LOT, BUILDING)

See definition for "building coverage."

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

CUTOFF FIXTURE

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

[Image]

DAY

A calendar day unless otherwise indicated.

DAY-CARE FACILITY

A house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under 16 years of age, who are unattended by their parent(s) or guardian(s), for any part of a day. Any facility, the chief purpose of which is to provide education, is not considered a day-care facility.

DECK

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

DESIGNATED HISTORIC BUILDING

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

DESIGN HANDBOOK

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

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

DEVEGETATED AREA

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

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

DEVELOPER

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

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

A. A change in land use involving alteration of the land, water or vegetation; or

B. The addition or alteration of structures or other construction not naturally occurring.

DEVELOPMENT PLAN

See "master site development plan."

DIMENSIONAL REQUIREMENTS

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

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DISABILITY

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

DISCHARGE

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

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

DISTURBED AREA

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

DOCK

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

DRAINAGE DITCH

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

DREDGE

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

DRIVEWAY

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

DWELLING

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

DWELLING UNIT

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

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

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time and containing cooking, sleeping and toilet facilities. The term includes mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time period rented. Recreational vehicles are not dwelling units.

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

EASEMENT

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

EAVE

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

ELDER-CARE FACILITY

A residential facility occupied principally by residents who are at least 55 years of age (or in the case of a couple, at least one of whom is at least 55 years of age) that provides a program of services to its residents. Occupants of the facility may also include handicapped individuals of any age. The definition of elder-care facility includes a variety of accommodations that provide both housing and supportive services for the residents, including facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, but does not include housing units that do not provide supportive services or a nursing care or convalescent care facility that provides nursing services. See section XXX.

ELDERLY DAY-CARE FACILITY

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

ELDERLY HOUSING

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

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

A. A nonbasement building:

(1). Built, in the case of a building in Zone A1 — 30, AE, A, A99, AO or AH, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers or "stilts"; and

(2). Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

B. In the case of Zone A1 — 30, AE, A, A99, AO or AH, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of floodwaters.

ELEVATION CERTIFICATE

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

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

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A. Is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and

B. Is required for purchasing flood insurance.

EMERGENCY OPERATIONS

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

ESSENTIAL SERVICES

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

EXEMPT PERSON OR DISCHARGE

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

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

EXPANSION OF STRUCTURE

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

EXPANSION OF USE

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

FAA

The Federal Aviation Administration.

FAMILY

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

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

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

FCC

The Federal Communications Commission.

FILL

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

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FILLING

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

FINAL SUBDIVISION PLAN

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

FINGER FLOAT

A float extending from the main float of a pier, ramp and float system that creates slips and/or increases the pier or float edge available for mooring boats.

FLAG

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

FLOAT

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

FLOOD ELEVATION STUDY

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

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

FLOOD HAZARD ZONE

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

FLOOD INSURANCE RATE MAP (FIRM)

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

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

FLOOD INSURANCE STUDY

See "flood elevation study."

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

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

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

   (1). The overflow of inland or tidal waters; or

   (2). The unusual and rapid accumulation or runoff of surface waters from any source.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable

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event which results in flooding as defined in Subsection **A(1)** of this definition.

FLOOD, ONE-HUNDRED-YEAR

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

FLOODPLAIN MANAGEMENT

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

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

FLOODPLAIN MANAGEMENT REGULATIONS

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

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

FLOODPLAIN OR FLOOD-PRONE AREA

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

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

FLOODPROOFING

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

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

FLOODWAY

See "regulatory floodway."

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

FLOODWAY ENCROACHMENT LINES

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

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

FLOOR AREA

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

FOOD STORE

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

FOREST MANAGEMENT ACTIVITIES

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands,

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and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

FORESTED WETLAND

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

FOUNDATION

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

FREEBOARD

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

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

FRESHWATER WETLAND

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

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

A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: **[Added 5-22-2017 by Ord. No. 17-04]**

(1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and

(2). Inundated or saturated by surface- or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

B. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria in this definition.

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FUNCTIONALLY WATER-DEPENDENT USES

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

GAMBLING

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

GAMBLING CASINO

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

GAMBLING DEVICE

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

GAME OF CHANCE

A. Any game, contest, scheme or device in which:

(1). A person stakes or risks something of value for the opportunity to win something of value;

(2). The rules of operation or play require an event, the result of which is determined by chance, outside the control of the contestant or participant; and

(3). Chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill.

B. As used in this definition, "an event the result of which is determined by chance" includes, but is not limited to, a shuffle of a deck or decks of cards, a roll of a die or dice, or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers, or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects, or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme or device does not alone make a game, contest, scheme or device a game of chance.

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GAME OF SKILL

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

GASOLINE SALES

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

GASOLINE SERVICE STATION

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

GRADE PLANE

A reference plane representing the average of finished ground level adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane is to be established by the lowest points within the area between the building and the lot line

or, where the lot line is more than six feet (1,829 mm) from the building, between the building and a point six feet (1,829 mm) from the building.

GROCERY STORE

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

GROSS FLOOR AREA

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

GROUND COVER

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

HAZARDOUS WASTE

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

HEIGHT OF BUILDING

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

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HEIGHT OF STRUCTURE

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

HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES

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

HIGH INTENSITY SOIL SURVEY

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

HISTORIC STRUCTURE

Any structure that is:

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

A. Listed individually on the National Register of Historic Places (a listing maintained by the

Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1). By an approved state program as determined by the Secretary of the Interior; or

(2). Directly by the Secretary of the Interior in states without approved programs.

HOME OCCUPATION

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

HOME OCCUPATION, MAJOR

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

HOME OCCUPATION, MINOR

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

HOSPITAL

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

HOTEL

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

HYDRIC SOIL

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

HYDROPHYTIC VEGETATION

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

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ILLICIT DISCHARGE

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

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

IMPROVEMENT PLANS

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

INDIVIDUAL PRIVATE CAMPSITE

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

INDUSTRIAL ACTIVITY

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

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

INDUSTRY, HEAVY

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

INDUSTRY, LIGHT

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

INN

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

INTERMITTENT STREAM

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

INVASIVE NONNATIVE PLANT

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

JULY 13, 1977

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

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JUNKYARD

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

LANDING

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

LANDSCAPE PLANTER STRIP

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

LARGE, HEALTHY TREE

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

LEGALLY NONCONFORMING

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

LEGISLATIVE BODY

Town Council.

LIGHT FIXTURE HEIGHT

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

LOCALLY ESTABLISHED DATUM

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

DRAFT

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

LOT

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

LOT AREA

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

A. Land below the normal high-water line of a water body or upland edge of a coastal wetland;

B. Areas beneath Planning Board-approved right-of-way; and

C. Land within public street rights-of-way.

LOT WIDTH

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

LOW INTENSITY RECREATION

Outdoor recreational activities which have a low impact on the environment and neighborhood and require no motorized vehicles, significant earthmoving or substantial structures, such as hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and

boardwalks, steps, railings and other structures necessary to provide safe accessibility for physically handicapped persons are allowed.

LOWEST FLOOR

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

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

LUMEN

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

MANUFACTURED HOUSING

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

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

MARIJUANA

Cannabis.

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

MARIJUANA MEDICAL USE

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

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

MARIJUANA RETAIL USE

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

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

MARINA

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

MARKET VALUE

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

DRAFT

prevailing general price levels.

MASS TRANSIT STATION

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

MASTER SITE DEVELOPMENT PLAN

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

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

B. The standards are applied to the zone rather than to individual lots, tracts and parcels within the zone.

MEAN SEA LEVEL

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

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

MECHANICAL SERVICE

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

MEDICAL MARIJUANA CULTIVATION FACILITY

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

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

MEDICAL MARIJUANA DISPENSARY

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

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

MEDICAL MARIJUANA QUALIFYING PATIENT OR PATIENT

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

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

MEDICAL MARIJUANA TESTING FACILITY

A public or private laboratory that:

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

A. Is licensed, certified or otherwise approved under 22 M.R.S. § 2423-A to analyze

DRAFT

contaminants in, and the potency and cannabinoid profile of, samples; and

B. Is accredited pursuant to standard International Standards Organization/International Electrotechnical Commission 17025 of the International Organization for Standardization by a third-party accrediting body or is certified, registered, or accredited by an organization approved by the state.

MINERAL EXTRACTION

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

MINERAL/EARTH MATERIAL EXPLORATION

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

MINI STORAGE

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

MINIMUM LAND AREA PER DWELLING UNIT

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

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

A. All land located below the highest annual tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most-current year.

B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds, streams and other water bodies.

C. All land located on filled tidal lands, per the definition of "tidal land, filled."

D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.

MIXED-USE BUILDING

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

MOBILE HOME PARK

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

MOBILE HOME PARK LOT

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

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

MOBILE HOMES

Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development (HUD)

DRAFT

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

MODULAR HOME

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

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

MOTEL

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

MULTIUNIT RESIDENTIAL

A residential structure containing three or more residential dwelling units.

MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4

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

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

MUNICIPALITY

Town of Kittery, Maine.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT

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

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

NAVIGABLE WATERS

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

NET RESIDENTIAL ACREAGE

The land area subject to subdivision that is identified for regulatory purposes as developable and is

DRAFT

the gross available acreage minus land area identified in Article VIII, Net Residential Acreage, of Chapter 16.7, unless otherwise exempt in § 16.7.8.4, Exemptions to net residential acreage calculations.

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

NET RESIDENTIAL DENSITY

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

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

NEW CONSTRUCTION

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

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

NEW MOTOR VEHICLE SALES

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

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NONCONFORMING LOT OF RECORD

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

NONCONFORMING STRUCTURE

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

NONCONFORMING USE

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

NONCONFORMING, LEGALLY

See "legally nonconforming."

NONSTORMWATER DISCHARGE

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

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

NORMAL HIGH-WATER LINE

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

NURSERY SCHOOL

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

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

A. No session conducted for the children is longer than 3 1/2 hours in length;

B. No more than two sessions are conducted per day;

C. Each child in attendance at the nursery school attends only one session per day; and

D. No hot meal is served to the children.

NURSING CARE FACILITY, LONG-TERM

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

OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)

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

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

OFFICIAL MAP

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

[AMENDED9-26-2011 BY ORD. NO. 11-15]

OFFICIAL SUBMITTAL DATE

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

ONE-HUNDRED-YEAR FLOOD

See "base flood."

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

OPEN SPACE

Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. "Open space" does not include areas occupied by a building or a parking area, except where required by the management plan in place to govern the open space and as approved by the Planning Board.

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

DRAFT

OPEN SPACE, COMMON

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

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

OPEN SPACE, PUBLIC

Land accessible or dedicated for public use.

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

OPEN SPACE, RESERVED

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

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

OUTDOOR SERVICE AREAS

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

OWNER

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

PARAPET

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

PARKING AREA

Any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets. .

PATIO

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

PERSON

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

PERSONAL SERVICES

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

PIER

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

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POLLUTANT

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

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

POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN

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

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

PRACTICABLE

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

PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS

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

PRELIMINARY SUBDIVISION PLAN

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

PREMISES

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

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

PRIMARY CAREGIVER

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

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

PRINCIPAL BUILDING

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

PRINCIPAL STRUCTURE

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

PRINCIPAL USE

The primary or predominant use. An activity that is conducted in conjunction with the principal use and such activity that either constitutes only an incidental or insubstantial part of the total activity

DRAFT

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

PRIVATE MARINA USE STRUCTURE

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

PRUDENT AVOIDANCE

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

PUBLIC FACILITY

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

PUBLIC RECREATION

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

PUBLIC UTILITY

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

PUBLIC UTILITY FACILITY

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

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QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR

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

RECENT FLOODPLAIN SOILS

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

RECREATIONAL FACILITY

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

RECREATIONAL VEHICLE

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

REGULATED SMALL MS4

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

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

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

A. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; and

B. In riverine areas, is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the normal high-water mark to the upland limit of the floodplain.

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

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

REPLACEMENT SYSTEM
A system intended to replace:

A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or

B. Any existing overboard wastewater discharge.

RESEARCH AND DEVELOPMENT
A building or group of buildings in which are located facilities for technical or scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the facility.

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

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

RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM

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

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

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

RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM

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

RESIDUAL BASAL AREA

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

RESIDUAL STAND

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

RESTAURANT

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

RESUBDIVISION

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

RETAIL USE

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

RIGHT-OF-WAY, PRIVATE

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

RIPRAP

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

RIVER

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

RIVERINE

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

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

ROAD

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

ROOMING HOUSE

A residential use in which the owner or manager of the facility resides on the premises and in which more than three persons who are not part of the owner's/manager's family are housed in rooms for

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compensation with or without meals. This includes fraternities and sororities.

ROULETTE

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

SALT MARSH

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

SALT MEADOW

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

SCREEN

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

SCREENING

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

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SELECTED COMMERCIAL RECREATION

A recreational facility operated as a business and open to the public for a fee, which is listed as one of the following types of allowed recreational activities:

A. Indoor commercial recreation limited to billiards and pool, bowling alley, dance hall, swimming pool, ice skating rink, tennis, racquetball or squash courts, shooting or archery range, weight-lifting equipment center, aerobics/exercise center, roller skating rinks, basketball courts, gymnasium, concert hall, aquarium, botanical and zoological garden, bingo parlor, simulated sports; and

B. Outdoor commercial recreation limited to riding stables, golf course, swimming pool, driving range, miniature golf, archery range, tennis courts, balloon rides, roller skating rink, botanical and zoological garden, and equestrian sports excluding racing.

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

SEPTIC SYSTEM

See "subsurface wastewater disposal system."

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

SERVICE DROP

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

A. In the case of electric service:

(1). The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway at the right-of-way; and

(2). The total length of the extension is less than 1,000 feet.

B. In the case of telecommunications service:

(1). The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or

(2). The extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

SETBACK

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

SETBACK FROM STREAMS, WATER BODIES AND WETLANDS

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

SHOP IN PURSUIT OF TRADES

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

SHORE FRONTAGE

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

SHOREFRONT DEVELOPMENT PLAN

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

SHORELINE

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

SIGN

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

SIGN AREA

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

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SIGN, CHANGEABLE MESSAGE

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

SIGN, FREESTANDING

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

SIGN, REAL ESTATE

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

SIGN, TEMPORARY

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

SIGN, TRAILER

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

SLOT MACHINE

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

SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4

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

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

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SOILS

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

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

A. VERY POORLY DRAINEDWater is removed from the soil so slowly that the water table remains at or above the surface most of the year. A seasonal high water table is at or above the surface from at least October through July and sometimes throughout the year. In August and September, the water table may recede below 12 inches. The high water table severely limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

B. POORLY DRAINEDWater is removed from the soil so slowly that the soil remains wet most of the year. A seasonal high water table is at or near the surface from October through June. In July, August and September, it may recede below 16 inches. The seasonal high water table limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

C. SOMEWHAT POORLY DRAINEDWater is removed from the soil slowly enough to keep it wet for significant periods of time but not the entire year. A seasonal high water table is at seven inches to 16 inches in depth from October through May and sometimes June. From July to October, it may recede below 30 inches in depth. A seasonal water

table limits the use of these soils for some agricultural, forestry and urban activities. These soils are not hydric in Maine and are commonly found in the transitional landscape positions between wetland and upland soils.

SOMETHING OF VALUE

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

SPECIAL EXCEPTION

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

SPECIAL FLOOD HAZARD AREA

See "area of special flood hazard."

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

SPECIALTY FOOD AND/OR BEVERAGE FACILITY

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

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

START OF CONSTRUCTION

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

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

STORM DRAINAGE SYSTEM

The entire Town's storm drainage system.

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

STORMWATER

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

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

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STORY

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

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

STORY ABOVE GRADE

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

A. More than six feet (1,829 mm) above the grade plane;

B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the total building perimeter; or

C. More than 12 feet (3,658 mm) above the finished ground level at any point.

STREAM OR BROOK

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

STREET

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

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STREET FRONTAGE

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

STREET LINE

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

STRUCTURALLY ALTERED

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

STRUCTURE

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

SUBDIVIDER

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

SUBDIVISION

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

SUBDIVISION, MAJOR

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

SUBDIVISION, MINOR

A subdivision containing not more than four lots.

SUBSTANTIAL DAMAGE

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

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

SUBSTANTIAL IMPROVEMENT

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

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

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)

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

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

SUSTAINED SLOPE

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

TEMPORARY, INTRAFAMILY DWELLING UNIT

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

A. Person(s) related by blood or marriage within the sixth degree to an occupant of the

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property;

B. Personal care provider(s) to an occupant of the property;

C. Personal care receiver(s) from an occupant of the property; or

D. Person(s) with a demonstrably familial type relationship to an occupant of the property.

TEMPORARY STRUCTURE

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

THEATER

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

TIDAL LAND, FILLED

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

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

TIDAL WATERS

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

TIMBER HARVESTING

A. TIMBER HARVESTINGSelective cutting or removal of 10 or more cords, or the equivalent thereof, but no more than 40% of the total volume of trees four inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period for the purpose of selling or processing forest products. Clearing of land necessary for approved construction is not considered as timber harvesting.

B. For the purposes of this title, timber harvesting activities taking place outside the shoreland overlay zone on land classified by the Town Assessor as enrolled in the state tree growth program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance with a forest management and harvest plan prepared by a licensed professional forester, is not considered timber harvesting.

TOWER

Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

TRACT OR PARCEL OF LAND

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

TRAILER

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

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TRAILER PARK

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

TRANSPORTATION TERMINAL

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

TRAVELED WAY

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

TRIBUTARY STREAM

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

UPLAND EDGE

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

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URBANIZED AREA (UA)

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

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

USED CAR LOT

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

VARIANCE

A. A relaxation of the terms of this title where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.

B. As used in this title, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone.

VEGETATION

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

VETERINARY HOSPITAL

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

VIOLATION

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

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

VOLUME OF A STRUCTURE

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

WAREHOUSING AND STORAGE

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

WASTE

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

WASTEWATER

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

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

WASTEWATER, DOMESTIC

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

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

WATER BODY

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

WATER CROSSING

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

WATER-DEPENDENT USE

See "functionally water-dependent use."

WETLAND

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

WETLAND ALTERATION

Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the

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hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude:

A. An activity of installing a fence post or planting shrubs by hand;

B. Alteration of an existing structure such as a bench or handrail; and

C. The construction, repair or alteration of a structure with minimal impact such as a nesting box, pasture fence or staff gauge.

WETLAND CREATION

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

WETLAND ENHANCEMENT

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

WETLAND FUNCTIONS

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

WETLAND HYDROLOGY

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

WETLAND PRESERVATION

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

WETLAND RESTORATION

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

WETLAND VALUE

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

WETLAND VEGETATION

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

WETLANDS ASSOCIATED WITH RIVERS

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

WETLANDS IMPACT

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

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

WHOLESALE BUSINESS

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

WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)

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

WORK

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

YARD, ACCESSORY BUILDING SIDE AND REAR

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

YARD, FRONT

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

YARD, REAR

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

YARD, SIDE

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

A. Attachments:

Attachment 1 - Figure 1, Formula for Determining Ownership of Intertidal Land

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16.4 Land Use Zone Regulations

Article 1 General

Purpose.
The purpose of this chapter is to establish zones, uses, standards and dimensional requirements for the Town to implement the adopted Comprehensive Plan.

Establishment of Zones.
To implement the provision of this title, the Town is divided into the following base and overlay zones:

A. Base zones.

(1).	Residential – Rural	RL
(2).	Residential – Suburban	R-S
(3).	Residential – Kittery Point Village	R-KPV
(4).	Residential – Urban	R-U
(5).	Residential – Village	R-V
(6).	Residential – Rural Conservation	R-RLC
(7).	Conservation	CON
(8).	Business – Local	B-L
(9).	Business – Local 1	B-L1
(10).	Commercial 1	C-1
(11).	Commercial 2	C-2
(12).	Commercial 3	C-3
(13).	Industrial	IND
(14).	Mixed-Use	MU
(15).	Mixed-Use – Badgers Island	MU-BI
(16).	Mixed-Use – Kittery Foreside	MU-KF
(17).	Mixed Use – Neighborhood	MU-N
(18).	Transportation – Maine Turnpike	T-MT

B. Overlay zones.

(1).	Shoreland Overlay Zones	
	a. Water Body/Wetland Protection Area – 250 feet	OZ-SL-250
	b. Stream Protection Area – 75 feet	OZ-SL-75
(2).	Commercial Fisheries/Maritime Uses Overlay Zone	OZ-CFMU
(3).	Resource Protection Overlay Zone	OZ-RP

Zoning Map

A. Zone boundaries. The location and boundaries of the zones are established as shown on the current Official Zoning Map titled "Town of Kittery Maine Land Use Zoning Map," as may be amended by law. The Zoning Map with all explanatory matter thereon is hereby made part of this title and must be kept on file at the Town office. Said Zoning Map must be drawn at a scale of not less than one-inch equals 1,000 feet. Zone boundaries must be clearly delineated, and the Map must have a legend indicating the name and symbol for each zone.

B. Boundary line interpretation. Where uncertainty exists with respect to property or natural resource boundaries of the various zones as shown on the Zoning Map, the following rules apply:

(1). Unless otherwise shown, zone boundary lines are coincidental with street center lines and lot lines. Where zone boundary lines are designated on the Zoning Map, those lines are construed to be the boundary of the zone.

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(2). Where the zone boundary lines are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the zone boundaries are construed to be the lot lines, and where the zones designated on the Map accompanying and made a part of this title are bounded approximately by lot lines, the lot lines are construed to be the boundary of the zones unless the boundary lines are otherwise indicated on the Zoning Map.

(3). Where unsubdivided property lies within two or more zones, the zone boundary lines on the Zoning Map are determined by use of the scale appearing on the Zoning Map.

(4). Where there is uncertainty regarding a zone boundary, the Planning Board is the local decision authority as to the exact location of said boundary. In the Shoreland and Resource Protection Overlay Zones, boundary redefinition must be supported by documentation from an appropriately licensed or certified Maine state professional.

Overlay zone.
An overlay zone is a special purpose zone where additional regulations, beyond those set forth in the base zone, apply. The regulations of the underlying zone must apply unless specified otherwise in the overlay zone.

Zoning Map amendments to Resource Protection and Shoreland Overlay Zones.
If Zoning Map amendments are adopted that change the Shoreland or Resource Protection Overlay Zones, said amendments also must be approved by the Maine Commissioner of the State Department of Environmental Protection and then implemented within 30 days of approval.

Prohibited uses.
Uses in all zones are defined in Article II of this chapter by zone as permitted or special exception uses. Any use not listed as a permitted or a special exception use is prohibited in the zone.

Article 2 Zone Definitions, Uses and Standards

16.4.2.1 Residential – Rural (R-RL)

A. Purpose. The purpose of the Residential – Rural R-RL Zone is to protect the prevailing rural character of the Town and its natural rural quality from development sprawl by prescribing the most appropriate uses and standards.

B. Permitted uses. The following uses are permitted in the R-RL Zone:

(1). Dwellings or modular homes
(2). School
(3). Hospital
(4). Nursing Care Facility, Long-Term
(5). Convalescent Care Facility
(6). Municipal Building or Use
(7). Institution of educational, religious, philanthropic, fraternal or social nature
(8). Open Space, Public
(9). Public Recreation
(10). Agriculture
(11). Accessory Use and Building
(12). Home Occupation, Minor
(13). Day-care Facility
(14). Individual Private Campsite
(15). Accessory Dwelling Units
(16). Cluster Residential Development. [Added 9-24-2012 by Ord. No. 12-10]

C. Special exception uses. The following uses are permitted as special exception uses in the R-RL Zone:

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(1). Shops Used in Pursuit of Trade
(2). Public Utility Facilities
(3). Cemetery
(4). Mobile Home Parks
(5). Campgrounds
(6). Trailer Parks
(7). Mineral extraction, subject to § 16.9.1.2;
(8). Sawmill, piggery
(9). Rooming House
(10). Commercial Kennel
(11). Veterinary Hospital
(12). Selected Commercial Recreation
(13). Junkyard
(14). Temporary, intrafamily dwelling unit
(15). Home Occupation, Major
(16). Dwellings, exclusive of mobile homes, in a major or minor subdivision. **[Added 9-24-2012 by Ord. No. 12-10]**

D. Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development: **[Amended 9-24-2012 by Ord. No. 12-10]**

(1). Design and performance standards in Chapters 16.8 and 16.9.
(2). Dimensional standards:
a. Minimum land area per dwelling unit: 40,000 square feet.*
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-28-2015 by Ord. No. 15-05]**
b. Minimum lot size: 40,000 square feet.
c. Minimum street frontage: 150 feet.
d. Minimum front yard: 40 feet.
e. Maximum building coverage: 15%.
f. Minimum rear and side yards: 20 feet. (NOTE: Buildings higher than 40 actual feet are to have side and rear yards not less than 50% of building height.)
g. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)
h. Minimum setback from water body and wetland water-dependent uses: zero feet.
i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.
(3). Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.2.2. **[Amended 9-28-2015 by Ord. No. 15-05]**
a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that:
i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

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b. Subdivision development [per special exception uses, § 16.3.2.1C(14)]. In a subdivision development, standards in § 16.3.2.1D(1) and (2) apply and include:

i. Minimum percentage of common open space: 15%.

(4). In the case of junkyards, the following special standards apply, which are in addition to the standards and provisions prescribed in Maine State Statutes, 30-A M.R.S. §§ 3751 to 3760, and any changes thereto:

a. Minimum land area: 400,000 square feet.

b. Minimum street frontage: 600 feet.

c. Minimum distance from street or highway to junk concentration area: 200 feet.

d. Other standards as prescribed in Article XIV of Chapter 16.8.

(5). In the case of Mobile Home Parks, sites must be at least 10 acres, subject to the special provisions of Article XII of Chapter 16.8;

16.4.2.2 Residential – Suburban (R-S)

A. Purpose. The purpose of the Residential – Suburban R-S Zone is to provide areas adjacent to the developed urban areas for future residential growth consistent with the availability of public utilities. To this end, the following apply:

B. Permitted uses. The following uses are permitted in the R-S Zone:

(1). Dwelling, Single-family
(2). Dwelling, Duplex
(3). Dwelling, Multi-unit (not more than four units per building)
(4). Mobile Homes
(5). School
(6). Nursery School
(7). Hospital
(8). Elder-care Facility
(9). Nursing Care Facility, Long-term
(10). Convalescent Care Facility
(11). State Building or Use
(12). Municipal Building or Use
(13). County Building or Use
(14). Institution of educational, religious, philanthropic, fraternal or social nature
(15). Open Space, Public
(16). Public Recreation
(17). Agriculture
(18). Accessory Uses and Buildings
(19). Home Occupations, Minor
(20). Day-care Facility
(21). Elderly Day-care Facility
(22). Accessory Dwelling Units
(23). Cluster Residential Development. [Added 9-24-2012 by Ord. No. 12-10]

C. Special exception uses. The following uses are permitted as special exception uses in the R-S Zone:

(1). Rooming House
(2). Public Utility Facility
(3). Cemetery

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(4). Mineral extraction, subject to § 16.9.1.2;

(5). Convenience Store, neighborhood grocery facilities

(6). Temporary, intrafamily dwelling unit;

(7). Home Occupations, Major

(8). Any use listed in Subsection **B(2)** (permitted uses) of this section that occupies more than 5,000 square feet of floor area;

(9). Dwelling, Multi-unit (5-12 units per building)

(10). Dwellings, exclusive of mobile homes, in a major or minor subdivision. **[Added 9-24-2012 by Ord. No. 12-10]**

D. Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development: **[Amended 9-24-2012 by Ord. No. 12-10]**

(1). Design and performance standards. The design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2). Dimensional standards.

a. Minimum land area per dwelling unit:*

i. Without public sewage disposal: 40,000 square feet.

ii. With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-28-2015 by Ord. No. 15-05]**

b. Minimum lot size:

i. Without public sewage disposal: 40,000 square feet.

ii. With public sewage disposal: 30,000 square feet unless reduced in accordance with Note A.

c. Minimum street frontage: 150 feet unless reduced in accordance with Note A.

d. Minimum front yard: 40 feet.

e. Maximum building coverage: 20%.

f. Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of the building height.)

g. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

h. Minimum setback from water body and wetland water-dependent uses: zero feet.

i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

Note A:

- The required minimum land area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than 30,000 square feet per lot/unit if the established average density of development in the immediate area of the use as determined

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below is less than 30,000 square feet.

- If the average of the lot sizes and/or land area per dwelling unit of the developed residential lots that are located on the same street and within 500 feet of the parcel is less than 30,000 square feet, the required minimum lot size or required minimum land area per dwelling unit is the calculated average lot size or average land area per dwelling unit but not less than 20,000 square feet.
- If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel but in no case to less than 100 feet.

(3). Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.2.2. **[Amended 9-28-2015 by Ord. No. 15-05]**

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that:

b. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

c. Subdivision development [per special exception uses, § 16.3.2.2C(10)]. In a subdivision development, standards in § 16.3.2.2D(1) and (2) apply and include:

i. Minimum percentage of common open space: 15%.

(4). Mobile homes must meet the standards of Articles XII and XIII of Chapter 16.8.

16.4.2.3 Residential – Kittery Point Village (R-KPV) [Amended 9-26-2011 by Ord. No. 11-15]

A. Purpose. The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve the established character and development pattern of the Kittery Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable. To this end, the following apply:

B. Permitted uses. The following uses are permitted in the R-KPV Zone:

(1). Dwelling, Single-family
(2). Dwelling, Duplex
(3). Dwelling, Multi-unit (not more than four units per building)
(4). School
(5). Nursery School
(6). State Building or Use
(7). Municipal Building or Use
(8). County Building or Use
(9). Institution of educational, religious, philanthropic, fraternal or social nature
(10). Open Space, Public
(11). Public Recreation
(12). Agriculture
(13). Accessory Uses and Buildings
(14). Home Occupations, Minor
(15). Day-care Facility
(16). Accessory Dwelling Units

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(17). Cluster Residential Development. [Added 9-24-2012 by Ord. No. 12-10]

C. Special exception uses. The following uses are permitted as special exception uses in the R-KPV Zone:

(1). Rooming House

(2). Any use listed in Subsection **B(2)** of this section (permitted uses) that occupies more than 5,000 square feet of floor area;

(3). Public Utility Facility

(4). Cemeteries

(5). Convenience Store, neighborhood grocery facilities

(6). Temporary, intrafamily dwelling unit

(7). Home Occupations, Major

(8). The reuse of a designated historic building, in nonresidential use as of the effective date of this provision, as an art studio/gallery, museum, or business and professional office subject to standards for a minor home occupation as set forth in § 16.8.22.2B through L

(9). Dwellings, exclusive of mobile homes, in a major or minor subdivision. **[Added 9-24-2012 by Ord. No. 12-10]**

D. Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development: **[Amended 9-24-2012 by Ord. No. 12-10]**

(1). Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2). Dimensional standards.

a. Minimum land area per dwelling unit: 40,000 square feet.*
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-28-2015 by Ord. No. 15-05]**

b. Minimum lot size: 40,000 square feet.

c. Minimum street frontage: 150 feet unless reduced in accordance with Note A.

Note A:

- The required minimum street frontage for a new lot may be less than 150 feet if the established pattern of street frontage in the immediate area of the lot as determined below is less than 150 feet per lot.
- The required minimum street frontage in this case is the average of the street frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel, but in no case less than 100 feet.

d. Minimum front yard: 40 feet

e. Maximum building coverage: 20%.

f. Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of the building height.)

g. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

h. Minimum setback from water body and wetland water-dependent uses: zero

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feet.

i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

(3). Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.2.2. **[Amended 9-28-2015 by Ord. No. 15-05]**

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

16.4.2.4 Residential – Urban (R-U)

A. Purpose. The purpose of the Residential – Urban R-U Zone is to preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title. To this end, the following apply:

B. Permitted uses. The following uses are permitted in the R-U Zone:

(1). Dwelling, Single-family
(2). Dwelling, Duplex
(3). Dwelling, Multi-unit
(4). Manufactured Housing
(5). Open Space, Public
(6). Public Recreation
(7). School
(8). Nursery School
(9). Hospital
(10). Nursing Care Facility, long-term
(11). Convalescent Care Facility
(12). Municipal Building or Use
(13). State Building or Use
(14). Institution of educational, religious, philanthropic, fraternal, political or social nature
(15). Accessory Uses and Buildings
(16). Home Occupations, Minor
(17). Day-care Facility
(18). Conference Center
(19). Accessory Dwelling Units
(20). Cluster Residential Development. [Added 9-24-2012 by Ord. No. 12-10]

C. Special exception uses. The following uses are permitted as special exception uses in the R-U Zone:

(1). Rooming House
(2). Professional Offices
(3). Funeral Homes
(4). Art Galleries
(5). Public and private recreational uses, exclusive of drive-in theaters;
(6). Public Utility Facilities
(7). Inn

DRAFT

(8). Temporary, intrafamily dwelling unit;

(9). Home Occupations, Major

(10). Dwellings and manufactured housing in a major or minor subdivision. [Added 9-24-2012 by Ord. No. 12-10]

D. Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development: **[Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10]**

(1). The design and performance standards in Chapters 16.8 and 16.9.

(2). Dimensional standards:

a. Minimum land area per dwelling unit: 20,000 square feet.*
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-28-2015 by Ord. No. 15-05]**

b. Minimum lot size: 20,000 square feet.

c. Minimum street frontage: 100 feet.

d. Minimum front yard, all buildings: 30 feet.

e. Minimum rear and side yards, all buildings: 15 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of building height.)

f. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

g. Maximum building coverage: 20%.

h. Minimum setback from water body and wetland water-dependent uses: zero feet.

i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

(3). Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.2.2. **[Amended 9-28-2015 by Ord. No. 15-05]**

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development [special exception uses, § 16.3.2.4C(10)]. In a subdivision development, standards in § 16.3.2.4D(1) and (2) apply and include:

i. Minimum percentage of common open space: 15%.

(4). In the case of housing for the elderly, the above standards may be modified in accordance with the special provisions of Article XIII of Chapter 16.8 and with the condition that:

a. Municipal sewerage and water must be provided.

b. A minimum land area of three acres must be provided.

c. The maximum net density may not exceed four dwelling units per net residential acre. In no event may the Planning Board authorize a departure which increases the total number of dwelling units greater than that specified under the applicable zoning ordinance.

d. A single bedroom unit may not be less than 550 square feet and a two-bedroom unit not less than 650 square feet.

DRAFT

(5). Modular housing to meet standards of § 16.8.13.1.

16.4.2.5 Residential – Village (R-V)

A. Purpose. The purpose of the Residential – Village R-V Zone is to recognize the special nature of the Admiralty Village neighborhood as a densely developed residential zone composed primarily of affordable housing on small lots serviced by sewer and water and to encourage reinvestment in maintaining and upgrading the neighborhood. Consistent with this goal, the zone provides for uses that reinforce the residential character and establish building standards that allow improvements on typical lots to enhance the residential quality of life in the neighborhood. To this end, the following will apply:

B. Permitted uses. The following uses are permitted in the R-V Zone:

(1). Dwellings, Single-family
(2). Dwellings, duplex
(3). Modular Homes
(4). Public Recreation
(5). Municipal Building or Use
(6). County Building or Use
(7). State Building or Use
(8). Day-care Facility; facility limited to 12 or fewer persons in care, in conformance with the standards for a minor home occupation (see § 16.8.22.2);
(9). Nursery School Facility; facility limited to 12 or fewer persons in care, in conformance with the standards for a minor home occupation (see § 16.8.22.2);
(10). Accessory Uses and Buildings
(11). Home Occupations, Minor
(12). Accessory Dwelling Units

C. Special exception uses. The following uses are permitted as special exception uses in the R-V Zone:

(1). Public Utility Facilities
(2). Home Occupations, Major
(3). Day-care Facility
(4). Nursery School

D. Standards.

(1). All development and the use of land in the R-V Zone must meet the following standards. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multiunit residential projects.

(2). The following space standards apply:

a. Minimum land area per dwelling unit: 4,000 square feet.*
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-24-2012 by Ord. No. 12-10; 9-28-2015 by Ord. No. 15-05]**
b. Minimum lot size: 6,000 square feet.
c. Minimum street frontage: 50 feet.
d. Minimum front yard: 15 feet.
e. Minimum rear yard, dwellings/structures: 15 feet.
f. Minimum side yard, dwellings/structures: 10 feet.
g. Minimum rear and side yards for accessory buildings/structures that are

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accessory to a residential use and located at least four feet behind the predominant rear line of the principal building: three feet.

h. Maximum structure coverage: 40%.

i. Maximum height of principal dwellings/structures: 35 feet.

j. Maximum height of accessory buildings/structures located closer than 10 feet to a lot line: 15 feet.

k. Maximum building coverage: 20%.

l. Minimum setback from water body and wetland water-dependent uses: zero feet.

m. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

16.4.2.6 Residential – Rural Conservation (R-RLC)

A. Purpose. The purpose of the Residential – Rural Conservation R-RC Zone is to conserve and protect land areas of the Town which by their location and character require special measures to ensure low-density development. To this end, the following apply:

B. Permitted uses. The following uses are permitted in the R-RC Zone:

(1). Dwellings, Single-family
(2). Dwellings, Duplex
(3). Dwellings, Multi-unit
(4). Modular Homes
(5). Agriculture
(6). Timber Harvesting
(7). Public Recreation
(8). Accessory Uses and Buildings
(9). Home Occupations, Minor
(10). Accessory Dwelling Units
(11). Cluster Residential Development. **[Added 9-24-2012 by Ord. No. 12-10]**

C. Special exception uses. The following uses are permitted as special exception uses in the R-RC Zone:

(1). School
(2). Municipal Building or Use
(3). Institution of educational, religious, philanthropic, fraternal or social nature;
(4). Open Space, Public
(5). Open Space, Private
(6). Public Recreation
(7). Selected Commercial Recreation
(8). Home Occupations, Major
(9). Public Utility facilities
(10). Cemetery
(11). Day-care Facility
(12). Temporary, intrafamily dwelling unit
(13). Dwellings, exclusive of mobile homes, in a major or minor subdivision. **[Added 9-24-2012 by Ord. No. 12-10]**

D. Standards. The following standards must be met unless as may be modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development: **[Amended 9-24-2012 by Ord. No. 12-10]**

(1). The design and performance standards of Chapters 16.8 and 16.9 must be met.

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(2). The following dimensional standards apply:

a. Minimum land area per dwelling unit: 80,000 square feet.*
*As per Chapter 16.2 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. **[Amended 9-28-2015 by Ord. No. 15-05]**

b. Minimum lot size: 80,000 square feet.

c. Minimum street frontage: 200 feet.

d. Minimum front yard: 40 feet.

e. Maximum building coverage: 6%.

f. Minimum rear and side yards: 20 feet. (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of building height.)

g. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

h. Minimum setback from water body and wetland water-dependent uses: zero feet.

i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

(3). Subdivision types and standards. Subject to net residential acreage and net residential density per § 16.2.2. **[Amended 9-28-2015 by Ord. No. 15-05]**

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

b. Subdivision development [special exception uses, § 16.3.2.6C(8)]. In a subdivision development, standards in § 16.3.2.6D(1) and (2) apply and include:

i. Minimum percentage of common open space: 15%.

16.4.2.7 Conservation (CON)

A. Purpose. The purposes of the Conservation Zone are to preserve and protect natural environmental areas, conservation lands, park and other areas, including but not limited to the Rachel Carson Wildlife Preserve, Town Forest, state and local parklands, and land with conservation easements that prohibit development in perpetuity; further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

B. Permitted uses. The following uses are permitted in the CON Zone:

(1). Open Space, Reserved

(2). Public recreation

(3). Accessory Structure

C. Special exception uses. The following uses are permitted as special exception uses in the CON Zone:

(1). Public Facility Utility

D. Standards.

DRAFT

(1). The design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). Dimensional standards:

a. Minimum land area per dwelling unit: not applicable.

b. Minimum lot size: none.

c. Minimum street frontage: none.

d. Minimum front yard: 40 feet.

e. Maximum building coverage: 6%.

f. Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing conditions a building is higher than 40 actual feet, it must have side and rear yards not less than 50% of building height.)

g. Maximum building height: 35 feet. (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)

h. Minimum setback from water body and wetland water-dependent uses: zero feet.

i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

16.4.2.8 Business – Local (B-L)

A. Purpose. The purpose of the Business – Local B-L Zone is to provide local sales, services and business space within the Town.

B. Permitted uses. The following uses are permitted in the B-L Zone:

(1). Dwellings, Single-family

(2). Dwellings, Duplex

(3). Dwellings, Multi-unit

(4). Modular Homes

(5). Open Space, Public

(6). Public Recreation

(7). School

(8). Nursery School

(9). Day-care Facility

(10). Elder-care Facility

(11). Hospital

(12). Nursing Care Facility, long-term

(13). Convalescent Care Facility

(14). Municipal Building or Use

(15). County Building or Use

(16). State Building or Use

(17). Institution of educational, religious, philanthropic, fraternal, political or social nature

(18). Accessory Uses and Buildings

(19). Home Occupations, Major and Minor

(20). Retail Use

(21). Business and Professional Offices

(22). Mass Transit Station

(23). Parking Area

(24). Restaurant

(25). Art Studio or Gallery

DRAFT

(26). Convenience Store, Neighborhood Grocery Facilities
(27). Food Store
(28). Grocery Store
(29). Personal Service
(30). Business Service
(31). Building Materials and Garden Supply
(32). Conference Center
(33). Commercial Fisheries/Maritime Activities
(34). Aquaculture
(35). Accessory Dwelling Units
(36). Specialty Food and/or Beverage Facility. [Added 6-10-2013 by Ord. No. 13-02]

C. Special exception uses. The following uses are permitted as special exception uses in the B-L Zone:

(1). Motel
(2). Hotel
(3). Inn
(4). Rooming House
(5). Funeral Home
(6). Gasoline Service Station
(7). Place of Public Assembly
(8). Theater
(9). Public utility Facilities
(10). Temporary, intrafamily dwelling unit
(11). Mechanical Service
(12). Residential Dwelling Units, as part of a mixed-use building

D. Standards.

(1). All development and the use of land in the B-L Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

a. Parking. One row of parking spaces and a related access drive may be located between the front property line and the front wall of the building extending the full width of the lot. All other parking must be located to the side and/or rear of the building. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

b. Building design standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented with the front of the building facing the street on which the building is located. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for

DRAFT

architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted. (See Design Handbook for examples.) The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air-handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)

iii. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping standards. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9 the following landscaping requirements apply to new and modified existing developments:

i. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads. The Planning Board may reduce the required depth of the landscape planter strip if a sidewalk is provided in front of the parcel and the area between the front property line and the front wall of the building will be designed and used as a pedestrian space. The landscape planter strip must include the following landscape elements:

a. Ground cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

b. Street-side trees. A minimum of one tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement. [Amended 9-26-2011 by Ord. No. 11-15]

c. Special situations.

DRAFT

1. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
2. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.
3. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

ii. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

d. Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

e. Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Fifteen percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in

DRAFT

conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

(2). The following space standards apply:

a. Minimum land area per dwelling unit when all floors are residential: 20,000 square feet if served by on-site sewage disposal; 8,000 square feet if served by the public sewerage system. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

b. Minimum land area per dwelling unit when the entire first floor is used for nonresidential uses: 20,000 square feet if served by on-site sewage disposal; 4,000 square feet if served by the public sewerage system.

c. Minimum lot size: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

d. Minimum street frontage: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

e. Minimum front yard: 15 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

f. Maximum front setback of the principal building: 60 feet.

g. Minimum rear and side yards: 10 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

h. Maximum building height: 40 feet. (NOTE: Except that space standards for single- and two-family residential uses are the same as for those of the Urban Residential District.)

i. Maximum building and outdoor stored material coverage: none, except that side, rear and front yards must be maintained

j. Minimum setback from water body and wetland water-dependent uses: zero feet.

k. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

l. Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be located within 1,000 feet of any private residence; and (c) not be located within 150 feet of any existing structure.

16.4.2.9 Business – Local 1 (B-L1)

A. Purpose. The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart growth/urban design pattern that will serve as a focal point for the provision of local sales, urban residences, services and business space. The goal of this section is to create an attractive, functional and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and residential uses. This type of development reflects a traditional New England pattern of building, where commercial uses are located on the first floor and housing on the upper floors.

B. Permitted uses. The following uses are permitted in the B-L1 Zone:

(1). Dwellings, Single-family

DRAFT

(2). Dwellings, Duplex
(3). Dwellings, Multi-unit
(4). Modular Homes
(5). Open Space, Public
(6). Public Recreation
(7). Inn
(8). School
(9). Nursery School
(10). Day-care Facility
(11). Elder-care Facility
(12). Hospital
(13). Nursing Care Facility, Long-term
(14). Convalescent Care Facility
(15). Municipal Building or Use
(16). County Building or Use
(17). State Building or Use
(18). Institution of educational, religious, philanthropic, fraternal, political or social nature.
(19). Accessory Buildings and Use
(20). Home Occupations, Major and Minor
(21). Retail Use
(22). Business and Professional Offices
(23). Mass Transit Station
(24). Parking Area
(25). Restaurant
(26). Art Studio or Gallery
(27). Convenience Store, Neighborhood Grocery Facilities
(28). Food Store
(29). Grocery Store
(30). Personal Service
(31). Business Service
(32). Building Materials and Garden Supply
(33). Conference Center
(34). Accessory Dwelling Units
(35). Specialty Food and/or Beverage Facility **[Added 6-10-2013 by Ord. No. 13-02]**

C. Special exception uses. The following uses are permitted as special exception uses in the B-L1 Zone:

(1). Motel
(2). Hotel
(3). Rooming House
(4). Funeral Home
(5). Gasoline Service Station
(6). Place of public assembly
(7). Theater
(8). Public Utility Facilities
(9). Farmer's market
(10). Temporary, intrafamily dwelling unit

DRAFT

(11). Mechanical service

D. Standards. All development and the use of land in the B-L1 Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(1). The following space standards apply

a. Minimum land area per dwelling unit:

i. When all floors are residential: 8,000 square feet

ii. When the entire first floor is in nonresidential use: 3,500 square feet.

b. Minimum parking spaces per dwelling unit: 1.5.

c. Minimum lot size: 20,000 square feet.

d. Minimum street frontage per building: 50 feet.

e. Maximum front yard: 30 feet. (NOTE: This area must be designed to promote a pedestrian public space, which includes, but is not limited to, landscaping, sidewalks and sitting areas. Parking and outdoor storage are prohibited anywhere in the front yard of the structure, except for seasonal sales items.)

f. Minimum rear and side yards: 10 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential zone or use; in which case a minimum of 15 feet or 50% of the building height, whichever is greater, is required.) **[Amended 9-26-2011 by Ord. No. 11-15]**

g. Maximum building height: 40 feet.

h. Maximum building and outdoor stored material coverage: 50%.

i. Minimum area dedicated to landscaped area: 15%.

j. Hours of operation must be noted on the final site plan and are determined by the Planning Board on a case-by-case basis. All lighting other than designated security lighting must be extinguished outside of noted hours of operation.

k. Minimum setback from water body and wetland water-dependent uses: zero feet.

l. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

m. Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be located within 1,000 feet of any private residence; and (c) not be located within 150 feet of any existing structure.

(2). Parking.

a. Parking must be on the side or back yard;

b. Shared access must be provided where feasible; and

c. New or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

d. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

(3). Building design standards. Kittery's characteristic buildings reflect its historic seacoast

DRAFT

past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. Architectural design and structure location must reinforce the human scale and pedestrian nature of the neighborhood by using orientation and building massing, exterior building materials, and roofing as set forth below. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Main entries should be clearly visible from the street and provide adequate cover from the weather. Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

a. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted. (See Design Handbook for examples.) The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)

c. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and must be screened from view from adjacent properties in residential use.

(4). Landscaping/site improvements. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:

a. Fifteen percent of site area must be landscaped;

b. Outdoor spaces must be created to reinforce commercial activities and pedestrian-friendly access. Outdoor spaces are encouraged throughout the site with special attention along the sidewalk and street. Architectural features such as decorative pavers, planters and benches are encouraged in the creation of these spaces;

c. The space between the roadway and any buildings must be attractively landscaped using trees, flowers, shrubs, fencing or stone walls to reinforce the site's unique character and building design;

d. A buffer between commercial and residential zones must be established and be landscaped with a visually pleasing mixed planting type;

e. Solid fencing, berms and/or stone walls must be used to prevent headlights

DRAFT

from shining on abutting residential property. Incorporating flowering vines and other plantings on fences and blank exterior walls is encouraged;

f. Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

g. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within developed areas of the site to be substituted for the planting of new trees; **[Amended 9-26-2011 by Ord. No. 11-15]**

h. Service and storage areas must be located to the rear of the building and be shielded using plantings and/or fencing. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments (see Design Handbook for examples of appropriate buffering);

i. No storage may be in front of buildings except seasonal sales items;

j. Lighting and landscape plans must be provided and approved as a part of final plan; and

k. Lighting along the street must be of a pedestrian scale using an architectural fixture appropriate to the neighborhood.

(5). Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

16.4.2.10 Business – Park (B-PK)

A. Purpose. The purpose of the Business – Park B-PK Zone is to encourage investment that promotes development of a high quality parklike setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

B. Permitted uses. The following uses are permitted in the B-PK Zone.

(1). The following land uses are permitted for projects that are cluster mixed-use developments:

a. Art studio or Gallery

DRAFT

b. Building Materials and Garden Supply
c. Business and Professional Offices
d. Business Services
e. Parking Area
f. Conference Center
g. Cluster Residential Development
h. Grocery Store
i. Food Store
j. Convenience Store, Neighborhood Facilities
k. Gas Service Station
l. Industry, Light
m. Mass Transit Station
n. Mechanical Services
o. Motel
p. Hotel
q. Rooming House
r. Inn
s. Personal Service
t. Place of Public Assembly
u. Theater
v. Open Space, Public
w. Public Recreation
x. Public Facility
y. Selected Commercial Recreation
z. Public Utility Facilities
aa. Repair Services
bb. Research and Development
cc. Restaurant
dd. Retail Uses
ee. Wholesale Businesses
ff. School
gg. Nursery School
hh. Museum
ii. Hospital
jj. Municipal Building or Use
kk. State Building or Use
ll. Institution of educational, religious, philanthropic, fraternal, political or social nature
mm. Shops in Pursuit of Trade
nn. Veterinary Hospital
oo. Warehousing and Storage
pp. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

(2). The following land uses are permitted for projects that are not cluster mixed-use developments:

a. Business and Professional Offices
b. Accessory Uses and Buildings

DRAFT

c. Business Services

C. Special exception uses: none

D. Standards. The following standards must be met unless modified per Chapter 16.8, Article XI, Cluster Residential and Cluster Mixed-Use Development. Multiple-parcel development is subject to Chapter 16.10, Article II, Master Site Development Plan: [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10]

(1). Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

(2). Dimensional standards:

a. Minimum land area per dwelling unit: 10,000 square feet with sewer service

b. Minimum lot size: 120,000 square feet.

c. Minimum street frontage: 150 feet.

d. Minimum front yard: 50 feet.

e. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required by the buffer provisions of this title, and except where the side and/or rear yards of the proposed nonresidential use abut a residential district or use; in which case a minimum of 40 feet is required.)

f. Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.

g. Maximum building height: 40 feet.

h. Maximum building and outdoor stored material coverage: 50%.

(3). Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that: **[Amended 9-28-2015 by Ord. No. 15-05]**

a. Minimum principal building separation as required by the Fire Chief, but not less than 10 feet.

(4). Other standards.

a. Parking.

i. All new or revised parking must be visually screened by landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties. (See the Design Handbook for appropriate examples.)

ii. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

b. Building design standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. The front elevation must contain one or more of the following elements: windows or display cases. (See

DRAFT

Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See the Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. The Board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel and hipped roofs. Shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the Planning Board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See the Design Handbook for examples of appropriate treatments.)

iii. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping standards. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments:

i. Landscape planter strip. Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of 40 feet in depth of vegetated landscape buffer must be provided adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:

a. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

b. Street-side trees.

c. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.

d. Development not based on a master development plan must, as a minimum, provide one street tree for each 25 feet of street frontage.

e. The trees may be spaced along the frontage or grouped or

DRAFT

clustered to enhance the visual quality of the site. (See the Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

f. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 15 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation. (See the Design Handbook for examples of appropriate treatments.)

g. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 15 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation. (See the Design Handbook for examples of appropriate treatments.)

ii. Outdoor service and storage areas. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See the Design Handbook for examples of appropriate buffering.)

d. Traffic and circulation standards. Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally and provide safe and sufficient connectivity to the surrounding neighborhoods. (See the Design Handbook for appropriate examples.)

e. Open space standards. Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams and setbacks. Twenty-five percent of each parcel or individual lot, if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources. Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

16.4.2.11 Commercial 1, Route 1 Commercial Zone (C-1)

A. Purpose.

(1). The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail sales, services and business space within the Town in locations capable of

DRAFT

conveniently serving community-wide and/or regional trade areas and oriented primarily to automobile access. To reflect the differing character of various parts of the commercial areas, it is divided into three zones that are shown on the Zoning Map:

C-1 Route 1 Commercial Zone

C-2 Route 236 Commercial Zone

C-3 Bypass/Old Post Road Commercial Zone

(2). Where the standards or requirements for the zones vary, the provisions for the zone in which the parcel is located apply.

B. Permitted uses. The following uses are permitted in the C-1 Zone:

(1). Accessory Dwelling Unit
(2). Accessory Uses and Buildings
(3). Home Occupations, Minor and Major
(4). Art Studio or Gallery
(5). Building Materials and Garden Supply
(6). Business and Professional Offices
(7). Business Service
(8). Parking Area
(9). Conference Center
(10). Day-care Facility
(11). Grocery Store
(12). Food Store
(13). Convenience Store, Neighborhood Grocery Facilities
(14). Mass Transit Station
(15). Motel
(16). Hotel
(17). Rooming House
(18). Inn
(19). Personal Service
(20). Open Space, Public
(21). Public Recreation
(22). Public Facility
(23). Selected Commercial Recreation
(24). School Nursery School
(25). Hospital
(26). Nursing Care Facility, Long-term
(27). Convalescent Care Facility
(28). Municipal Building or Use
(29). State Building or Use
(30). Institution of educational, religious, philanthropic, fraternal, political or social nature
(31). Service Establishments
(32). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
(33). Public Utility Facilities
(34). Repair Services
(35). Restaurant
(36). Retail Uses

DRAFT

(37). Wholesale Businesses

(38). Veterinary Hospital

B. Special exception uses. The following uses are permitted as special exception uses in the C-1 Zone:

(1). Aquaculture.

(2). Buildings and structures over 40 feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than 40 actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties and which may not be less than current standards or 50% of actual height, whichever is greater;

(3). Funeral Home

(4). Gasoline Service Station

(5). Industry, Light

(6). Mechanical Services

(7). Mini Storage

(8). New Motor Vehicle Sales

(9). Place of Assembly

(10). Theater

(11). Repair Garages

(12). Research and Development

(13). Temporary, intrafamily dwelling unit

(14). Transportation Terminal

(15). Used Car Lot

(16). Warehousing and Storage

C. Standards.

(1). C Zone standards. All development and the use of land in the C Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). The following space standards apply in the C-1 Zone:

f. Lot size: 40,000 square feet.

g. Minimum street frontage: 150 feet.

h. Minimum front yard: 50 feet.

i. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required by the buffer provisions of this title, and where the side and/or rear yards of the proposed nonresidential use abut a residential zone or use; in which case a minimum of 40 feet is required.)

j. Maximum building height: 40 feet.

k. Maximum building and outdoor stored material coverage: 40%.

l. Minimum setback from water body and wetland water-dependent uses: zero feet.

m. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

n. Gasoline Sales i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure.

(3). Parking.

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a. All new or revised parking must be visually screened by landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.) **[Amended 9-26-2011 by Ord. No. 11-15**

b. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

(4). Building design standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

a. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. **[Amended 9-26-2011 by Ord. No. 11-15]**

b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)

c. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

(5). Landscaping site improvements. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments: **[Amended 9-26-2011 by Ord. No. 11-15]**

a. Landscape planter strip. A vegetated landscape planter strip must be

DRAFT

provided a minimum of 30 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

i. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

ii. Street-side trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

iii. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation. (See Design Handbook for examples of appropriate treatments.)

iv. Special situations.

a. Expansions of less than 2,000 square feet to existing uses are exempt from the landscaping standard of this subsection.

b. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip together with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so the open space standards are not exceeded, but in no case to less than 20 feet for this reason.

c. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the

DRAFT

preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

d. Residences. Residential additions to existing single- and two-family dwellings and proposed single- and duplex-family dwellings are exempt from the landscaping standards of this subsection.

v. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

(6). Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

(7). Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty-five percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 15% of each lot that is less than 100,000 square feet in size.

a. Minimum land area per unit for elder-care facilities that are connected to the public sewerage system:

i. Dwelling unit with two or more bedrooms: 3,000 square feet.

ii. Dwelling unit with less than two bedrooms: 2,000 square feet.

iii. Residential care unit: 1,500 square feet.

iv. Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 1,200 square feet.

16.4.2.12 Commercial 2, Route 236 Commercial Zone (C-2)

A. Purpose.

(1). The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail sales, services and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to automobile access. To reflect the differing character of various parts of the commercial areas, it is divided into three zones that are shown on the Zoning Map:

C-1	Route 1 Commercial Zone
C-2	Route 236 Commercial Zone
C-3	Bypass/Old Post Road Commercial Zone

(2). Where the standards or requirements for the zones vary, the provisions for the zone

DRAFT

in which the parcel is located apply.

B. Permitted uses. The following uses are permitted in the C-2 Zone:

(1). Accessory Dwelling Unit
(2). Accessory Uses and Buildings
(3). Home Occupations, Minor and Major
(4). Aquaculture
(5). Art studio or Gallery
(6). Building Materials and Garden Supply
(7). Business and Professional Offices
(8). Business Service
(9). Boatyard
(10). Commercial Fisheries/Maritime Activities
(11). Parking Area
(12). Conference Center
(13). Day-care Facility
(14). Grocery Store
(15). Food Store
(16). Convenience Store, Neighborhood Grocery Facilities
(17). Mass Transit Station
(18). Mechanical Services
(19). Motel
(20). Hotel
(21). Rooming House
(22). Inn
(23). New Motor Vehicle Sales
(24). Personal Service
(25). Open Space, Public
(26). Public Recreation
(27). Public Facility
(28). Selected Commercial Recreation
(29). Public Utility Facilities
(30). Repair Services
(31). Restaurant
(32). Retail Uses
(33). Wholesale Businesses
(34). School
(35). Nursery School
(36). Hospital
(37). Nursing Care-Facility, Long-term
(38). Convalescent Care Facility
(39). Municipal Building or Use
(40). State Building or Use
(41). Institution of educational, religious, philanthropic, fraternal, political or social nature
(42). Service Establishments
(43). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

DRAFT

(44). Veterinary Hospital

C. The following land uses are permitted as special exception uses in the C-2 Zone:

(1). Adult Entertainment Establishment

(2). Buildings and structures over 40 feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than 40 actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards or 50% of actual height, whichever is greater;

(3). Commercial Greenhouses

(4). Construction Services

(5). Funeral Home

(6). Gasoline Service Station

(7). Industry, Light/Heavy

(8). Mini storage

(9). Repair Garage

(10). Place of Assembly

(11). Theater

(12). Research and Development

(13). Shops in Pursuit of Trade

(14). Transportation Terminal

(15). Temporary, intrafamily dwelling unit;

(16). Used Car Lot

(17). Warehousing and Storage

D. Standards.

(1). C Zone standards. All development and the use of land in the C Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). The following space standards apply in the C-2 Zones:

a. Lot size: 40,000 square feet.

b. Minimum street frontage: 150 feet.

c. Minimum front yard: 50 feet.

d. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required by the buffer provisions of this title, and where the side and/or rear yards of the proposed nonresidential use abut a residential zone or use; in which case a minimum of 40 feet is required.)

e. Maximum building height: 40 feet.

f. Maximum building and outdoor stored material coverage: 40%.

g. Minimum setback from water body and wetland water-dependent uses: zero feet.

h. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

i. Gasoline Sales: i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure.

j. Adult Entertainment Establishment not located within 1,000 feet of an existing private residence, school or place of worship.

k. Repair Garages not located within 150 feet of a private dwelling or existing

DRAFT

structure.

(3). Parking.

a. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

b. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

(4). Building design standards.

a. New buildings should meet the general design principles set forth in the Design Handbook. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements:

i. A "front door," although other provisions for access to the building may be provided;

ii. Windows; or

iii. Display cases.

b. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. (See Design Handbook for examples of acceptable designs.)

c. Landscaping site improvements. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments: **[Amended 9-26-2011 by Ord. No. 11-15]**

i. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 20 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

a. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

b. Street-side trees. A minimum of one street tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

c. Special situations.

1. Expansions of less than 2,000 square feet to existing

DRAFT

uses are exempt from the landscaping standard of this subsection.

2. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.
3. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.
4. Residences. Residential additions to existing single- and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

ii. Outdoor service and storage areas. No areas for the storage of raw materials, equipment or finished products other than small areas for the display of samples of products available for sale or rent may be located between the front property line and the front facade of the building. Display areas may not be located within the required landscape planter strip. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

(5). Traffic and circulation standards. Vehicular and pedestrian circulation must meet the general provisions of the Design Handbook.

16.4.2.13 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)

A. Purpose.

(1). The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail sales, services and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to automobile access. To reflect the differing character of various parts of the commercial areas, it is divided into three zones that are shown on the Zoning Map:

DRAFT

C-1	Route 1 Commercial Zone
C-2	Route 236 Commercial Zone
C-3	Bypass/Old Post Road Commercial Zone

(2). Where the standards or requirements for the zones vary, the provisions for the zone in which the parcel is located apply.

B. The following uses are permitted in the C-3 Zone:

(1). Accessory Dwelling Unit
(2). Accessory Uses and Buildings
(3). Home Occupations, Major and Minor
(4). Art Studio or Gallery
(5). Aquaculture
(6). Boatyard
(7). Building Materials and Garden Supply
(8). Business and Professional Offices
(9). Business Service
(10). Commercial Fisheries/Maritime Activities
(11). Parking Area
(12). Conference Center
(13). Day-care Facility
(14). Grocery Store
(15). Food Store
(16). Convenience Store, Neighborhood Grocery Facilities
(17). Mass Transit Station
(18). Mechanical Services
(19). Motel
(20). Hotel
(21). Rooming House
(22). Inn
(23). New Motor Vehicle Sales
(24). Personal Service
(25). Open Space, Public
(26). Public Recreation
(27). Public Facility
(28). Selected Commercial Recreation
(29). Public Utility Facilities
(30). Repair Services
(31). Restaurant
(32). Retail Uses
(33). Wholesale Businesses
(34). School
(35). Hospital
(36). Elder-Care Facility
(37). Nursing-Care Facility, Long-term
(38). Convalescent Care Facility
(39). Municipal Building or Use

DRAFT

(40). State Building or Use

(41). Institution of educational, religious, philanthropic, fraternal, political or social nature

(42). Service Establishments

(43). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

(44). Veterinary Hospital

E. The following uses are permitted by special exception uses in the C-3 Zone:

(1). Adult Entertainment Establishment

(2). Buildings and structures over 40 feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than 40 actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards or 50% of actual height, whichever is greater;

(3). Commercial Greenhouses

(4). Construction Services

(5). Funeral Home

(6). Gasoline Service Station

(7). Industry, Light/Heavy

(8). Mini Storage

(9). Place of Assembly

(10). Theater

(11). Repair Garages

(12). Research and development

(13). Shops in Pursuit of Trade

(14). Temporary, intrafamily dwelling unit

(15). Transportation Terminal, excluding truck stops

(16). Used Car Lot

(17). Warehousing and Storage

DRAFT

F. Standards.

(1). C Zone standards. All development and the use of land in the C Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). The following space standards apply in the C-3 Zone:

a. Lot size: 40,000 square feet.

b. Minimum street frontage: 150 feet.

c. Minimum front yard: 50 feet.

d. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required by the buffer provisions of this title, and where the side and/or rear yards of the proposed nonresidential use abut a residential zone or use; in which case a minimum of 40 feet is required.)

e. Maximum building height: 40 feet.

f. Maximum building and outdoor stored material coverage: 40%.

g. Minimum setback from water body and wetland water-dependent uses: zero feet.

h. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

i. Adult entertainment establishment not located within 1,000 feet of an existing private residence, school or place of worship.

j. Gasoline Sales: i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure.

k. Repair Garages not located within 150 feet of a private dwelling or existing structure.

(3). Parking.

a. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)

b. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

(4). Building design. Kittery's characteristic buildings reflect its historical seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects: **[Amended 9-26-2011 by Ord. No. 11-15]**

a. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)

c. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view

DRAFT

from adjacent properties in residential use.

(5). Landscaping site improvements. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments: **[Amended 9-26-2011 by Ord. No. 11-15]**

a. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

i. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.

ii. Street-side trees. A minimum of one tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Town Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

iii. Special situations.

a. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.

b. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

c. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

b. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

DRAFT

(6). Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

(7). Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

16.4.2.14 Industrial (IND)

A. Purpose. The purpose of the Industrial IND Zone is to provide areas within the Town for manufacturing, processing, treatment and research, to which end all the performance standards set forth in this title apply.

B. Permitted uses. The following uses are permitted in the IND Zone:

(1). Accessory Uses and Buildings

(2). Home Occupations, Major and Minor

(3). Industry, Light/Heavy

(4). Research and Development

C. Special exception uses. The following uses are permitted as special exception uses in the IND Zone:

(1). Municipal Building or Use

(2). State Building or Use

(3). County Building or Use

(4). Public Utility Facilities

(5). Temporary, intrafamily dwelling unit

D. Standards.

(1). The design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). The following space standards apply:

a. Minimum area of lot: none.

b. Minimum street frontage: none.

c. Minimum front yard: none.

d. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential zone or use; in which case a minimum of 50 feet or 50% of the building or outdoor stored material height, whichever is greater, is required.)

e. Maximum building height: none.

f. Maximum building coverage: none.

g. Minimum setback from water body and wetland water-dependent uses: zero

DRAFT

feet.

h. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

NOTE: It is recognized that federal ownership of this zone at the time of enactment of the ordinance codified in this title precludes enforcement of any local regulations.

16.4.2.15 Mixed-Use (MU)

A. Purpose.

(1). To provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize traffic congestion. A mix of uses on a site is desired and, in some cases, required; a continuation of strip development is not encouraged in this zone. The Mixed-Use Zone is intended to accommodate growth.

(2). The purpose of large lot sizes, open space standards, and frontage requirements is to limit the number of access points along U.S. Route 1, to encourage the development of service roads which may serve several developments, and to create development that will retain the predominant rural character of the zone. Other objectives are to encourage an orderly and safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced by landscaping, open space, and restrictions on the locations of parking. These development goals are supported by the principles and objectives identified in the Town's Design Handbook, Kittery Maine.

B. Permitted uses.

(1). Accessory Buildings and Uses
(2). Home Occupations, Major and Minor
(3). Accessory Dwelling Units
(4). Agriculture
(5). Art Studio or Gallery
(6). Boatyard
(7). Building Materials and Garden Supplies
(8). Business and Professional Offices
(9). Parking Area
(10). Convalescent Care Facility
(11). Nursing Care Facility, Long-term
(12). Day-care Facility
(13). Dwellings, Single-family (on lots of record as of April 1, 2004)Dwellings, units on upper floors of mixed-use building that is served by public sewerage
(14). Elder care Facility
(15). Funeral Home
(16). Grocery Store
(17). Food Store
(18). Convenience Store, Neighborhood Grocery Facilities
(19). Hospital
(20). Industry, light (less than or equal to 20,000 square feet in gross floor area)
(21). Inn
(22). Institution of educational, religious, philanthropic, fraternal, political, or social nature, which is not used for residential or overnight occupancy
(23). Mass Transit Station

DRAFT

(24). Municipal Building or Use
(25). State Building or Use
(26). Personal Services
(27). Open Space, Public
(28). Public Recreation
(29). Restaurant
(30). Research and Development
(31). Repair Service
(32). Retail use, a single use not to exceed 50,000 square feet in gross floor area
(33). Selected Commercial Recreation
(34). Specialty Food and/or Beverage Facility
(35). Theater
(36). Timber Harvesting
(37). Veterinary Hospital

C. Special exception uses.

(1). Campground
(2). Trailer Park
(3). Construction Services
(4). Commercial Kennel
(5). Commercial Greenhouses
(6). Drive-in Theater
(7). Gas Service Station
(8). Elderly Housing
(9). Industry, Light
(10). Mechanical Service
(11). Motel
(12). Hotel
(13). New Motor Vehicle Sales
(14). Public Utility Facilities
(15). Repair Garage
(16). Retail Use
(17). Shop in Pursuit of Trades
(18). Transportation Terminal
(19). Warehousing and Storage
(20). Wholesale Business

D. Standards.

(1). All development and the use of land in the MU Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(2). Minimum dimensional standards. The following apply:

a. Minimum lot size:

i. Lots with frontage on Route 1: 200,000 square feet.

ii. Lots without frontage on Route 1: 80,000 square feet.

b. Minimum street frontage on road with access along U.S. Route 1, Haley Road, Lewis Road, or Cutts Road: 250 feet.

DRAFT

i. Other streets or approved ways: 150 feet.

c. Minimum front yard: 30 feet.

d. Minimum rear and side yards: 30 feet.

e. Maximum building height: 40 feet.

f. Maximum height above grade of building-mounted signs: 40 feet.

g. Minimum setback from water body and wetland water dependent uses: zero feet.

h. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.

i. Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:

i. Dwelling unit with two or more bedrooms: 5,000 square feet.

ii. Dwelling unit with less than two bedrooms: 4,000 square feet.

iii. Residential care unit: 2,500 square feet.

j. Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 2,000 square feet.

k. Buffer to I-95 right-of-way: 40 feet.

l. Buffer to neighboring lot with an existing residence within 100 feet of the lot line: 40 feet.

m. Vegetated buffer to be maintained between the MU and R-RL Zones: 40 feet.

NOTE 1: For single-family dwellings, one dwelling unit is allowed for each 200,000 square feet of land area. A lot of record having a land area of more than 200,000 square feet that was improved with a single-family dwelling as of April 1, 2004, may be divided into two lots with a single-family dwelling on each lot provided that each of the lots contains at least 40,000 square feet of land area and meets the other dimensional standards of the zone. Sections 16.3.2.1D(1) and (2) as set forth in the Residential - Rural Zone apply and no further subdivision is allowed.

NOTE 2: For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each 10,000 square feet of buildable land area. Within the Resource Protection and Shoreland Overlay Zones, one dwelling unit is allowed for each 40,000 square feet of land area within these zones. If the parking for the residential units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to 7,500 square feet, except in the Resource Protection and Shoreland Overlay Zones where the area per dwelling unit remains 40,000 square feet.

NOTE 3: For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each 15,000 square feet of buildable land area. Within the Resource Protection and Shoreland Overlay Zones, one dwelling unit is allowed for each 40,000 square feet of land within these zones. If the parking for the elderly units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to 10,000 square feet, except in the Resource Protection and Shoreland Overlay Zones where the area per dwelling unit remains 40,000 square feet.

(3). Retail use limitation. Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more than 30% of the developable area of any lot or portion of a lot within the Mixed-Use Zone.

DRAFT

(4). Mixed-use requirement. The Mixed-Use Zone is intended for the creation of an area in the Town that has a mix of uses and in which no single type of use predominates. To this end, larger scale projects must incorporate a mix of principal uses into the development. Any new development that creates more than 20,000 square feet of gross floor area must include at least two principal uses as set forth in the list of permitted uses and special exceptions. To fulfill this requirement, the smaller use or combination of smaller uses must contain at least 10% of the gross floor area. The combination of retail uses that are permitted uses and one larger retail use allowed as a special exception does not fulfill this requirement. This provision does not apply to the development of a single lot of record as of April 1, 2004, that has a lot area of less than 200,000 square feet.

(5). Location and screening of parking areas. All new parking areas must be located at the side of, and/or to the rear of, principal buildings. Where unique circumstances exist and it is demonstrated to the Planning Board that prohibition of parking in front of the principal building is not practicable, with the Board's approval, 10 or fewer parking spaces may be located closer to the front lot line than a principal building. All new or altered parking must be visually screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive landscaping, earthen berms, and/or fencing (see Design Handbook for examples of acceptable screening).

(6). Building design standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings should be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a front door although other provisions for access to the building may be provided, (2) windows, or (3) display cases (see Design Handbook for examples of acceptable materials and designs). Though strict imitation is not required, design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

a. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character (see Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design.

i. Predominant exterior building materials. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet metal, standard concrete block, tilt-up concrete panels, plywood or particle board are prohibited as the primary materials.

ii. Blank walls. A wall may not extend for a length of more than 50 linear feet without an architectural feature such as a dormer, pilaster, cornice, corner, window, porch, or visually compatible door to break up the large mass of a featureless wall (see Design Handbook for examples of the appropriate treatment of walls). As an exception, walls with a clapboard facade may extend for a length of up to 100 feet without such an architectural feature.

iii. Light industrial and boatyard uses. Such uses must comply with the above standards only along the front face and extending back 100 feet along the side walls.

DRAFT

b. Roofs. Roofs must meet the following standards:

i. Form. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as primary roof forms.

ii. Color. Roof colors must be muted (see Design Handbook for examples).

iii. Rooftop mechanical and electrical equipment. Rooftops must be free of clutter. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see Design Handbook for examples of appropriate treatments). Interior-mounted equipment is encouraged. Whenever possible, utility equipment areas must be placed in an obscure location and screened from view.

iv. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and be screened from view from public streets.

(7). Landscaping standards. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:

a. Landscape planter strip. A vegetated landscape planter strip 30 feet in depth (as measured from the edge of the property line) must be provided along the length of all developed portions of a parcel that are adjacent to a street right-of-way. The planter strip must include the following landscape elements:

i. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

ii. Streetside trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least 12 feet high at the time of planting. The species should be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

iii. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of approved materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see Design Handbook for examples of appropriate treatments).

iv. Special situations.

a. Expansions of less than 500 square feet to existing uses are exempt from the landscaping standard of this subsection.

b. Depth of landscape planter strip. In instances where the required average depth of the landscape planter strip is

DRAFT

legally utilized, in accordance with previous permits or approval, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so that the open space standards are not exceeded, but in no case to less than 20 feet for this reason.

c. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (see list of recommended street trees in Design Handbook) is required for every 500 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

d. Residences. Residential additions to existing single- and two-family dwellings and proposed single- and duplex-family dwellings are exempt from the landscaping standards of this subsection.

DRAFT

b. Buffer area. Where buffering is required, it must provide a year-round visual screen to minimize adverse impacts and screen new development (see Design Guidelines for examples of appropriate buffers for various situations), and may consist of fencing, evergreens, retention of existing vegetation, berms, rocks, boulders, mounds or combinations thereof. Within three growing seasons, the buffer must provide a year-round screen at least eight feet in height or such lower height as determined by the Planning Board to be appropriate for the situation. Buffer areas must be maintained and kept free of all outdoor storage, debris, and rubbish. The width of the buffer area may be reduced by the Planning Board if the function of the buffer is still fulfilled.

c. Rural landscape features. Rural landscape features such as stonewalls, berms, and other agricultural structures, and tree lines or fields must be retained to the maximum extent practicable.

d. Lighting. Outdoor lighting must provide the minimum illumination needed for the safe use of the site while enhancing the nighttime visual character of the site. Lighting must conform to the standards for outdoor lighting in Chapter 16.8.

e. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered

by fencing, landscaping, and/or other treatments (see Design Handbook for examples of appropriate buffering).

(8). Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement.

(9). Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space."

a. An objective of the open space standard is to encourage the integration of open space throughout the entire development and with the open space on adjoining properties in order to alter the pattern of commercial activity along Route 1. To this end, a minimum of 25% of the required open space must be located in the front 50% of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest to the public street used to enter the lot. The Planning Board may modify this requirement when it is demonstrated to the Board's satisfaction that the objective is met to the greatest practicable extent.

b. The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

c. Special situations.

i. Cases where integrating open space would require exceeding the open space standards. In cases where the topography, wetlands, and existing development on the lot dictates that more than 75% of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.

ii. Small lots. The required amount of designated open space is reduced to 20% of each lot that is less than 100,000 square feet in size.

(10). Conditions for approving special exception uses in the Mixed-Use Zone.

a. All special exception uses in the Mixed-Use Zone must be visually harmonious with the neighborhood and natural landscape by the use of adequate screening and/or architectural design as follows:

i. Screening. Must be screened and buffered through landscaping, fencing, planted berms, existing vegetation, and separations of spaces to shield neighbors from any adverse external effects of the facility and to integrate the facility into the landscape. Plantings must be of sufficient maturity to achieve the desired screening effect within three years.

ii. Architectural compatibility. Must be in architectural harmony with the area in which it is located to the maximum extent practicable through the appropriate use of facade materials, roof style, scale, bulk, and architectural style and details.

DRAFT

iii. Location. Facilities located above ground must be sited so as to eliminate adverse impacts associated with the facility to the maximum extent practicable while still fulfilling the basic purpose of the facility.

b. A single retail use greater than 50,000 square feet in gross floor area and less than 150,000 square feet in gross floor area:

i. Timing. No more than one retail use with a gross floor area greater than 50,000 square feet and less than 150,000 square feet may be approved in any three-year period.

ii. Size. A single retail use with a gross floor area greater than 150,000 square feet is not permitted.

c. Gasoline service stations.

i. Visual screening. A year-round buffer area must be provided between the gasoline service station and neighboring uses in accordance with the landscaping standards of the mixed-use zone regulations.

ii. Separation distance. A gasoline service station may not be located within 2,000 feet of another service station.

iii. Minimum distance, pump to existing structures. A fuel pump may not be located closer than 150 feet to an existing occupied structure located off the site of the gasoline service station.

d. Drive-in theater.

i. To protect the tranquility and quality of life of existing residential uses in the vicinity of the proposed drive-in theater, the hours of operation must be limited to the degree necessary and/or adequate visual and sound buffers must be established.

e. Campground/trailer park.

i. The standards in Article XII of Chapter 16.8 must be satisfied.

ii. Occupation of any site by single user for a period exceeding 96 hours is prohibited.

iii. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

f. Motel or hotel.

i. Multiple-story structures are encouraged.

ii. Wherever practicable, building orientation should not be parallel to U.S. Route 1, but must take maximum advantage of the depth of the mixed-use zone.

iii. More than three separate motels and/or hotels may not be permitted in the mixed-use zone.

g. Public utility facilities including substation, pumping stations, and sewage treatment facilities.

i. Public health and safety. Must not endanger the public health or safety.

ii. Protect property values. Must not unreasonably reduce the value of abutting property without just compensation.

iii. Prevent nuisances. Must prevent the emission of nuisances, such as but not limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and electrical interference, beyond the boundaries of the site to the maximum extent practicable.

h. Housing for the elderly.

i. Location suitability. The location of the site must allow it to be developed so that the residents of the project will be able to function

DRAFT

as part of the community and have pedestrian access to services and facilities within the area.

ii. Mixed use. If an elderly housing component is proposed as part of the project, it must be an essential element of the mixed-use project and be designed to be an integrated part of the overall development.

i. Commercial greenhouses.

i. The greenhouses and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties.

ii. If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the internal lighting may not be visible from adjacent properties including public streets.

iii. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU Zone during the period between 9:00 p.m. and 6:00 a.m.

iv. The greenhouses and related storage and service areas may not be located within 200 feet of any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

j. Industry, light (greater than 20,000 square feet in gross floor area), transportation terminal, warehousing/storage, or wholesale business.

i. The building and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties by other uses allowed in the zone and/or by a landscaped buffer strip.

ii. If the area between this use and Route 1 is not developed for another permitted use or special exception, it must be maintained as a naturally vegetated buffer in addition to the provision of a landscape planter strip.

iii. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU Zone during the period between 9:00 p.m. and 6:00 a.m.

iv. The use and related storage and service areas may not be located within 200 feet for any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

DRAFT

16.4.2.16 Mixed-Use – Badger Island (MU-BI)

A. Purpose.

(1). The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide opportunities for a wide variety of uses, including marine-related activities, offices, restaurants, shops, residences and services, to take advantage of a unique island setting located within walking distance to both downtown Portsmouth and downtown Kittery, in which water and sewer services are available to support development.

(2). This zone is further intended to develop standards appropriate for existing small lot sizes and street frontages to encourage investment in buildings that will contribute to the revitalization of the greater Kittery Foreside area while balancing business and residential interests to keep property values up and maintain an urban residential quality of life in the zone.

B. Permitted uses. The following uses are permitted in the MU-BI Zone:

(1). Accessory Buildings and Uses

(2). Home Occupations, Major and Minor

(3). Accessory Dwelling Units
(4). Dwellings, Multi-unit
(5). Dwellings, Single-family
(6). Dwellings, Modular Homes
(7). Aquaculture
(8). Art Studio or Gallery
(9). Boatyard
(10). Business and Professional Offices
(11). Commercial Fisheries/Maritime Activities
(12). Conference Center
(13). Day-care Facility
(14). Grocery Store
(15). Food Store
(16). Inn
(17). Marina
(18). Personal Service
(19). Business Service
(20). Mechanical Service
(21). Open Space, Public
(22). Public Recreation
(23). Research and Development
(24). Restaurant with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle;
(25). Retail Use, but excluding those with any outdoor sales and/or storage
(26). Service Establishments, but excluding those with any outdoor sales and/or storage;
(27). School
(28). Municipal Building or Use
(29). State Building or Use
(30). Institution of educational, religious, philanthropic, fraternal, political or social nature;
(31). Mass Transit Station
(32). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

C. Special exception uses. The following uses are permitted as special exception uses in the MU-BI Zone:

(1). Selected Commercial Recreation
(2). Place of Assembly
(3). Theater
(4). Public Utility Facilities

D. Standards.

(1). The following space standards apply.

a. Minimum land area per dwelling unit: 3,000 square feet.

i. For each of the first two dwelling units and thereafter: 6,000 square feet.

b. Minimum lot size: 6,000 square feet.
c. Minimum street frontage: 50 feet.
d. Minimum front yard: five feet.

DRAFT

e. Minimum rear and side yards: 10 feet.

f. Maximum building height: 40 feet.

g. Minimum setback from:

i. Water body and wetland water-dependent uses: zero feet.

ii. All other uses (including buildings and parking): 75 feet unless modified, according to the terms of Subsection E of this section.

h. Minimum open space on the site: 40%. (NOTE: The Planning Board may reduce the required open space to 30% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.)

(2). The design and performance standards of Chapters 16.8 and 16.9 must be met, except where specifically altered in this subsection.

E. Appropriate waterfront activity incentives. To encourage objectives of the Comprehensive Plan to: 1) provide public access to the waterfront; 2) retain and expand commercial water-dependent uses; and 3) take extraordinary steps to preserve the environmental quality of the shoreline and tidal waters, the required setback from water bodies and wetlands may be reduced to 25 feet where the Planning Board finds a development plan significantly contributes to accomplishment of the above objectives by satisfactorily achieving one or more of the following:

(1). Public access. Grants an easement to the Town, or other acceptable party, providing public access to the waterfront at no charge to the general public via a developed accessible pedestrian route with appropriate signage or includes an outdoor deck or patio for customer seating at a restaurant open to the general public; or

(2). Retain/expand commercial water-dependent uses. Provides for inclusion of commercial water-dependent use(s) on the property for the duration of the portion of the project that encroaches closer than the normal minimum setback from water bodies and wetlands. Provision of fewer than six boat slips for leisure/recreational boating do not constitute a commercial water-dependent use for the purposes of this section; or

(3). Preserve the environmental quality of coastal resources. Protect existing wildlife habitat, conserve shore cover and ensure the quality of stormwater runoff by satisfying all of the following standards:

a. Retain and protect existing significant wildlife habitat that provides food, cover and/or nesting for migratory song birds and wading birds;

b. In order to conserve shore cover, contiguous areas of shrubberies of varying height, such as dwarf species of barberry, serviceberry, holly, crabapple, dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as erosion-resistant ground cover plantings must be retained and planted, and existing trees retained, wherever practicable in the setback;

c. Implementation of a stormwater management plan endorsed by the York County Soil and Water Conservation District (SCS), or the Town's engineering peer review consultant, that treats stormwater with appropriate BMPs and removes pollutants in accordance with the most-current edition of the Maine Department of Environmental Protection BMP Manual, Stormwater Management for Maine. Pollutants sought to be removed include suspended solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the first flush of runoff may include detention, infiltration, filtering and trapping of pollutants. **[Amended 9-26-2011 by Ord. No. 11-15]**

F. Special parking standards.

(1). Revised off-street parking standards. Off-street parking must be provided in accordance with § 16.8.9.4 unless modified below for the following uses:

DRAFT

a. Dwellings: 1 1/2 parking space for each dwelling unit;

b. Retail stores: one parking space for each 400 square feet of gross floor area;

c. Drive-in restaurants, snack bars and fast-food outlets, but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle: one parking space for every three seats, but in no case less than four spaces;

d. Conference centers: one parking space for every 60 square feet in the largest assembly or meeting room.

(2). Joint-use parking. Required off-street parking may be satisfied by the joint use of parking spaces by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekend hours of operation or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board must consider the following factors:

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

b. Analysis is based on a most frequent basis not a "worst case" scenario;

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

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

e. Such joint parking areas may not be located in residential zoning districts.

(3). Off-site parking. Required off-street parking for employee use may be satisfied at off-site locations located within 1,000 feet measured along lines of public access from the lot to be served, provided such parking area is on other property owned by the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

(4). Employee parking. Required off-street parking for employee use may be satisfied at off-site locations greater than 1,000 feet from the lot served upon a finding by the Planning Board that such parking is practicable and will reasonably prevent overflow parking from occurring on Badgers Island in undesignated locations. In making this determination under development review, the Planning Board must consider the following factors:

a. Such parking must be located within a reasonable distance to the users.

b. Such parking area must be on other property of the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

c. Safe and convenient means of transporting users to and from the off-site parking must be demonstrated by the applicant.

d. Such off-site parking area must not be located in residential zones of the Town. Off-site parking for use by employees may deviate from the dimensional standards contained in Chapter 16.8, Figure 2, Parking Space Design, if the applicant can demonstrate that the proposal practicably accommodates the number of parking spaces proposed.

(5). Parking demand management (PDM) strategies.

a. Parking demand strategies are measures geared toward affecting the demand side of the parking equation rather than the supply side. They attempt to change people's behavior away from traveling to work as a single occupant in an automobile to be parked near the work site. To be

DRAFT

successful, they must rely on incentives or disincentives to make these shifts in behavior attractive to the traveler.

b. A portion of required off-street parking may be satisfied by an owner incorporating PDM strategies to effectively reduce demand for parking stalls as determined by the Planning Board. In making this determination the Planning Board, under development plan review, must consider the following factors:

i. The written commitment of the employer to maintain and enforce parking policies to reduce demand for parking stalls;

ii. The likelihood that specific incentives and policies adopted by the applicant will reduce parking demand on a regular basis throughout the year;

iii. Written commitments by employees to participate in PDM strategies; and

iv. The results of any studies demonstrating the effectiveness of strategies adopted by the applicant to reduce parking demand.

c. PDM strategies include, but are not limited to, the following:

i. Increase the number of persons per parked vehicle. Potential incentives:

a. Preferential parking locations for car pools and van pools;

b. Guaranteed ride home programs/taxi subsidies;

c. Employer provision of vans for van pools; and

d. Financial incentives to participants in car pools and van pools.

ii. Increase the number of persons using an alternative mode of travel to the automobile, such as walking, bicycling, motorcycle, moped, bus and shuttle service. Potential incentives:

a. Preferential parking locations for alternative modes of travel;

b. Provision of changing rooms, lockers and showers;

c. Early work release for employees using alternative modes of travel;

d. Financial subsidies toward the purchase of alternative modes of travel to be used for commuting;

e. Guaranteed ride home programs in inclement weather;

f. Preferential work station locations; and

g. Free use of a business vehicle for errands, lunch and off-site appointments.

iii. Influencing the time of, or need to, travel to work. Potential incentives:

h. Reward employees who telecommute from their home or other remote location;

i. Offer an optional four-day, forty-hour workweek as an alternative to a five-day workweek;

j. Allow nonoverlapping early and late work shifts; and

k. Flextime.

16.4.2.17 Mixed-Use – Kittery Foreside (MU-KF)

A. Purpose. The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide business, service and community functions within the Mixed-Use – Kittery Foreside Zone and to provide a mix of housing opportunities in the historic urbanized center of the community and to allow for use patterns which recognize the densely built-up character of

DRAFT

the zone and the limitations for providing off-street parking. Design standards are used to facilitate the revitalization of downtown Kittery Foreside as a neighborhood center, while promoting economic development of service businesses and walk-in shopping as well as respecting the zone's historic and residential character. [Amended 7-25-2016 by Ord. No. 16-04]

B. Permitted uses. The following uses are permitted in the MU-KF Zone:

(1). Accessory Dwelling Units
(2). Accessory Buildings and Uses
(3). Home Occupation, Major and Minor
(4). Art Studio or Gallery
(5). Business and Professional Offices
(6). Commercial Fisheries/Maritime Activities
(7). Parking Area
(8). Dwellings, Sinlge-family
(9). Dwellings, Duplex
(10). Dwellings, Multi-family (up to 12 units per lot)
(11). Grocery Store
(12). Food Store
(13). Inn
(14). Marinas
(15). Personal Service
(16). Business Service
(17). Place of Assembly
(18). Theater
(19). Open Space, Public
(20). Public Recreation
(21). Restaurant
(22). Food Store
(23). Retail Use
(24). Service Establishments, excluding those where the principal activity entails outdoor sales and/or storage
(25). School
(26). Nursery School
(27). Hospital
(28). Elder-care Facility
(29). Nursing Care Facility, Long-term
(30). Convalescent Care Facility
(31). Municipal Building and Use
(32). State Building and Use
(33). Institution of educational, religious, philanthropic, fraternal, political or social nature
(34). Mass Transit Station
(35). Specialty Food and/or Beverage Facility. [Added 6-10-2013 by Ord. No. 13-02]
(36). Temporary, intrafamily dwelling unit

C. Special exception uses. The following uses are permitted as special exception uses in the MU-KF Zone:

(1). Public Utility Facilities

DRAFT

(2). Research and Development

D. Standards. [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-11; 7-25-2016 by Ord. No. 16-04]

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

(2). Dimensional standards. The following space standards apply:

a. Minimum land area per dwelling unit: 5,000 square feet.

b. Minimum lot size: 5,000 square feet.

c. Minimum street frontage: zero feet.

d. Minimum front yard along:

i. Government Street east of Jones Avenue including Lot 107 at the corner of Government and Walker Streets: zero feet.

ii. Wallingford Square: zero feet.

iii. Other streets: 10 feet.

e. Minimum rear and side yards: 10 feet.

f. Minimum separation distance between principal buildings on the same lot: 10 feet.

g. Maximum building height: 40 feet. (NOTE: Except that for buildings located on lots that abut tidal waters, the highest point on the primary structure of the building including the roof, but excluding chimneys, towers, cupolas and similar appurtenances that have no floor area, may be not more than 35 feet above the average grade between the highest and lowest elevations of the original ground level adjacent to the building.)

h. Minimum setback from:

i. Water body and wetland water-dependent uses: zero feet.

ii. All other uses (including buildings and parking): 75 feet unless modified, according to the terms of Subsection **E** of this section.

i. Maximum building coverage: 60%.

j. Minimum open space on the site: 40%.

k. Minimum land area per unit for elder-care facilities that are connected to the public sewerage system:

i. Dwelling unit with two or more bedrooms: 3,000 square feet.

ii. Dwelling unit with less than two bedrooms: 2,500 square feet.

iii. Residential care unit: 2,000 square feet.

a. Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system: 1,500 square feet.

(3). Maximum building footprint. The maximum area of the building footprint of any new building is 1,500 square feet unless the building is replacing a larger building that existed on the lot as of April 1, 2005.

a. If the footprint of the preexisting building was larger than 1,500 square feet, the maximum size of the footprint of the new building may be no larger than the footprint of the preexisting building.

b. If the footprint of the new building is larger than 1,500 square feet, the width of the new building as measured parallel to the front lot line may not be greater than the width of the preexisting building.

(4). Design standards. Any new building or additions or modifications to an existing building that cumulatively increases the building footprint or building volume by more than 30% after April 1, 2005, or is subject to shoreland overlay zoning as set forth in § 16.7.3.7 must conform to the following standards:

DRAFT

NOTE: This requirement does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the preexisting building footprint and that does not increase the preexisting building volume by more than 30%.

a. Placement and orientation of buildings within a lot.
    i. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site and buildings, and buildings must be placed to frame, rather than block, vistas.
    ii. Buildings and the front elevation must be oriented facing the street on which the building is located. The siting of buildings on corner lots must consider the placement of buildings on both streets.
b. Overall massing of buildings. The overall massing objective is to simulate a concentrated use of space in the Foreside Zone while avoiding the use of large, multiunit buildings. In the interest of this objective, building footprints must not exceed the maximums set forth within this subsection. Larger parcels may be developed but will require the use of multiple buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the existing architectural styles of the Foreside Zone.
c. Grouping of smaller buildings. When smaller buildings that are part of one project are placed adjacent to one another on the same lot or adjacent lots, each building must have its own structure and elevation treatment that is different from its neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall arrangement of shapes.
d. Building details. Buildings must include architectural details that reflect the historic style of the Foreside Zone. Molding and trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should be incorporated into the design.
e. Roof slopes and shapes.
    i. Allowable roof shapes include a simple gable, gambrel, saltbox and hip. The minimum roof pitch must be 8:12 (rise over run), except in the case of a hip roof, where a lesser pitch is acceptable.
    ii. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked.
    iii. Flat or nearly flat shed roofs are not allowed except for porches, dormers or attachments distinct from the primary structure or where systems are concealed by standard roof forms.
    iv. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of buildings must apply the same roof plan principles to pitch and link roofs.
f. Fencing and walls.
    i. Fencing may be used to separate public and private spaces, mark property lines, and protect plantings.
    ii. Fences must harmonize with nearby structures and not unduly interfere with existing scenic views or vistas.
    iii. Picket and other medium height fences and low stone walls are permitted.
    iv. Modern concrete walls and similar structures are prohibited.
    v. Chain-link and stockade fences are not appropriate in front yards

DRAFT

and may be used in side and rear yards only if compatible with the overall design of the site.

vi. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be screened with board fences, board and lattice fences, and/or landscaping.

g. Utilities. All utilities serving a new building, including electricity, telephone, cable, Internet and alarm systems must be placed underground from the access pole.

h. Preservation of trees. Existing large, healthy trees must be preserved if practical.

(5). Signage. Display of signboard and/or products for sale may be placed on a Town sidewalk only if:

a. Products for sale displayed outside the building are limited to an area extending no greater than two feet from the front facade of the building;

b. Signboards and/or products for sale must be removed from the sidewalk at the close of each business day;

c. An annual permit must be obtained from the Code Enforcement Officer. Permits are issued for a calendar year or portion thereof, to expire December 31 of each year. Sign permit application fee, reference Appendix A.

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

(1). Revised off-street parking standards. Insofar as practical, parking requirements are to be met on site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off site or through joint-use agreements as specified herein. Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified herein:

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

b. Dwelling units in new buildings, including the replacement of existing buildings other than the replacement of units destroyed by accidental or natural causes: 1 1/2 parking spaces per dwelling unit;

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

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

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

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

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

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

DRAFT

(2). Maximum parking on new impervious surface. Not more than 1 1/2 parking spaces per dwelling unit may be created on new impervious surface in conjunction with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the same building with the dwelling units, to spaces located on preexisting impervious surface, or to spaces located on a pervious surface such as parking pavers designed to allow infiltration of precipitation.

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

(4). Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board is to consider the following factors:

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

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

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

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

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

DRAFT

16.4.2.18 Transportation – Maine Turnpike T-MT.

A. Purpose. The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe, effective, efficient and environmentally compatible use of the right-of-way owned and operated by the Maine Department of Transportation and the Maine Turnpike Authority as authorized by the state, as well as for safe and environmentally compatible buffering for the adjacent land uses along the right-of-way.

B. Permitted uses. Permitted and special exception land uses include the highway, information center and other uses as authorized by the state.

C. Special exception uses: none.

D. Standards.

(1). The design and performance standards of Chapters 16.8 and 16.9 and the Shoreland and Resource Protection Overlay Zones, where applicable.

(2). Dimensional standards.

a. Minimum land area per dwelling unit: not applicable.

b. Minimum lot size: not applicable.

c. Minimum street frontage: not applicable.

d. Minimum front yard: not applicable.

e. Maximum building coverage: not applicable.

f. Minimum rear and side yards: not applicable.

g. Maximum building height: 35 feet.

h. Minimum distance between principal buildings on the same lot: not applicable.

i. Minimum setback from water bodies and wetlands: not applicable.

16.4.2.19 Shoreland Overlay Zone OZ-SL.

A. Purposes. The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources, to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

(1). Authority. These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435 to 449.

(2). Applicability and boundaries. The provisions of this section apply to all uses, lots and structures within the following:

a. Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-250 feet): Land areas within 250 feet, horizontal distance, of the:

i. Normal high-water line of any river or saltwater body.

ii. Upland edge of a coastal wetland, including all areas affected by tidal action.

iii. Land edge of a fresh water wetland connecting to a protected stream as identified on the Zoning Map.

b. Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within 250 feet horizontal distance of the normal high-water line of a river or within 250 feet horizontal distance of the upland edge of a freshwater or coastal wetland. **[Amended 9-26-2011 by Ord. No. 11-15]**

i. However, where a stream and its associated Shoreland Overlay Zone area are located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land area will be regulated under the provisions of the Shoreland Overlay Zone associated with that water body or wetland.

ii. Where uncertainty exists as to the exact location of the Shoreland Overlay Zone boundary, the Planning Board, with expert consultation as may be required, is the final authority as to location.

B. Permitted and special exception land use. The following uses in this section are allowed in accordance with the land use standards established in the underlying base zone in this chapter and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §§ 435 to 449.

(1). Residential – Rural Zone (R-RL).

a. Permitted uses.

i. Accessory uses and buildings;

ii. Any agricultural building or use except a sawmill, piggery or the raising of poultry for commercial purposes;

iii. Individual private campsite.

iv. Public open space recreational uses;

DRAFT

b. Special exception uses.

i. Day-care facility;

ii. Dwellings or modular home, excluding mobile home, in a single-family or duplex configuration;

iii. Home occupations;

iv. Mineral extraction subject to § 16.9.1.2;

v. Public utility facilities including substations, pumping stations and sewage treatment facilities;

vi. Recreation activity buildings and grounds operated for profit, exclusive of drive-in theaters;

vii. School, hospital, long-term nursing care facility, convalescent care facility, municipal building or use, church or other institution of educational, religious, philanthropic, fraternal or social nature.

(2). Residential – Suburban Zone (R-S).

a. Permitted uses.

i. Day-care facility;

ii. Elderly day-care facility;

iii. Public open space recreational uses.

b. Special exception uses.

i. Dwellings in a multiunit residential configuration with not more than four units per building and mobile homes;

ii. Home occupations;

iii. Mineral extraction subject to § 16.9.1.2;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. School or educational facility (including nursery schools), elder-care facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county or state building or use, church or other institution of educational, religious, philanthropic, fraternal, political or social nature. Any single listed use may not occupy more than 5,000 square feet of floor area;

(3). Residential – Kittery Point Village (R-KPV).

a. Permitted uses.

i. Any agricultural building or use except a sawmill, piggery or the raising of poultry for commercial purposes;

ii. Accessory uses and buildings; and

iii. Day-care facility.

b. Special exception uses.

i. Dwellings or modular home, excluding mobile homes, in a single-family or duplex configuration;

ii. Home occupations;

iii. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

iv. School or educational facility (including nursery schools), municipal, county or state building or use, church or other institution of educational, religious, philanthropic, fraternal, political or social nature. Any single listed use may not occupy more than 5,000 square feet of floor area.

(4). Residential – Urban Zone (R-U).

a. Permitted uses.

DRAFT

i. Accessory uses and buildings;

ii. Day-care facility;

iii. Public open space recreational uses.

b. Special exception uses.

i. Dwellings, or manufactured housing, in a single-family or duplex configuration;

ii. Home occupations;

iii. Inn;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. Recreational uses, exclusive of drive-in theaters;

vi. School (including day nursery), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature.

(5). Residential – Village Zone (R-V).

a. Permitted uses.

i. Accessory buildings and structures;

ii. Municipal, county or state building or use;

iii. Public recreation.

b. Special exception uses.

i. Day-care or nursery school facility for 13 or more persons in care, in conformance with the standards for a major home occupation (see § 16.8.22.3);

ii. Dwellings or modular home, excluding mobile home, in a single-family or duplex configuration;

iii. Home occupation;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities.

(6). Residential – Rural Conservation Zone (R-RC).

a. Permitted uses.

i. Accessory uses and buildings;

ii. Any agricultural building or use except sawmill, piggery or the raising of poultry for commercial purposes;

iii. Public recreation;

iv. Timber harvesting

b. Special exception uses.

i. Day-care facility.

ii. Dwellings or modular home, excluding mobile home, in a single-family or duplex configuration;

iii. Home occupation;

iv. Public and private open space recreational uses, exclusive of drive-in theaters;

v. Public utility facilities, including substations, pumping stations and sewage treatment facilities; and

vi. School, municipal building or use, or any other institution of educational, religious, philanthropic, fraternal or social nature.

c. Prohibited uses. Prohibited use is any use not listed as a permitted or special exception use.

DRAFT

(7). Conservation (CON). [Amended 9-26-2011 by Ord. No. 11-15]

a. Permitted uses.

i. Accessory structure including restrooms;

ii. Existing land conservation uses;

iii. Public recreation.

b. Special exception uses.

i. Public facility.

(8). Business – Local Zone (B-L).

a. Permitted uses.

i. Accessory uses and buildings;

ii. Public open space recreational uses.

b. Special exception uses.

i. Apartment building;

ii. Art studio or gallery;

iii. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;

iv. Business service;

v. Business and professional offices;

vi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

vii. Commercial parking lot or parking garage;

viii. Conference center;

ix. Convenience store, food store, grocery store;

x. Dwellings or modular home, excluding mobile home, in a single-family or duplex configuration;

xi. Garden supply;

xii. Home occupation;

xiii. Mass transit station;

xiv. Motel, hotel, inn or rooming house;

xv. Personal service;

xvi. Place of public assembly, including theater;

xvii. Public utility facilities, including substation, pumping stations and sewage treatment facilities;

xviii. Residential dwelling units as part of a mixed-use building;

xix. Restaurant;

xx. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage, and excluding those specifically mentioned under Subsection C of this section;

xxi. School or educational facility (including nursery schools), day-care facility, elder-care facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;

xxii. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02]

(9). Business – Local Zone (B-L1).

a. Permitted uses.

i. Accessory uses and buildings;

DRAFT

ii. Aquaculture.

iii. Public open space recreational uses;

b. Special exception uses.

i. Art studio or gallery;

ii. Business and professional offices;

iii. Business service;

iv. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;

v. Conference center;

vi. Convenience store, food store, grocery store;

vii. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

viii. Commercial parking lot or parking garage;

ix. Dwellings or modular home, excluding mobile home, in a single-family or duplex configuration;

x. Farmer's market;

xi. Funeral home;

xii. Garden supply;

xiii. Home occupation;

xiv. Inn;

xv. Mass transit station;

xvi. Motel, hotel, inn or rooming house;

xvii. Personal service;

xviii. Place of public assembly, including theater;

xix. Public utility facilities, including substation, pumping stations and sewage treatment facilities;

xx. Restaurant;

xxi. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage;

xxii. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02]

(10). Business – Park Zone (B-PK).

a. Permitted uses.

i. The following land uses are permitted for projects that are cluster mixed-use developments:

a. Art studio/gallery;

b. Mass transit station;

c. Public open space recreational uses, recreational facilities, and selected commercial recreation;

d. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.

e. Research and development.

ii. The following land uses are permitted for projects that are not cluster mixed-use developments:

a. Accessory uses and buildings.

b. Special exception uses. The following uses are permitted in a cluster mixed-use development as a special exception:

1. Business and professional offices;

DRAFT

2. Business services;
3. Commercial parking lot or parking garage;
4. Conference center;
5. Cluster residential development;
6. Grocery, food store, convenience store, including gas station;
7. Mechanical services, excluding junkyard;
8. Motel, hotel, rooming house, inn;
9. Personal service;
10. Place of public assembly, including theater;
11. Repair services;
12. Restaurant;
13. Retail uses and wholesale businesses, excluding used car lots and junkyards;
14. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
15. Shops in pursuit of trade;
16. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02]
17. Veterinary hospital;
18. Warehousing and storage;

(11). Commercial – 1 Zone (C-1).

a. Permitted uses.

i. Accessory uses and buildings including minor or major home occupations;

ii. Public open space recreational uses, recreational facilities, and selected commercial recreation;

iii. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

iv. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature.

b. Special exception uses.

i. Aquaculture;

ii. Art studio/gallery;

iii. Building materials and garden supply;

iv. Business and professional offices;

v. Business service;

vi. Commercial parking lot or parking garage;

vii. Conference center;

viii. Day-care facility;

ix. Grocery, food store, convenience store;

x. Mass transit station;

xi. Mini storage;

xii. Motel, hotel, rooming house, inn;

xiii. Personal service;

DRAFT

xiv. Repair services;

xv. Place of assembly, including theater;

xvi. Research and development;

xvii. Restaurant;

xviii. Retail uses and wholesale businesses, excluding used car lots and junkyards;

xix. Service establishments;

xx. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02]

xxi. Transportation terminal excluding truck stops;

xxii. Veterinary hospital;

xxiii. Warehousing and storage;

(12). Commercial – 2 Zone (C-2).

a. Permitted uses.

i. Accessory uses and buildings including minor or major home occupations;

ii. Aquaculture;

iii. Public open space recreational uses, recreational facilities, and selected commercial recreation;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;

b. Special exception uses.

i. Adult entertainment establishment not located within 1,000 feet of an existing private residence, school or place of worship;

ii. Art studio/gallery;

iii. Boatyard;

iv. Business and professional offices;

v. Business service;

vi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

vii. Commercial parking lot or parking garage;

viii. Conference center;

ix. Construction services;

x. Day-care facility;

xi. Grocery, food store, convenience store;

xii. Mass transit station;

xiii. Mini storage;

xiv. Motel, hotel, rooming house, inn;

xv. Personal service;

xvi. Place of assembly, including theater;

xvii. Research and development;

xviii. Restaurant;

xix. Retail uses and wholesale businesses, excluding used car lots and junkyards;

DRAFT

xx. Repair services;

xxi. Service establishments;

xxii. Shops in pursuit of trade;

xxiii. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02]

xxiv. Transportation terminal, excluding truck stops;

xxv. Veterinary hospital;

xxvi. Warehousing and storage;

(13). Commercial – 3 Zone (C-3).

a. Permitted uses.

i. Accessory uses and buildings including minor or major home occupations;

ii. Aquaculture;

iii. Public open space recreational uses, recreational facilities, and selected commercial recreation;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. School (including nursery school), hospital, elder-care facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature.

b. Special exception uses.

i. Adult entertainment establishment not located within 1,000 feet of an existing private residence, school or place of worship;

ii. Art studio/gallery;

iii. Boatyard;

iv. Business and professional offices;

v. Business service;

vi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

vii. Commercial parking lot or parking garage;

viii. Conference center;

ix. Construction services;

x. Day-care facility;

xi. Funeral home.

xii. Grocery, food store, convenience store;

xiii. Mass transit station;

xiv. Motel, hotel, rooming house, inn;

xv. Mini storage;

xvi. Personal service;

xvii. Place of assembly, including theater;

xviii. Research and development;

xix. Restaurant;

xx. Retail uses and wholesale businesses, excluding used car lots and junkyards;

xxi. Service establishments;

xxii. Shops in pursuit of trade;

xxiii. Transportation terminal excluding truck stops;

DRAFT

xxiv. Veterinary hospital;

xxv. Warehousing and storage;

(14). Industrial Zone (IND).

a. Permitted uses.

i. Accessory uses and buildings including minor or major home occupations;

ii. Research facilities;

b. Special exception uses.

i. Manufacturing, processing and treatment;

ii. Municipal and governmental uses; and

iii. Public utility facilities, including substations, pumping stations and sewage treatment plants.

(15). Mixed-Use Zone (MU). [Amended 9-26-2011 by Ord. No. 11-15]

a. Permitted uses.

i. Agricultural uses and practices, except a piggery or the raising of poultry for commercial purposes;

ii. Art studio/gallery;

iii. Church or institution of religion;

iv. Home occupations.

v. Institution of philanthropic, fraternal, political or social nature which is not used for residential or overnight occupancy;

vi. Municipal or state building or use;

vii. Public open space or recreation;

viii. Research and development;

ix. Timber harvesting;

b. Special exception uses.

i. Accessory buildings and uses;

ii. Boatyard;

iii. Business and professional offices;

iv. Commercial kennel;

v. Commercial parking lot or garage;

vi. Construction services;

vii. Convalescent care facility, long-term nursing care facility;

viii. Day-care facility;

ix. Dwellings, limited to the following:

a. Single-family dwellings on lots of record as of April 1, 2004; and

b. Dwelling units on the upper floors of a mixed-use building that is served by public sewerage.

x. Elder-care facility;

xi. Funeral home;

xii. Grocery store, food store, convenience store or neighborhood grocery;

xiii. Hospital;

xiv. Housing for elderly as part of a mixed-use project;

xv. Inn;

xvi. Institution of education which is not used for residential or overnight occupancy;

DRAFT

xvii. Mass transit station;

xviii. Motel or hotel;

xix. Personal services;

xx. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

xxi. Repair service;

xxii. Research and development;

xxiii. Restaurant;

xxiv. Retail use, a single use not to exceed 50,000 square feet in gross floor area;

xxv. Selected commercial recreation;

xxvi. Shop in pursuit of trades;

xxvii. Specialty food and/or beverage facility. [Added 6-10-2013 by Ord. No. 13-02];

xxviii. Theater;

xxix. Transportation terminal;

xxx. Veterinary hospital;

xxxi. Warehousing/storage;

xxxii. Wholesale business;

(16). Mixed-Use – Badger's Island Zone (MU-BI).

a. Permitted uses.

i. Aquaculture;

ii. Public open space and recreational uses;

iii. Research laboratories;

iv. Shuttle service and ride-sharing facilities

b. Special exception uses.

i. Accessory buildings and uses;

ii. Art studio/gallery;

iii. Boatyard;

iv. Business and professional offices;

v. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

vi. Commercial recreational use;

vii. Day-care facility;

viii. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile homes;

ix. Grocery store, food store;

x. Home occupations;

xi. Inn;

xii. Marina;

xiii. Personal, business or service;

xiv. Place of assembly;

xv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

xvi. Retail business and service establishments, but excluding those with any outdoor sales and/or storage;

xvii. Restaurant with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but excluding restaurants where ordering and/or pickup

DRAFT

of food may take place from a motorized vehicle;

xviii. School, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;

xix. Specialty food and/or beverage facility; [Added 6-10-2013 by Ord. No. 13-02]

xx. Theater.

(17). Mixed-Use – Kittery Foreside Zone (MU-KF).

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Art studio or gallery;

ii. Business and professional offices, including financial institutions;

iii. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

iv. Commercial or private parking lots;

v. Dwellings in a single-family or duplex configuration, excluding mobile homes;

vi. Grocery store, food store;

vii. Home occupations;

viii. Inn;

ix. Marinas;

x. Personal and/or business service;

xi. Place of assembly;

xii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities; and

xiii. Research and development;

xiv. Restaurant, coffee shop, bakery, cafes and similar food service operations, but excluding drive-in facilities;

xv. Retail business and service establishments, excluding those where the principal activity entails outdoor sales and/or storage;

xvi. Shuttle service and ride-sharing facilities;

xvii. Specialty food and/or beverage facility; [Added 6-10-2013 by Ord. No. 13-02]

xviii. Theater.

(18). Transportation – Maine Turnpike (T-MT). [Amended 9-26-2011 by Ord. No. 11-15]

a. Permitted uses. Permitted and special exception land uses include the highway, information center and other uses as authorized by the state.

b. Special exception uses: none.

C. Special exception uses (included in Section B above).

D. Standards. [Amended 1-28-2015 by Ord. No. 15-01; 7-25-2016 by Ord. No. 16-03]

(1). Minimum lot standards.

a. Minimum lot size by base zone, within the:

i. Residential-Village (R-V) Zone: 8,000 square feet.

ii. Residential-Urban (R-U) Zone: 20,000 square feet.

iii. Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones: 40,000 square

DRAFT

feet.

iv. Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) Zones: 60,000 square feet.

v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

vi. Business-Park (B-PK) Zone: 120,000 square feet.

vii. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

viii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

b. Minimum land area per dwelling unit by base zone, within the:

i. Residential-Village (R-V) Zone: 8,000 square feet.

ii. Business-Park (B-PK) Zone: 10,000 square feet.

iii. Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) Zones: 20,000 square feet.

iv. Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.

v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

vi. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet. [NOTE: 3,000 square feet for the first two dwelling units.]

vii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

c. Minimum shore frontage by base zone per lot and dwelling unit.

i. Mixed Use-Badgers Island (MU-BI): 25 feet.

ii. Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery Foreside (MU-KF) Zones: 50 feet.

iii. Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) Zones:

a. Shore frontage per lot: 150 feet.

b. Shore frontage per dwelling unit: 50 feet.

iv. Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) Zones:

a. Shore frontage per lot: 150 feet.

b. Shore frontage per dwelling unit: 100 feet.

v. Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling unit): 250 feet.

vi. The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

d. The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:

i. Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use – Badgers Island (MU-B1) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial (IND) Zones where the maximum devegetated area is 70%.

DRAFT

iii. Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000 square feet, the maximum devegetated area is 50%.

(2). Principal and accessory structures — setbacks and development.

a. All new principal and accessory structures [except certain patios and decks per § 16.3.2.17D(2)(b)] must be set back at least 100 feet, horizontal distance, 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, with the following exceptions:

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

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

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

b. Accessory patios or decks no larger than 500 square feet in area must be set back at least 75 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. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on coastal bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff Map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant is responsible for the employment of a Maine-registered professional engineer, a Maine-certified soil scientist, or a Maine state geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed 80 square feet in area nor eight feet in height and must be located as far from the shoreline or

DRAFT

tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

f. 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.

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

i. Structure is limited to a maximum of four feet in width;

ii. Structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C); and

iii. Applicant demonstrates that no reasonable access alternative exists on the property.

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

16.4.2.20 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU.

A. Purpose.

(1). The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the development and expansion of water-dependent commercial fisheries/maritime activities. Commercial fisheries/maritime activities and other areas suitable for functionally water-dependent uses, considers:

a. Shelter from prevailing winds and waves;

b. Slope of the land within 250 feet, horizontal distance, of the normal high-water line;

c. Depth of the water within 150 feet, horizontal distance, of the shoreline;

d. Available support facilities, including utilities and transportation facilities; and

e. Compatibility with adjacent upland uses.

(2). Authority. These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435 to 449.

(3). Applicability and boundaries. The provisions of this section apply to all uses, lots and structures within areas where the existing predominant pattern of development is consistent with the allowed uses for this overlay zone, where consistent with dimensional requirements of the underlying base zone, and where the active use of lands, buildings, wharves, piers, floats or landings with the principal intent of such activity is the production of income by an individual or legal business entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be either a principal or accessory use, as defined in this title.

B. Permitted uses. Functionally water-dependent commercial fisheries/marine uses.

C. Special exception uses: none

D. Standards. Dimensional standards of the underlying base and overlay zone(s).

E. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND and MU-KF, except as permitted herein.

DRAFT

16.4.2.21 Resource Protection Overlay Zone OZ-RP.

A. Purpose. The purposes of this zone are to further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters, and natural beauty.

(1). Authority. These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435 to 449.

(2). Applicability and boundaries. The provisions of this section apply to all uses, lots and structures within areas where the existing conservation and accessory development is consistent with the allowed uses for this zone. The Resource Protection Overlay Zone includes areas where development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This includes the following areas when they also occur within the limits of the Shoreland Overlay Zone, exclusive of a stream protection area, except currently developed areas and areas that meet the criteria for commercial fisheries/maritime uses:

a. Waterfowl and wading bird habitat/water body related wetland areas. Land areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with rivers which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas as identified as of December 31, 2008, and salt marshes and salt meadows as identified as of January 1, 1973, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). For the purposes of this section "wetlands associated with rivers" means: areas characterized by nonforested wetland vegetation and hydric soils that are contiguous with a river and have a surface elevation at or below the water level of the river during the period of normal high water. "Wetlands associated with rivers" are considered to be part of that river.

b. Steep slope areas.

i. Land areas that have two or more contiguous acres of land where the slopes are 20% or greater; and

ii. Land areas along rivers subject to severe bank erosion, undercutting or riverbed movement; and

iii. Land adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

c. Independent wetland areas. Land areas of two or more contiguous acres supporting wetland vegetation and hydric soils which are not part of a freshwater or coastal wetland as defined and which are not surficially connected to a water body during the period of normal high water.

d. Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters, and other areas susceptible to flooding as defined as being located within the one-hundred-year floodplain as designated on the FEMA Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record or, in the absence of these, by soil types identified as recent floodplain soils.

B. Permitted and special exception land use. Land uses within each base zone that are overlaid by the Resource Protection Overlay Zone include:

(1). Residential – Rural Zone (R-RL).

a. Permitted uses.

i. Individual private campsite.

ii. Public open space recreational uses.

b. Special exception uses.

DRAFT

i. Accessory use and buildings;
ii. Any agricultural building or use, except sawmill, piggery or the raising of poultry for commercial purposes;
iii. Home occupations;
iv. Single-family dwelling or modular home, excluding mobile home;
v. School or other institution of educational, religious, philanthropic, fraternal or social nature, less than 6,000 square feet;
vi. Public utility facilities, including substation, pumping stations and sewage treatment facilities.

(2). Residential – Suburban Zone (R-S).

a. Permitted uses.
i. Public open space recreational uses.

b. Special exception uses.
i. Accessory use and building;
ii. Any agricultural building or use, except sawmill, piggery or the raising of poultry for commercial purposes;
iii. Home occupations;
iv. Public utility facilities, including substation, pumping stations and sewage treatment facilities;
v. Single-family dwelling or mobile home

(3). Residential – Kittery Point Village Zone (R-KPV).

a. Permitted uses.
i. Public open space recreational uses.

b. Special exception uses.
i. Accessory uses and buildings;
ii. Any agricultural building or use, except a sawmill, piggery or the raising of poultry for commercial purposes;
iii. Home occupations;
iv. Public utility facilities, including substation, pumping stations and sewage treatment facilities;
v. Single-family dwellings, excluding mobile homes;

(4). Residential – Urban Zone (R-U).

a. Permitted uses.
i. Public open space recreational uses.

b. Special exception uses.
i. Accessory uses and buildings;
ii. Home occupations;
iii. Public utility facilities, including substation, pumping stations and sewage treatment facilities
iv. Single-family dwelling including manufactured housing;

(5). Residential – Village Zone (R-V).

a. Permitted uses: none.

b. Special exception uses.
i. Accessory buildings and structures;
ii. Home occupations;
iii. Public utilities, including substation, pumping stations and sewage treatment facilities
iv. Single-family dwelling and manufactured housing.

DRAFT

(6). Residential – Rural Conservation Zone (R-RLC).

a. Permitted uses.

i. Public recreation;

ii. Timber harvesting;

b. Special exception uses.

i. Accessory uses and buildings;

ii. Any agricultural building or use except sawmill, piggery or the raising of poultry for commercial purposes;

iii. Home occupations;

iv. Public and private open space recreational uses, exclusive of drive-in theaters and golf courses;

v. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

vi. Single-family dwelling, including modular homes;

(7). Conservation (CON). [Amended 9-26-2011 by Ord. No. 11-15]

a. Permitted uses.

i. Accessory structure including restrooms;

ii. Existing land conservation uses;

iii. Public recreation.

b. Special exception uses.

i. Public facility.

(8). Business – Local (B-L). [Amended 9-26-2011 by Ord. No. 11-15]

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Aquaculture;

iii. Home occupations;

iv. Public utility facilities, including substation, pumping stations, and sewage treatment facilities;

v. Single-family dwelling including modular homes;

(9). Business – Local Zone (B-L1).

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Home occupations;

iii. Single-family dwelling, including modular homes and excluding mobile homes;

iv. Public utility facilities, including substation, pumping stations and sewage treatment facilities.

(10). Business – Park Zone (B-PK).

a. Permitted uses — cluster and noncluster development.

i. Public open space recreational use.

b. Special exception uses — cluster development.

i. Public utility facilities, including substations, pumping stations and sewage treatment facilities.

c. Special exception uses — noncluster. Special exception uses for projects

DRAFT

not designed as a cluster mixed-use development include:

i. Accessory uses and buildings.

(11). Commercial – 1 Zone (C-1).

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Aquaculture

iii. Home occupations;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. Research and development;

(12). Commercial – 2 Zone (C-2).

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses and buildings including minor or major home occupations;

ii. Aquaculture;

iii. Home occupations;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities; and

(13). (13) Commercial – 3 Zone (C-3).

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Aquaculture ;

iii. Home occupations;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities.

(14). Industrial Zone (IND).

a. Permitted uses.

i. Research facilities.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Home occupations;

iii. Municipal and governmental uses; and

iv. Public utility facilities, including substations, pumping stations and sewage treatment plants.

(15). Mixed-Use Zone (MU).

a. Permitted uses.

i. Public open space or recreation; and

ii. Timber harvesting.

b. Special exception uses.

i. Accessory uses and buildings;

ii. Any agricultural building or use, except sawmill, piggery or the

DRAFT

raising of poultry for commercial purposes;

iii. Home occupations;

iv. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

v. Single-family dwelling on lots of record as of April 1, 2004.

(16). Mixed-Use – Badger's Island Zone (MU-BI). **[Amended 9-26-2011 by Ord. No. 11-15]**

a. Permitted uses.

i. Aquaculture;

ii. Public open space and recreational uses;

b. Special exception uses.

i. Accessory buildings and uses;

ii. Home occupations;

iii. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

iv. Single-family dwelling, excluding mobile homes,

(17). Mixed-Use – Kittery Foreside Zone (MU-KF). **[Amended 9-26-2011 by Ord. No. 11-15]**

a. Permitted uses.

i. Public open space recreational uses.

b. Special exception uses.

i. Accessory uses, including church rectory;

ii. Home occupations;

iii. Public utility facilities, including substations, pumping stations and sewage treatment facilities;

iv. Single-family dwelling, excluding mobile homes.

(18). Transportation – Maine Turnpike T-MT.

a. Permitted uses. Permitted and special exception land uses include the highway, information center and other uses as authorized by the state.

b. Special exception uses: none

C. Special exception uses (included in Section B, above).

D. Standards.

(1). The design and performance standards of Chapters 16.8 and 16.9 and Shoreland Overlay Zone provisions of § 16.3.2.17 apply, where applicable, in addition to the following standards, whichever is the most restrictive.

(2). Dimensional standards such as front, side and rear yards, building coverage, height and the like are the same as those in the underlying zone.

(3). 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.

(4). Clearing or removal of vegetation for uses, other than timber harvesting as limited per Chapter 16.9, Article V, Design and Performance Standards, in a Resource Protection Overlay Zone, is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection Overlay Zone.

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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.

DRAFT

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.

DRAFT

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.

DRAFT

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

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.

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.

16.5.1.6 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 that 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.

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

DRAFT

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

DRAFT

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

DRAFT

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

DRAFT

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;

DRAFT

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.

DRAFT

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

DRAFT

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.

DRAFT

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

DRAFT

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.

16.5.1.8 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.

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

DRAFT

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.

DRAFT

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

DRAFT

§§ 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.

DRAFT

(6). New construction or substantial improvement of any residential structure located within:

a. 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.

b. Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

c. Zone AO is 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.

d. 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.

e. 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:

a. 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:

i. 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;

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

iii. 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.

b. Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.

c. Zone AO is 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; or

iii. 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.

d. 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.

e. 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:

a. Zones A1 — 30, AE or AH must:

i. Be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation; and

DRAFT

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,

DRAFT

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

DRAFT

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

DRAFT

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.

16.5.1.10 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

DRAFT

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

DRAFT

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

a. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon.

b. 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

DRAFT

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;

DRAFT

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.

16.5.1.11 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.

DRAFT

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.

16.5.1.12 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.

DRAFT

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.

16.5.1.13 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.

16.5.1.14 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

DRAFT

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

DRAFT

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.

16.5.1.15 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.

DRAFT

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.

DRAFT

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.

DRAFT

(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

DRAFT

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

DRAFT

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 convened 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."

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

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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.

16.5.1.17 Nonstormwater Discharge [Amended 5-22-2017 by Ord. No. 17-06]

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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.

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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.

16.5.1.18 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

DRAFT

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

DRAFT

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

DRAFT

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.

16.5.1.19 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.

(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

DRAFT

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.

DRAFT

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

DRAFT

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

DRAFT

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

DRAFT

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

DRAFT

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.

(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.

DRAFT

(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.

(1). The CEO must notify and order the owner to immediately correct any sign that

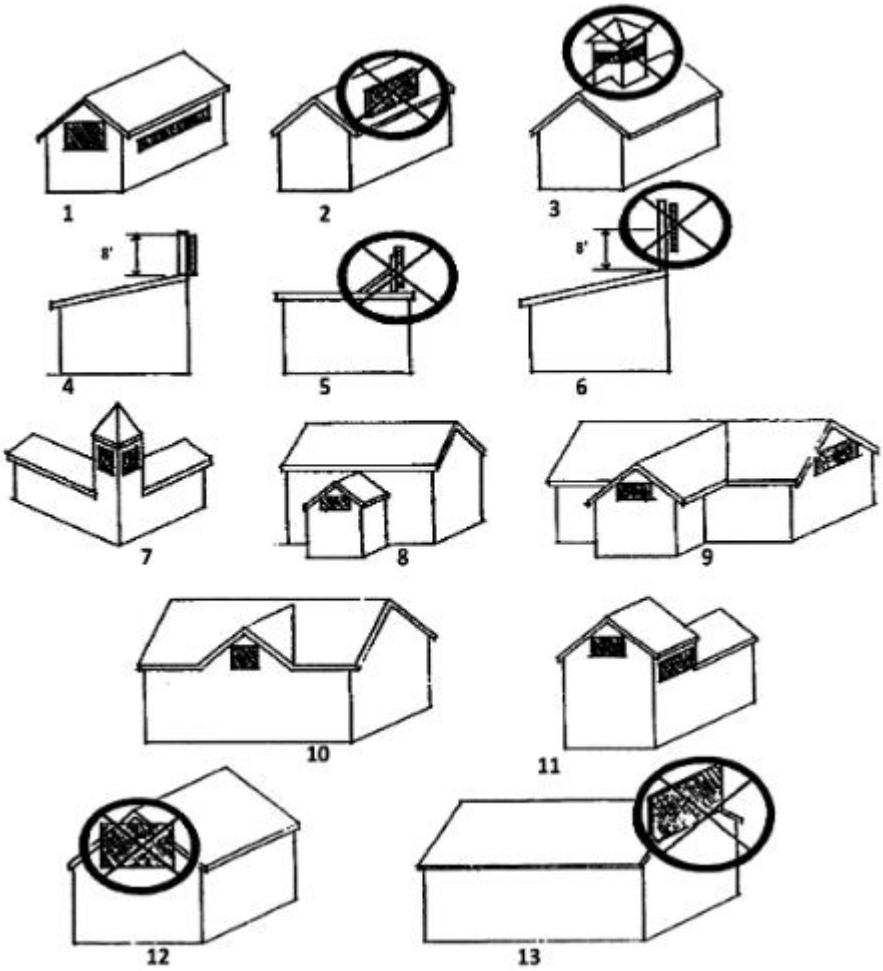
DRAFT

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.



16.5.1.21 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.

16.5.1.22 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.

DRAFT

(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.

DRAFT

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.

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.

DRAFT

(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

DRAFT

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.

DRAFT

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:

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

(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:

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

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**
1/4 inch	25% to 70%
No. 40	0% to 30%
No. 200	0% to 7%

DRAFT

(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**
1/2 inch	45% to 70%
1/4 inch	30% to 55%
No. 40	0% to 20%
No. 200	0% to 5%

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.

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

DRAFT

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:

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

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

DRAFT

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.

16.5.1.25

A.

B.

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.

16.5.1.27 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 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.

DRAFT

(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

DRAFT

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.

16.5.1.28 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

DRAFT

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.

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

DRAFT

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]

	Total Size of Wetland and/or Water Body		
Structure/Activity	**Less than 501 square feet (feet)**	**501 square feet to 1 acre and Intermittent Streams (feet)**	**Greater than 1 acre (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 management	0	50	75
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30	50

DRAFT

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)
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
Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan	0	25	25
Special Uses			
Junkyard[1]	0	100	150

DRAFT

Table 16.9

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

	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
Structure/Activity	(feet)	(feet)	(feet)
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

DRAFT

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 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.

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

DRAFT

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

DRAFT

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.

DRAFT

16.6 Master Site Development Plan Review

1. General.

   A. Master Site Development Plans are intended to show an overall development scheme for a large property so that the Planning Board an ensure that development of large sites with potential town-wide or regional impacts proceed in an orderly sequence with coordinated phasing. Master Site Development Plans are to assure adequate provisions are made to protect the public health and safety, taking into account such factors as traffic safety and access; water supply and sewage disposal; management of stormwater, erosion, and sedimentation; protection of the environment; and other criteria as noted below.

2. Applicability

   A. A person who has right, title, or interest in a parcel of land shall obtain Master Site Development Plan approval for a site when:

      (1). The cumulative lot area is one acre or larger, and

      (2). The site is designed as a cohesive and integral development program consisting of multiple buildings and associated site improvements proposed to be built in phases.

3. Review Process & Submission Requirements

   A. Pre-application and Conference

      (1). Process
      Before submitting a proposed Master Site Development Plan to the Board, the owner must meet with the Town Planner to discuss the feasibility and conceptual design, including sketch plans, regarding land use, parcel layout, public improvement, and the surrounding existing development and environment.

   B. Sketch Plan

      (1). Process
      The applicant must prepare and submit, for review and consideration by the Planning Board, a sketch plan and subsequently, for review and possible approval by the Planning Board, a Master Site Development Plan for the mixed-use development of the parcel.

      (2). Plan Requirements
      A Master Site Development Sketch Plan must include, at a minimum:

         a. Location, type and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;

         b. Proposed provisions for utilities, access roads, parking and public and private ways;

         c. Areas proposed to be permanently dedicated for public or private open space or other public purpose;

         d. Proposed buffers between uses and adjacent properties in accordance with the provisions of § 16.7.8.D.9.P of this title;

         e. Proposed phasing of the overall site development, including the general sequence in which related public and private improvements are to be completed, clearly defined on Master Site Development Plan.

      (3). Written Submission Requirements

         a. A project narrative, describing the nature of the proposed project along with an anticipated timeframes for project phases and overall project buildout.

         b. In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple

DRAFT

parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

(4). Decisions.

a. The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained herein and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.

b. If the concept is approved, inform the applicant in writing.

C. Final Master Site Development Plan

(1). Process

a. The Planning Board may approve the Final Master Site Development Plan as submitted, return the Final Development Master Plan for additional information or revision, or deny the Final Development Master Plan.

b. The Final Master Site Development Plan becomes the plan with which subsequent submittals must conform. The Planning Board must sign and date the Final Master Site Development to indicate approval by the Board.

c. The approved Master Site Development Plan remains valid as set forth in this chapter but may be amended and extended as set forth in this chapter.

(2). Plan Requirements

The Final Master Site Development Plan must include the following elements:

a. land use,

b. public sites, environmental design,

c. vehicular, pedestrian and

d. bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this title.

e. The Planning Board may waive one or more elements of the plan, if they are determined inapplicable.

(3). Written Submission Requirements

a. A project narrative describing the project, including updates and changes proposed from the Sketch Plan to the Final Plan.

DRAFT

4. Performance Standards and Approval Criteria

A. Outside agency approvals. Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state or federal agencies must be sought for the entire Master Site Development Plan, not individual phases. Stormwater, traffic and other impacts of project phases are cumulative.

B. Infrastructre. Improvements within the right-of-way, including streetlights, sidewalks, streets, guardrails and more will maintain consistency in construction details, design and materials throughout the Master Site Development Plan.

C. Stormwater. Each phase of the project shall include stormwater treatment adequate to treat that phase of the project. It is acceptable to oversize stormwater infrastructure in early phases to treat later development. It is not acceptable for proposed development to rely on later phase construction for necessary stormwater treatment.

D. Traffic. New streets in the Master Site Development Plan will include provisions for adequate turnarounds between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be removed if the street is extended in future phases.

5. Decisions

A. The Planning Board shall approve, approve with conditions, or deny a Master Site

Development Plan application based on the applicable review standards. An approval, including any approval of waivers from Performance Standards, establishes the general parameters to be adhered to for the development, including the supporting documentation for floor area and/or residential density, general types of uses, building coverage, generalize open space plans and infrastructure systems.

(1). A Master Site Development Plan approval shall not be construed as final authorization of the development. Approval shall confer pending proceeding status upon the development with the effect of maintaining the applicability of regulations in effect at the time of approval for as long as the Master Site Development Plan remains valid, including permissible extensions, if granted.

(2). Final approved Master Site Development Plan signing. The Planning Board must sign and date the plan to indicate that it is the Master Site Development Plan approved by the Board.

B. A Master Site Development Plan and each subsequent development plan thereof has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

6. Post-Approval Activities

A. Recording of master planned property survey.

(1). The owner must record the signed Master Site Development Plan at the York County Registry of Deeds after Planning Board approval.

B. Land division applications.

(1). After approval of the Master Site Development Plan and recording of the master site development plan property survey, the owner may initiate land division applications.

(2). The Code Enforcement Officer may issue permits only after the Master Site Development Plan property survey has been recorded and all other applicable state and local approvals have been obtained.

7. Recreational Land Allocation

A. Size.
(Reserved for future use.)

B. Character and configuration.
(Reserved for future use.)

C. Waterfront inclusion.
(Reserved for future use.)

8. Development Exaction

A. Municipal space.
The Planning Board may require the developer provide space for future municipal uses, in accordance with a Council-approved plan, on a reimbursable basis, with a five-year option, after which the space may be sold for other development.

B. Impact fees.
Impact fees and other like development exactions must be required by the Planning Board when all legal requirements have been fulfilled in accordance with 30-A M.R.S. § 4961-A (e.g., sewer connection fees).

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16.7 Site Plan Review

1. General.
   The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multipamily contruction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion and sedimentation; protection of groundwater, environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

2. Applicability.

   A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, including contracting or offering for the conveyance of the proposed development (or portion thereof), obtaining a building or regulated activity permit for any structure within the development is issues, or undertaking work on any improvements, including installation of roads or utilities or land clearing.

      (1). The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of one thousand (1,000) square feet or more measured cumulatively over a five (5) year period.

      (2). The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or one thousand (1,000) square feet, whichever is greater.

      (3). The conversion of an existing building in which one thousand (1,000) or more square feet of total floor area are converted from residential to nonresidential use.

      (4). The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.

      (5). The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in this section.

      (6). The construction of a residential building containing three (3) or more dwelling units.

      (7). The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.

      (8). The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.

      (9). The cumulative Development of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application.

   B. Other development review. [Amended 9-26-2011 by Ord. No. 11-15; 7-25-2016 by Ord. No. 16-02]
      Unless subject to a shoreland development plan review per § 16.10.3.4, the following do not require Planning Board approval:

DRAFT

(1). Single and duplex family dwellings.

(2). Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning Board review as a subdivision.

(3). Business use as provided in § 16.4.3.6.

3. Other Potential Reviews

A. Shoreland development review.
[Amended 7-25-2016 by Ord. No. 16-02]

(1). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming use, must be reviewed and approved as provided in § 16.10.10 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.

(2). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:

a. Proposed development of principal and accessory structures in compliance with § 16.3.2.17D(2), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.

b. Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.11, Marine-related development.

c. Division of a conforming parcel that is not subject to subdivision as defined in § 16.2.2.

d. Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

4. Review and Approval Authority

A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project.

(1). Major Site Plan. The Planning Board is authorized to review and act on all site plans for Major Site Plan applications. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve with project with such conditions as are authorized by this section.

(2). Minor Site Plan. The Staff Review Committee is authorized to review all site plans for Minor Site Plan applications and may approve, disapprove, or approve the project with such conditions as are authorized by this section. In addition, the Committee may reclassify a Minor Site Plan as a Major Site Plan, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its recommendations for Planning Board action.

B. Staff Review Committee Established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning and Development,

DRAFT

the Code Enforcement Officer, Fire Chief, Director of Public Works, or their designees, and a designee of the Town Manager.

C. Operation of the Staff Review Committee. The Director of Planning and Development shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Director of Planning and Development or his/her designee, the Code Enforcement Officer shall serve as chair pro tem.

(1). Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.

(2). Meeting Dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.

(3). Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.

(4). Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.

(5). Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three (3) members.

(6). Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.

(7). Minutes. The Staff Review Committee shall keep a record of its proceedings.

5. Classification of Projects

A. The Planner shall classify each project as a Major or Minor Site Plan. Minor Site Plans are smaller scale projects for which a minor review process is adequate to proetect the Town's interest. Major Site Plans are larger, more complex projects for which a more detailed review process and additional information are necessary. The following review thresholds shall be used by the Planner in classifying each project. The Planner may, due to the scope or anticipated impacts of a project, classify any project as a Major Site Plan.

(1). Minor Site Plans shall include those projects involving:

a. The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.

b. Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.

c. The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.

(2). Major Site Plans shall include projects involving:

a. The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,

b. The individual or cumulative Development of one (1) acre or more land,

DRAFT

unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above.)

c. Projects that involve Wireless Communication System Facilities (WCSF),

d. Projects that require any waiver from performance standards.

e. Projects that also require subdivision or special exception approval, or

f. Other projects requiring review which are not classified as a minor development.

B. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification.

(1). This request shall include the following information:

a. The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.

b. The location of the project, including the tax map and lot number.

c. A brief description of the proposed activities in such detail as to allow a classification to be made.

(2). When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification.

a. The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.

(3). Within ten (10) working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant, and the Chair of the Planning Board of the classification of the project in writing.

6. Application and Review Fees

A. Review fee(s); reimbursements.

(1). All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.

(2). The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

B. Independent peer review.
[Amended 9-28-2015 by Ord. No. 15-08]

(1). The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:

a. Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or

b. Assist with the technical review of applications submitted for new or amended development.

C. When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per Chapter 3.3, prior to commencing said review and continuing with the review of the development plan application.

7. Applicant attendance at review meeting(s).

A. The applicant or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this

DRAFT

requirement by the Board Chairperson.

8. Waivers [Amended 9-26-2011 by Ord. No. 11-14]

   A. Waiver authorization.
   Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.

   B. The Staff Review Committee may only grant waivers from submission requirements, and many not grant waivers from performance standards. Projects seeking such waivers must be classified as Major Site Plan applications to be reviewed by the Planning Board.

   C. Objectives secured.
   In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified.

9. Other Requirements

   A. Burden of proof.
   In all instances, the burden of proof is upon the applicant proposing the development.

   B. Comprehensive Plan.
   Any proposed development or use must be in harmony with the Town Comprehensive Plan guidance adopted into the provisions of this title.

   C. Site inspection.

      (1). So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.

   D. Safe use.
   The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

10. Review Process and Submission Requirements

   A. Pre Application and Conference

      (1). Process. Preapplication Conference. Applicants for site plan review are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.

         a. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

         b. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

   B. Sketch Plan Review

      (1). Planning Board or Staff Review Committee review. The Review Authority must, within 30 days of Sketch Plan submission, act upon the Sketch Plan as follows:

DRAFT

a. The Planning Board or Staff Review Committee must determine whether the Sketch Plan proposal complies with the standards contained herein and must act to formally accept the Sketch Plan and authorize a Final Plan application submission.

b. ,Where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.

c. The Review Authority should provide guidance as to whether or not an on-site inspection will be required

d. For applications for a Minor Site Plan, the Staff Review Committee should indicate whether or not a public hearing will be required.

e. The applicant should provide an indication as to whether or not waivers from the submission requirements or performance standards will be part of the next phase of review.

f. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.

i. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(2). Plan Requirements

a. The sketch plan must be submitted to the Planning Board at the time of, or prior to, the on-site inspection.

b. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.

c. The sketch may be a freehand penciled sketch and must include the data listed below.

(3). Written Submission Requirements

a. Any person requiring development review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in § 16.10.5.2. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review at a time. No more than one approved final plan for a piece of property may exist.

b. General project information must describe or outline the existing conditions of the site, including:

i. Covenants.

ii. High-intensity Class "A" soil survey and soil interpretation sheets.

iii. Available community facilities.

iv. Utilities.

c. Proposed development, such as:

i. Number of residential or business lots and/or dwelling units;

ii. Typical lot width and depth;

iii. Price range;

DRAFT

iv. Business areas;

v. Playgrounds, park areas and other public areas;

vi. Protective covenants;

vii. Utilities; and

viii. Street improvements.

C. Final Plan Review

(1). General Process

a. Final Plan application filing and completeness review. A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist filed with the plan, which indicates all elements required under §§ 16.10.5.2 and 16.10.7.2 have been received, or written request for any waivers of submission requirements or performance standards is included. The application must be accompanied by a plan and the required fee, together with a certification the applicant has notified abutters by mail of the filing of the plan application for approval.

b. Receipt and scheduling review. Upon validation, the Town Planner must place the application on the agenda for Planning Board or Staff Review Committee completeness review and acceptance and, upon acceptance, issue a dated receipt to the applicant, which is thereafter the official time of submission. **[Amended 9-26-2011 by Ord. No. 11-15]**

c. Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site. **[Amended 9-26-2011 by Ord. No. 11-15; 1-23-2012 by Ord. No. 12-01]**

d. Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.

e. Planner analysis. The Planner must analyze the application and forward comments and recommendations to the applicant and the Review Authority..

f. A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

i. A minimum of 12 paper copies of the application form, plan and all attachments thereto plus, if applicable, an additional three paper copies of the twenty-four-inch-by-thirty-six-inch-size plan sheets.

(2). Public hearing

a. Scheduling

i. A Major Site Plan application must be scheduled for review and public hearing once the Final Plan application is complete.

ii. A Minor Site Plan application may be scheduled for a public hearing

DRAFT

at the Staff Review Committee's discretion.

b. Public notice.

i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.

c. Abutter notice.

i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.

ii. For a wireless communication system facility (WCSF) plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first-class mail, provided by the applicant, at least seven days prior to the hearing to all owners of abutting property and property located within 1,000 feet of any property line of the property for which the permit is requested. Notice must also be given to any town located within 1,000 feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

d. Public Hearing Procedure

i. The Review Authority may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.

ii. The Chairperson of the Planning Board or Staff Review Committee must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.

iii. Any party may be represented by agent or attorney.

iv. The Town Planner, in consultation with the other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.

v. The Planning Board or Staff Review Committee may continue the hearing to another time and location, including the site of the development, as it deems necessary.

(3). Planning Board review schedule and vote on application.

DRAFT

a. Within 35 days after making a finding that the Final Plan application is complete, the Planning Board or Staff Review Committee must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

b. Continuation or tabling of a review beyond the thirty-day period for subdivision applications, and the thirty-five-day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

c. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.

d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

e. Failure to act within the thirty-five-day period constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.

(4). Final Plan review and decision.

a. The applicant must submit a Final Plan application to the Planning Department within six months of the date the Planning Board or Staff Review Committee makes a The Planning Board or Staff Review Committee must approve, approve with conditions or deny the preliminary plan.

b. Conditions of approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.

c. The decision of the Planning Board plus any conditions imposed must be noted on three copies of the plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.

(5). Plan Requirements

a. Plan sheets drawn on a reproducible medium and must measure no less than 11 inches by 17 inches and no larger than 24 inches by 36 inches;

b. With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;

c. Code block in the lower right-hand corner. The block must contain:

i. Name(s) and address(es) of the applicant and owner;

ii. Name of the project;

iii. Name and address of the preparer of the plan, with professional seal, if applicable;

iv. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;

d. Standard boundary survey conducted by a surveyor licensed in the State of

DRAFT

Maine, in the manner recommended by the State Board of Registration for Land Surveyors;

e. An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;

f. Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;

g. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;

h. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;

i. Names and addresses of all owners of record of property abutting the development, including those across a street;

j. Existing Development Area Conditions, including but not limited to:

    i. Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;

    ii. Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;

    iii. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways;

k. Proposed development area conditions including, but not limited to:

    i. Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.

    ii. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;

    iii. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;

    iv. Domestic water source;

    v. Parks, open space, or conservation easement locations;

    vi. Lot lines, interior and exterior, right-of-way, and street alignments;

    vii. Road and other paved ways plans, profiles and typical sections including all relevant data;

    viii. Setbacks existing and proposed;

    ix. Machinery permanently installed locations likely to cause appreciable noise at the lot lines;

    x. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

    xi. Topographic contours of existing contours and finished grade elevations within the development;

    xii. Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;

    xiii. Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;

DRAFT

xiv. Land proposed to be dedicated to public use and the conditions of such dedication;

xv. Natural features or site elements to be preserved.

l. Street names and lines, pedestrianways, lots, easements and areas to be reserved for or dedicated to public use.

m. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.

n. Lots and blocks within a subdivision, numbered in accordance with local practice.

o. Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.

p. Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:

i. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures;

ii. All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;

iii. Mounting height of all exterior lighting fixtures;

iv. Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;

v. Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and

vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.

q. Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.

r. Materials (raw, finished or waste) storage areas, their types and location, and any stored toxic or hazardous materials, their types and locations.

s. Fences, retaining walls and other artificial features locations and dimensions proposed.

t. Landscaping plan, including location, size and type of plant material.

u. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-construction stormwater management plan that defines maintenance

DRAFT

responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord. No. 16-06]**

v. Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

i. The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.10.9.1E.

ii. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.

iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.

v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(6). Written Submission Requirements

a. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;

b. Property encumbrances currently affecting the property, as well as any proposed encumbrances;

c. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;

d. Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;

e. Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;

f. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;

DRAFT

g. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;

h. Traffic impact analysis in accordance with § 16.10.5.2D(1) for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;

i. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;

j. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;

k. Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.

l. Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.

(7). Additional requirements. In its consideration of an application/plan, the Planning Board or Staff Review Committee may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:

a. Traffic impact analysis, for projects that are not required by C.(6).h., above.

b. Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;

c. Hydrologic analysis. An analysis of the effects that the development may have on groundwater must be conducted in accordance with § 16.8.6.9. This analysis is always required for mobile home park proposals.

d. Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board or Staff Review Committeeand written evidence the Town Manager is satisfied with the sufficiency of such guaranty.

i. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

ii. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.

(8). Additional Submittal Content Required for Review of Wireless Communication Services Facilities (WCSF).

a. A visual impact analysis prepared by a landscape architect or other

DRAFT

qualified professional acceptable to the Town that quantifies the amount of visual impact on properties located within 500 feet, within 2,500 feet and within two miles of the WCSF. This analysis will include recommendations to mitigate adverse visual impacts on such properties;

b. An analysis prepared by a qualified professional acceptable to the Town that describes why this site and structure is critical to the operation for which it is proposed. The analysis must address, at a minimum: existing and proposed service area; how this WCSF is integrated with other company operations, particularly other structures in Kittery and surrounding communities; future expansion needs in the area; the effect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location;

c. Certification by a structural engineer that construction of the structure satisfies all federal, state and local building code requirements as well as the requirement of maximum permitted co-location at the site as approved by the Planning Board/Town Planner;

d. A plan note stating the payment of all required performance guarantees as a condition of plan approval;

e. Payment of the Planning Board application fees;

f. And all other requirements per this chapter.

(9). Findings of Fact.

a. After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town Code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.

b. Findings of fact. Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title and which certify the development meets the following requirements:

i. Development conforms to local ordinances. The proposed development conforms to a duly adopted Comprehensive Plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

ii. Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

iii. River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9.

iv. Water supply sufficient. The proposed development has sufficient water available for the reasonably foreseeable needs of the

DRAFT

development.

v. Municipal water supply available. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

vi. Sewage disposal adequate. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized.

vii. Municipal solid waste disposal available. The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.

viii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

ix. Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

x. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one-hundred-year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.

xi. Stormwater managed. The proposed development will provide for adequate stormwater management.

xii. Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

xiii. Traffic managed. The proposed development will:

a. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and

b. Provide adequate traffic circulation, both on site and off site.

xiv. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

a. Elevation of the land above sea level and its relation to the floodplains;

b. Nature of soils and subsoils and their ability to adequately support waste disposal;

c. Slope of the land and its effect on effluents;

d. Availability of streams for disposal of effluents;

DRAFT

e. Applicable state and local health and water resource rules and regulations; and

f. Safe transportation, disposal and storage of hazardous materials.

xv. Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

xvi. Developer financially and technically capable. Developer is financially and technically capable to meet the standards of this section.

c. For wireless communication system facility (WCSF). In development, the WCSF:

i. Tower or other structure height does not exceed that which is essential for its intended use and public safety;

ii. Proximity of tower to residential development or zones is acceptable;

iii. Nature of uses on adjacent and nearby properties is compatible;

iv. Surrounding topography is protected;

v. Surrounding tree coverage and foliage is protected;

vi. Design of the tower, antenna or facility with particular reference to design characteristics effectively eliminating or significantly reducing visual obtrusiveness is minimized;

vii. Proposed ingress and egress to the site is adequate;

viii. Co-location with another existing WCSF has been thoroughly pursued and is not feasible;

ix. Visual impacts on view sheds, ridgelines and other impacts caused by tower location, tree and foliage clearing and placement of structures and associated development is minimized;

x. Will not unreasonably interfere with the view of or from any public park, natural scenic vista, and historic building or major view corridor and the Kittery waterfront and harbor;

xi. Is not constructed in such a manner as to result in needless height, mass and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility; and

xii. "Stealth" technology has been pursued and is not a viable option.

d. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones, the proposed use will:

i. Maintain safe and healthful conditions;

ii. Not result in water pollution, erosion or sedimentation to surface waters;

iii. Adequately provide for the disposal of all wastewater;

iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

v. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

DRAFT

vi. Protect archaeological and historic resources as designated in the comprehensive plan;

vii. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;

viii. Avoid problems associated with floodplain development and use; and

ix. Is in conformance with the provisions of this title.

e. For a right-of-way plan. The proposed right-of-way:

i. Does not create any nonconforming lots or buildings; and

ii. Could reasonably permit the right of passage for an automobile.

f. For special exception use – special exception use permitted. If a special exception use is requested, the special exception use will: **[Added 9-26-2011 by Ord. No. 11-15]**

i. Not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

ii. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; and

iii. Not adversely affect the safety, the health, and the welfare of the Town.

iv. Be in harmony with and promote the general purposes and intent of this title.

(10). Final plan approval and recording.

a. Agreement form. An approval by the Planning Board or Staff Review Committee must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.

b. Agreement distribution. The Planning Board must send copies of the agreement to the Town Manager and Code Enforcement Officer. **[Amended 9-26-2011 by Ord. No. 11-15]**

c. Approved final plan signing. A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

d. Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A Mylar copy of the recorded plan must be returned to the Town Planner. **[Amended 9-26-2011 by Ord. No. 11-15]**

11. Performance Standards and Approval Criteria

A. Monuments.

(1). Stone monuments. For site plans that involve the creation of new streets or rights-of-way,

a. Stone monuments must be set at all street intersections and points of curvature, but not more than 750 feet apart along street lines without curves or intersections.

b. Stone monuments must be set at all corners and angle points of the

DRAFT

development boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

c. Stone monuments must be a minimum of four inches square at the top and four feet in length and set in the ground at final grade level. Drilled holes, 1/2 inch deep, are to serve to locate the point or points described above.

(2). Other monumentation.
All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.

(3). Impractical placement.
Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

B. Water Supply

(1). The development shall be provided with a system of water supply that provides each use with an adequate supply of water.

(2). If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

C. Sewage Disposal [Amended 10-14-2015 by Ord. No. 15-10]

(1). Sewers.

a. As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.

b. Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way, is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.

c. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.

d. Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of final plan review.

DRAFT

e. When public sewer connection pursuant to Subsection b above is not feasible as determined by the Planning Board or Staff Review Committee, the Review Authority may allow individual or common subsurface wastewater disposal systems in accordance with § 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

(2). Subsurface wastewater disposal systems.

a. The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.

b. All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:

i. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.

ii. Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in Table 16.9, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage disposal.

c. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

i. Where no expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

ii. Where expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 in addition to the Maine Subsurface Wastewater Disposal Rules.

NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.

d. Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:

i. On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.

ii. In no instance may a primary or reserve disposal area be permitted

DRAFT

on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.

iii. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.

e. The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.

(3). Holding tanks.

a. Holding tanks are not allowed for a first-time residential use.

(4). (Reserved)

(5). Sanitary facilities/restrooms.

a. Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections **B**, **C** and **D** of this section.

b. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.

c. Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.

d. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

D. Stormwater and Surface Drainage

(1). Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.

(2). To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per § 16.8.8.2, Post-construction stormwater management.

(3). Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board or Staff Review Committee determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.

a. The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe

DRAFT

extending to six inches above the top of the pipe.

b. Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.

(4). When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

a. All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.

b. The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.

c. Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

i. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.

ii. All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

iii. Catch basins in streets and roads must be installed where necessary and located at the curbline. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.

iv. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

v. Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.

vi. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with § 16.8.8.2, Post-construction stormwater management.

E. Post-construction stormwater management.

(1). Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plan are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

DRAFT

(2). Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

(3). Applicability.

a. In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre. **[Amended 7-25-2016 by Ord. No. 16-06]**

b. Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.

c. Post-construction stormwater management plan approval.

i. General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.8.2C(2), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.

ii. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

iii. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any

DRAFT

unused balance remaining at that time will be refunded to the applicant.

d. Post-construction stormwater management plan compliance.

i. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:

a. That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;

b. If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and

c. That person or a qualified post-construction stormwater inspector hired by that person must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.

ii. Right of entry. In order to determine compliance with this section and with the post-construction stormwater management plan, the Code Enforcement Officer may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

e. Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include the following in its annual report to the Maine Department of Environmental Protection:

i. Cumulative number of sites that have stormwater management facilities discharging into its MS4;

ii. Summary of the number of sites that have stormwater management facilities discharging into its MS4 that were reported to the Town;

iii. Number of sites with documented functioning stormwater management facilities; and

iv. Number of sites that require routine maintenance in order to

DRAFT

continue the original line and grade, the hydraulic capacity, and the original purpose of improvements; or remedial action to ensure that stormwater management facilities are functioning as intended.

f. Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the post-construction stormwater management regulations are conducted in accordance with Chapter 16.4.

(4). Storm drainage construction standards.

a. Materials:

i. Reinforced concrete pipe must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a safety factor of 1.2 on the 0.01 inch crack strength with Class B bedding. Joints are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe must conform to the requirements of AASHTO M175 for the appropriate diameters.

ii. Corrugated metal pipe must be bituminous-coated, meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than 5%.

iii. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.

iv. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).

v. Catch basins are to be precast concrete truncated cone section construction, meeting the requirements of ASTM Designation C478, or precast concrete manhole block construction, meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed with tops and are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.

b. Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.

c. Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot intervals.

d. Upon completion, each catch basin or manhole must be cleared of all accumulation of silt, debris or other foreign matter and kept clean until final acceptance.

F. Vehicular Traffic

(1). Adequacy of Road System. Vehicular access to the site shall be on roads which

DRAFT

have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

a. A development not meeting this requirement may be approved if the applicant demonstrates that:

i. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or

ii. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.

(2). Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a Traffic Impact Study will include the following elements related to the project and surrounding street network.

a. An executive summary outlining the study findings and recommendations.

b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

e. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.

f. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.

g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.

h. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.

i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.

DRAFT

j. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.

k. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).

l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.

m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.

n. The base data collected and analyzed during the course of the traffic impact study.

o. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

(3). Access to the Site. Vehicular access to and from the development shall be safe and convenient.

a. Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.

b. Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.

c. The grade of any proposed drive shall be not more than ±3% for a minimum of fifty (50) feet, from the intersection.

d. The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period.

e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.

f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

g. Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

h. The following criteria shall be used to limit the number of driveways serving a proposed project:

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i. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.

ii. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.

iii. The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.

(4). Accessway Location and Spacing. Accessways shall meet the following standards:

a. Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

b. Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.

c. Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.

(5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.

a. Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.

i. If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.

b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).

c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.

d. All roadways shall be designed as follows:

i. To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,

ii. By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,

iii. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

e. Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

G. Parking and Loading

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(1). General standards.

a. All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in Article **V** of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:

i. Sight distances along public rights-of-way;

ii. The existence and impact upon adjacent access points and intersections;

iii. Turning movements of vehicles entering and leaving the public streets;

iv. Snow removal; and

v. General condition and capacity of public streets serving the facility.

b. Such requirements are intended to maintain traffic safety and an acceptable level of service throughout the impact area of the facility.

c. In front of areas zoned and designed for commercial use, or where a change of zoning to one which permits commercial use is contemplated, the street right-of-way and/or pavement width must be increased by such amount on each side as may be deemed necessary to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.

d. The Town reserves the right to designate in conjunction with the Maine State Department of Transportation all ingress and egress points to the public highway and to select areas for the grouping and placement of signs and traffic directions.

e. All traffic flow in parking areas is to be clearly marked with signs and/or surface directions at all times.

f. Off-street parking must be constructed in accordance with Table 2 of this chapter, set out at the end of Article **IX**, Parking Loading and Traffic.

(2). Corner clearances.

For purposes of traffic safety in all zoning districts, no building or structure other than public utility structures and traffic control devices may be erected, and no vegetation other than shade trees may be maintained above a height of two feet above the plane through the curb grades of intersection streets within a triangle, two sides of which are the edges of the traveled public ways for 20 feet measured from their point of intersection or, in the case of rounded street corners, the point of intersection of their tangents. The Town is not responsible for violations which lead to accidents. The Town will direct, however, a continued program designed to identify intersections having traffic safety problems.

(3). Off-street loading standards.

a. In those districts where off-street loading is required, the following minimum off-street loading bays or loading berths must be provided and maintained in the case of new construction, alterations and changes of use:

i. Office buildings, hospitals, long-term nursing care facilities, convalescent care facilities, elder-care facilities, hotels and motels with a gross floor area of more than 100,000 square feet: one bay.

ii. Retail, wholesale, warehouse and industrial operations with a gross floor area of more than 10,000 square feet:

10,001 to 40,000 square feet	1 bay

DRAFT

40,001 to 100,000 square feet	2 bays
100,001 to 160,000 square feet	3 bays
160,001 to 240,000 square feet	4 bays
240,001 to 320,000 square feet	5 bays
320,001 to 400,000 square feet	6 bays
Each 90,000 square feet over 400,000	1 additional bay

b. Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be located either within a building or outside and adjoining an opening in the building. Every part of such loading bay is to be located completely off the street. In case of trucks, trailers or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, or so that said equipment can be kept on site while awaiting loading or unloading, additional space is to be provided, so that such vehicle parks or stands completely off the street.

c. The provisions of this section for off-street loading do not prohibit incidental curbside business deliveries, dispatches or services, provided that they are in compliance with all applicable state and local traffic regulations.

d. The Board of Appeals has full authority to waive the requirements of this section if it is shown that appropriate parking and loading spaces will be maintained sufficient for intended use.

(4). Off-street parking standards.

a. Off-street parking, in addition to being a permitted use, is considered as an accessory use when required or provided to serve conforming uses located in any district.

b. The following minimum off-street parking and loading requirements must be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in design-dependent spaces dimensioned as may be required to suit the particular use as indicated in Table 2 of this chapter, set out at the end of Article **IX**, Parking Loading and Traffic, or in garages.

c. All spaces must be accessible from lanes of adequate size and location as per Table 2 of this chapter, set out at the end of Article **IX**, Parking Loading and Traffic. In cases not specifically covered, the Town Board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity. Existing parking standards are to be used as a guide where applicable to ensure that a sufficient number of parking spaces are provided to accommodate the number and type of vehicles attracted to the development during peak parking demand times.

d. When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of 1/2 or less may be disregarded, while a fraction in excess of 1/2 is counted as one parking space. **[Amended 9-26-2011 by Ord. No. 11-15]**

DRAFT

Use	Parking Spaces Required
Automobile, truck and tractor repair and filling station	1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work
Dwellings	2 vehicle spaces per each dwelling unit
Elderly housing	1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms
	2 parking spaces for each dwelling unit with more than 2 bedrooms
Elder-care facilities	1 parking space per dwelling unit;
	0.65 parking spaces per residential care unit
Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use	1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room
Schools	
Nursery school and day-care facilities	1 space for every 100 square feet of gross floor area used as school area
Elementary and junior high schools	1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment
Senior high schools	1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment
Marinas and other water-oriented recreational facilities	
With launching facilities	3 parking spaces for every 2 slips or moorings, arranged for trailers
Without launching facilities	1 parking space for each slip or mooring
Hospitals	1 parking space per each three beds
Long-term nursing care facilities and convalescent care facilities	1 parking space for each 4 beds
Theaters, auditoria, churches and arenas	1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of

DRAFT

Use	Parking Spaces Required
	assemblage space if no fixed seats
Mortuary chapels	5 parking spaces for each chapel
Retail stores and financial institutions	1 parking space for each 175 square feet of gross floor area
Bowling alley	4 parking spaces for each bowling lane
Drive-in restaurants, snack bars and fast food outlets	Minimum 15 parking spaces, plus 1 space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Restaurant	1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Offices, professional and public buildings	2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area
Convenience stores or neighborhood grocery facilities	6 spaces in the rural residential zone; all other zones, 10 parking spaces
Mobile home	2 vehicle spaces per each mobile home
Transportation terminals	In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following: 1 parking space for each employee; 1 parking space for each three seats of the terminal's major carrier vehicle; and 1 parking space for each rented vehicle to be based on site
Warehouse and storage	1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display or office area, which adds additional parking in accordance with the standards for those uses
Industry, manufacturing and business	1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1

DRAFT

Use	Parking Spaces Required
	spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade
Bus parking	For each 25,000 square feet of gross floor area, retail business must provide one bus parking area. Said area(s) are to be 12 feet by 50 feet in dimension, marked on the parking lot surface and labeled as such. Bus parking must be located in the parking area as far from the store entrance(s) as possible

e. A parking area is 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.

f. A parking area must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 16.9, Minimum Setback from Wetlands and Water Bodies; except, in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat-launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.

g. Parking landscaping is required for parking areas containing 10 or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches in diameter, with no less than 25 square feet of unpaved soil or permeable surface area per tree. At least 10% of the interior of any parking area having 25 or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.

h. Required off-street parking in all residential districts is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within 300 feet of the residential uses served, as measured along lines of public access. Such parking areas must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease is required. Leases obtained for this purpose must be reviewed by the Town Attorney at the developer's expense and include requirement for notice to the Town upon termination of lease. Approval for uses dependent on such lease is terminated upon termination of the lease.

i. If parking spaces are provided for employees, customers or visitors, then accessible parking spaces must be included in each such parking area in conformance with the following table:

DRAFT

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20 plus 1 for each 100 over 1,000

i. Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.

ii. The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.

iii. At least one accessible route is to connect from each accessible parking space to the accessible building entrance.

j. Required off-street parking in all commercial, business and industrial zones must be located on the same lot with the principal building or use, or within 100 feet measured along lines of public access; except that, where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas must be held under the same ownership or lease, and evidence of such control or lease is required. Such lots must be located within business or industrial districts.

k. The Planning Board or Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.

l. The Planning Board or Board of Appeals may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the

DRAFT

intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.

Table 2

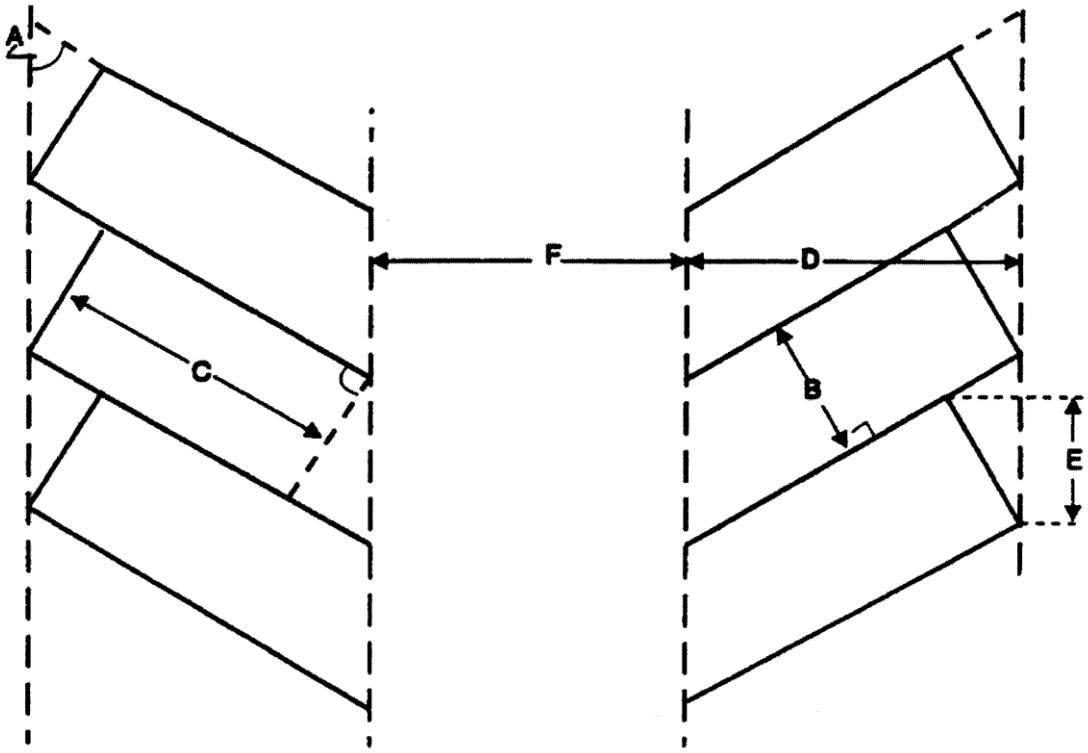
Parking Space Design

(minimum dimensions)

(Dimensions in feet unless otherwise indicated.)

	A	B	C	D	E	F (Aisle Width)	
To curb	**Angle (degrees)**	**Stall Width**	**Stall Depth**	**Stall to Curb**	**Skew Width**	**One-Way Traffic**	**Two-Way Traffic**
Parallel	0	9	22	9.0	22.0	13	19
Diagonal	30	9	19	17.3	18.0	11	20
Diagonal	45	9	19	19.8	12.9	13	21
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24

DRAFT



H. Utilities

(1). Approval.
The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.

(2). Underground installation.
Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

I. Exterior Lighting [Amended 3-25-2013 by Ord. No. 13-01]

(1). General requirements.
All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that result in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this article. Exterior lighting should also be consistent with the Design Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this article to the extent reasonable.

(2). Lighting fixtures.
All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

a. Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period or historical fixtures meeting the provisions of Subsection **G** of this section.

DRAFT

b. Floodlighting or other directional lighting may be used for supplemental illumination of sales or storage areas, provided that the floodlights are installed no higher than 12 feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding 39,000 lumens. The Town has the right to inspect the completed lighting installation and, if floodlights are used, to require that the floodlights be re-aimed or fitted with face louvers if necessary to control direct brightness or glare.

c. Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of 8,500 lumens or less, wall-mounted building lights must include full-face shielding consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom light-emitting surface.

d. Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures must limit the direction of light as required for a cutoff fixture. Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.

e. Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA-recommended practices and the provisions of this article.

    i. In approving new or modified lighting, the Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than 15 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of the site exists.

    ii. The Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than 20 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of that area of the site exists.

    iii. The maximum light fixture height for building-mounted light fixtures is the equivalent of that allowed for a pole-mounted light illuminating the same area. See the Design Handbook for examples of acceptable lighting installations.

f. Lamps in exterior light fixtures must be incandescent, metal halide, high-pressure sodium, compact fluorescent or light-emitting diode (LED). This provision does not prohibit the use of fluorescent lamps in internally lighted signs where such signs are otherwise permitted, provided such signs meet the requirements of this article. See the Design Handbook for appropriate examples of signs. With the use of LED lighting, the applicant is required to demonstrate that standards within this article are met and/or meet comparable accepted standards for LED exterior lighting. Required photometric test reports for LED lighting must be based on the IESNA LM-79-08 test procedure.

g. Period or historical fixtures that do not meet the requirements of this section may be used as an alternative to cutoff fixtures, provided the maximum initial lumens generated by each fixture does not exceed 2,000. The maximum initial lumens for metal halide lamps may be increased to 8,500

DRAFT

if the lamp is internally recessed within the fixture or is shielded by internal louvers or refractors. The mounting height of period or historical fixtures may not exceed 12 feet above the adjacent ground. See the Design Handbook for examples.

h. State and national flags that are flown on flagpoles may be illuminated by ground-mounted lighting that shines vertically as long as exposed lamps, reflectors or refractors are not visible from any public street.

(3). Illumination standards for nonresidential uses and multifamily housing.
New or revised exterior lighting serving nonresidential uses and multifamily housing must conform to the following standards:

a. The illumination of access drives must provide for a uniformity ratio of not more than 4:1 (ratio of average to minimum luminance). The illumination of parking lots and outdoor sales and service areas must provide for a uniformity ratio of not more than 20:1 (ratio of maximum to minimum luminance).

b. The maximum illumination level within access drives, parking lots and sales and service areas may not exceed eight footcandles measured at the ground surface.

c. The maximum illumination level at the property line of a nonresidential or multifamily housing use with abutting properties in a residential district may not exceed 0.1 footcandle.

d. Areas directly under canopies must be illuminated so that the uniformity ratio (ratio of average to minimum luminance) will be not greater than 3:1 with an average illumination level at ground level of not more than 30 footcandles. Areas of access drives, parking lots, sales display areas, etc., which are adjacent to canopies must taper down in illumination level from the illumination level permitted under the canopy to the maximum illumination level permitted in Subsection **B** of this section for the access drive, parking lot or sales display area adjacent to the canopy within a horizontal distance equivalent to the height of the canopy.

e. The maximum illumination levels and uniformity ratios for areas other than parking lots, access drives and canopies must be consistent with IESNA-recommended practices and be compatible with the overall lighting of the project and be specifically approved by the Planning Board.

f. Illuminated signs must not produce glare and are otherwise governed by Article **XXIV** of this chapter.

(4). Illumination standards for outdoor sports and recreational facilities.
New or revised exterior lighting serving sports fields and outdoor recreational facilities, including commercial recreational uses, must conform to the following standards:

a. Such fields and facilities may be illuminated for use during daylight hours and until 10:00 p.m. unless the Planning Board specifically approves a later time based upon the applicant demonstrating that such later time is needed for the reasonable operation of the facility and will be compatible with and will not result in adverse impacts on neighboring properties. If a later hour is approved, the Planning Board may impose conditions on the approval, including provisions for the periodic review of the time limit.

b. The illumination levels and mounting heights of the lighting fixtures may not exceed the minimum necessary to provide reasonable illumination for the proposed use consistent with IESNA-recommended practices.

c. The maximum illumination level at the property line of the use with

DRAFT

abutting properties in a residential district may not exceed 0.1 footcandle.

(5). Illumination standards for single- and two-family residential uses.
New or revised exterior lighting serving single- and two-family residential uses must be located and designed so that it does not result in excessive illumination levels on adjoining properties such as to amount to a public or private nuisance and must be compatible with the zone requirements in the neighborhood in which it is located. A maximum illumination level at the property line of more than 0.1 footcandle is considered to be excessive if the lighting level is in dispute. In the case of a major home occupation, the application must include a lighting plan meeting the requirements of § 16.10.7.2H(1).

J. Prevention of erosion. [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

(1). No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this title.

a. When an excavation contractor, as defined in § 16.2.2, performs an activity that requires or results in more than one cubic yard of soil disturbance within the Shoreland or Resource Protection Overlay Zones, there must be a person responsible for management of erosion and sedimentation control practices on site, and that person must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance must be included on the permit application. Excavation contractors will have one year from the date of the adoption of this subsection to comply with certification requirements.

b. The above requirement of § 16.9.1.3A(1) does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used.

c. The above requirement of § 16.9.1.3A(1) only applies to regulated activities requiring local, state or federal permits and/or Planning Board approval.

(2). All development must generally comply with the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control," published by the Maine Soil and Water Conservation Commission.

a. The developer must:

i. Select a site with the right soil properties, including natural drainage and topography, for the intended use;

ii. Utilize for open space uses those areas with soil unsuitable for construction;

iii. Preserve trees and other vegetation wherever possible;

iv. Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;

v. Spread jute matting, straw or other suitable material during

DRAFT

construction in critical areas subject to erosion;

vi. Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;

vii. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;

viii. Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;

b. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.

(3). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.

(4). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:

a. Mulching and revegetation of disturbed soil;

b. Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;

c. Permanent stabilization structures, such as retaining walls or riprap.

(5). To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.

(6). Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.

(7). Any exposed ground area must be temporarily or permanently stabilized in accordance with the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. All erosion control measures that are no longer necessary as determined by the CEO or Shoreland Resource Officer must be removed at the owner's expense.

(8). Natural and man-made drainageways and drainage outlets must be protected from erosion from water flowing through them. Drainageways must be designed and constructed in order to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or lined with riprap.

K. Water quality and wastewater pollution.

(1). No activity is allowed to deposit on or into the ground or discharge to any river, stream or brook, pond or lake, or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the

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water classification of the water body.

(2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or the Sewer Department.

(3). To meet those standards, the municipality or Sewer Department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.

(4). The disposal of wastewater by means other than a public system must comply with the laws of the State of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within 200 feet of the property line as measured along a public way, the Town requires individual entrance into said sewer.

(5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water and is secured against damage and uncovering by the tides, erosion or other foreseeable action.

L. Air pollution.
All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the State of Maine Department of Environmental Protection for approval before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

M. Buffer areas.
Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.

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

(1). Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed therein when there are undue flooding hazards, unless it can meet all requirements of Chapter 16.9, Article **VIII**, Floodplain Management, relating to flood hazard permit and review procedure, of this title. Floodplain areas shall be considered as those areas within the one-hundred-year frequency floodplain, as identified by an authorized federal or state agency, or where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

O. Noise abatement.

(1). Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

(2). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall be as established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall not exceed the following limits at the property line of the "receiver" premises.

DRAFT

Sound Pressure Level Limit Measured in dBs

Districts	7:00 a.m. to 9:00 p.m.	9:00 p.m. to 7:00 a.m.
Industrial	65	60
Commercial and Business	60	50
Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection	55	45

a. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.

b. The levels specified may be exceeded by 10 dB for a single period no longer than 15 minutes in any one day.

(3). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961, American Standard Specification for General Purpose Sound Level Meters). The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, American Standard Meter for the Physical Measurements of Sound.

(4). No person shall engage in, cause or permit to be engaged in construction activities producing excessive noise on a site abutting any residential use between the hours of 9:00 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for commercial districts for the periods within which construction is to be completed pursuant to any applicable building/regulated activity permit.

(5). The following uses and activities shall be exempt from the sound pressure level regulations:

a. Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.) between the hours of 7:00 a.m. and 9:00 p.m.;

b. Timber harvesting (felling trees and removing logs from the woods);

c. Noise created by construction and maintenance activities between 7:00 a.m. and 9:00 p.m.;

d. The noises of safety signals, warning devices and emergency pressure relief valves and any other public emergency activity; and

e. Traffic noise on existing public roads, railways or airports.

(6). These noise regulations are enforceable by law enforcement officers and by the Code Enforcement Officer (who may measure noise levels, and who shall report documented violations to the police). For the purposes of enforcement, sounds exceeding the above limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S. § 501-A ("disorderly conduct").

P. Radiation.

No dangerous radiation shall be detectable at the property line, in accordance with the applicable state and federal laws. In the case of electromagnetic pulses emanating from electrical service components, the Planning Board or Staff Review Committee shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

DRAFT

Q. Retention of Open Spaces and Natural or Historic Features

(1). Tree clearing.
Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.

(2). Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection or Shoreland Overlay Zone.

a. In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.

b. Except in areas as described in §§ 16.9.2.1 and 16.9.2.2A above and 100 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:

i. Clearance of an opening greater than 250 square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.

ii. Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level

(inches)	**Points**
2 to < 4	1
4 to < 8	2
8 to < 12	4
12 or greater	8

a. The following governs in applying this point system:

1. The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
2. Each successive plot must be adjacent to, but not overlap a previous plot;
3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;

DRAFT

4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and
5. Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

iii. For the purposes of § 16.9.2.2B(2), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter may be removed until five saplings have been recruited into the plot.

iv. Notwithstanding the above provisions, 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, may be removed in any ten-year period.

a. To protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered or undisturbed, except to provide for a footpath or other permitted uses as described in § 16.9.2.2B(2) above.

b. Pruning of tree branches on the bottom 1/3 of the tree is allowed.

c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14, for the listing of approved plant materials.

d. Article **II** of this chapter does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

c. At distances greater than 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

d. It is not permissible to clear openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay Zone or 10,000 square feet,

DRAFT

whichever is greater, including land previously cleared. This provision does not apply to the Commercial Fisheries/Maritime Activities Zones.

e. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this title.

f. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation will be regulated under the provisions of this chapter.

(3). Land dedication.
Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

(4). Landscape plan for preservation of natural and historic features.

a. The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing:

i. Preservation of existing trees 10 inches or more caliper at breast height;

ii. Replacement of trees and vegetation;

iii. Graded contours;

iv. Streams, wetlands and water bodies; and

v. Preservation of scenic, historic or environmentally significant areas.

b. Cutting of trees on the northerly borders of lots should be avoided as far as possible to provide a natural wind buffer.

c. Unless the applicant can demonstrate it is impracticable, street and lot layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.

(5). Archaeological or historic sites.

a. When the proposed development contains any identified archaeological or historic sites or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in a development plan's open space, and suitably protected by appropriate covenants and management plans.

b. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the National Register of Historic Places must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the Town Planner and/or the Planning Board. The development Review Authority will consider comments received from the Commission prior to rendering a decision on the application.

c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zones, a permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

12. Post-Approval

A. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

(1). A site plan approval will expire if work has not commenced within one year from the date of Planning Board or Staff Review Committee approval. Where work has

DRAFT

commenced within one year of such approval, the approval will expire if work is not complete within two years of the original date of approval.

(2). Prior to expiration, the Planning Board or Staff Review Committee 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 three years.

(3). When a plan's approval expires, the applicant may reapply subject to the Town Code current at the time of reapplication.

B. Inspection of required improvements. **[Amended 9-28-2015 by Ord. No. 15-08]**

(1). A preconstruction meeting is required for an approved site plan.. Prior to the commencement of any work associated with development approved in accordance with this title, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official [the Code Enforcement Officer (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and coordinate a preconstruction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their general contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.

(2). The developer or general contractor shall coordinate inspections with the inspecting official and provide written notice at least seven days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete, the general contractor shall request a final inspection from the inspecting official, who shall prepare a punch list of any outstanding items to be completed, within seven days of the final inspection. Once all outstanding items have been completed, the developer or the general contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide, in writing, to the developer or the general contractor within seven days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans.

(3). If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the approved plans and specifications, the inspecting official must report, in writing, to the Town Planner, the developer or duly authorized representative of the developer, and, when applicable, the CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections. The Town shall take any steps necessary to preserve the municipality's rights.

(4). Where applicable and in advance of any construction, the developer must deposit sufficient funds for said inspections in an applicant's service account per Chapter 3.3. The amount is based on a scope of services and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate prepared by a professional engineer or a qualified contractor.

(5). Stormwater and erosion control inspection.

a. During October to November of each year in which construction for grading, paving and landscaping occurs on a development site, the Town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and

DRAFT

permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.

b. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per § 16.8.8.2, Post-construction stormwater management.

c. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.

C. Modifications to an approved plan. Any modification to an approved plan may be considered for approval under § 16.10.3.1, General development, site and subdivision plan review, § 16.10.3.2, Other development review, and/or § 16.10.9.1B, Plan revisions after approval, or § 16.10.9.3, Modifications to approved plan.

D. Plan revisions after approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds. **[Amended 9-26-2011 by Ord. No. 11-15]**

(1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]

a. Minor. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer and Town Planner are authorized to approve minor plan amendments due to unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town Planner must issue any approval under this subsection in writing and transmit a copy of the approval to the Planning Board. Revised plans must be filed with the Town and recorded, where appropriate. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds when applicable.

b. Major. If, at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than 1%, or other modifications requiring review per § 16.10.3.2, must be reviewed by the Planning Board or Staff Review Committee.

(2). Modifications to approved plan.

c. Minor modifications. Modifications to a Planning Board approved plan that do not require Planning Board review per § 16.10.3.2 may be approved by the Code Enforcement Officer and Town Planner. Such approvals must be issued in writing to the developer with a copy to the Planning Board. The

DRAFT

developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds, when applicable. **[Amended 9-24-2012 by Ord. No. 12-11]**

d. Major modifications. Major modifications (e.g., relocations of principal structures, rights-of-way or property boundaries; changes of grade by more than 1%) require Planning Board or Staff Review Committee approval.

E. Maintenance of improvements. The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrianways/sidewalks unless and until the improvement has been accepted by the Town Council.

F. Acceptance of Streets and Ways

(1). Conditions. A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel prior to the enactment of this title must be laid out and accepted as a public street or way by the Town Council only upon the following conditions:

a. The owners must give the Town a deed to the property within the boundaries of the street at the time of acceptance by the Town.

b. A plan of said street or way must be recorded in the York County Registry of Deeds at the time of its acceptance.

c. A petition for laying out and acceptance of said street or way must be submitted to the Town Council upon a form prescribed by the Commissioner of Public Works. Said petition must be accompanied by a plan, profile and cross section of said street as follows:

i. A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must show the North point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments; waterways, topography and natural drainagecourses with contour at not greater than two-foot intervals; all angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;

ii. A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a vertical scale of four feet to one inch. Said profile must show the profile of the side lines and center line of said street or way and the proposed grades thereof. Any buildings abutting the street or way must be shown on said profile;

iii. A cross section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch; and

iv. The location and size of water and sewer mains and surface water drainage systems, as installed.

(2). Such street or way must have been previously constructed in accordance with the standards and criteria established in Article **IV** of this chapter.

(3). Acceptance of streets and ways required in public interest.

a. Notwithstanding the provisions of any other section hereof, the Town may at any time lay out and accept any street or way in the Town as a public street or way of said Town whenever the general public interest so requires. The cost of said street or way may be borne by the Town.

(4). Easements.

a. The Board may require easements for sewerage, other utilities, drainage and

DRAFT

stream protection. In general, easements may not be less than 20 feet in width. Wider easements may be required.

(5). No street or way to be accepted until after report.

a. No street or way may be laid out and accepted by the Town Council until the Planning Board and the Public Works Commissioner have made a careful investigation thereof and reported to the Town Council their recommendations in writing with respect thereto.

b. Upon completion of construction of any street/road intended for proposal for acceptance as a Town way, a written certification that such way meets or exceeds the design and construction standards of this title, signed by a professional engineer registered by the State of Maine, prepared at the developer's expense, must be submitted to the Board. If underground utilities are laid in such way, the developer must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The Board is to review the proposal and forward a recommendation to the Town Council regarding acceptance.

G. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code Enforcement Officer is to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

H. Nonstormwater discharge. No person, except where exempted in Title 16.9.7, may create, initiate, originate, or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable nonstormwater discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]

I. Nuisances. Any violation of this title is deemed to be a nuisance.

DRAFT

16.8 Subdivision Review

1. General.
   The purpose of this chapter is to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To that end, the Planning Board will evaluate proposed subdivisions using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

2. Authority and Statutory Review Criteria.

   A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.

   B. When reviewing any application for a subdivision, the Planning Board shall find that the criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of Title 16, Land Use and Development Code have been met, before granting approval.

3. Preapproval development prohibited.
   The applicant or applicant's authorized agent must obtain final Planning Board approval before:

   A. Any contract or offer for the conveyance of the proposed development (or portion thereof) has been made;

   B. Any subdivision into three or more lots has been recorded in the York County Registry of Deeds;

   C. A building/regulated activity permit for any structure within the development is issued; or

   D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

4. Other Potential Reviews

   A. Shoreland development review.
   [Amended 7-25-2016 by Ord. No. 16-02]

      (1). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or renewal of a discontinued nonconforming use, must be reviewed and approved as provided in § 16.10.10 and elsewhere in this title, and tracked as a shoreland development for reporting purposes.

      (2). All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except for the following:

         a. Proposed development of principal and accessory structures in compliance with § 16.3.2.17D(2), when not subject to Planning Board review as explicitly required elsewhere in this title. Such proposed development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be calculated by the applicant and

DRAFT

verified by the CEO and recorded in the Town's property records. Any development proposed in the Resource Protection and Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning Board.

b. Piers, docks, wharves, bridges and other structures and uses extending over or below the highest annual tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Chapter 16.11, Marine-related development.

c. Division of a conforming parcel that is not subject to subdivision as defined in § 16.2.2.

d. Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

(3). Establishment of new commercial or business entity in an existing facility, where intensity of use is not significantly different.

5. Application and Review Fees

(1). Review fee(s); reimbursements.

a. All applications for plan approval for properties which come under this title must be accompanied by a fee as determined by the Town Council.

b. The applicant must reimburse the Town for all expenses incurred for notifying abutters of the proposed plan and advertising of any public hearing regarding a development.

(2). Independent peer review.
[Amended 9-28-2015 by Ord. No. 15-08]

a. The Planning Board or, after the Town Manager's approval, the Town Planner and the Code Enforcement Officer, may require an independent consultant or specialist engaged by the Town, at the applicant's expense, to:

i. Determine compliance with all requirements of this title related to public health, safety and welfare and the abatement of nuisances; or

ii. Assist with the technical review of applications submitted for new or amended development.

b. When peer review is required of the applicant, sufficient funds, based on a written estimate by the required consultant, must be deposited in an applicant's service account per Chapter 3.3, prior to commencing said review and continuing with the review of the development plan application.

6. Applicant attendance at review meeting(s).
The applicant or duly authorized representative must attend all Board meetings for which the applicant's application has been placed on the agenda. Relief may be given from this requirement by the Board Chairperson.

7. Waivers [Amended 9-26-2011 by Ord. No. 11-14]

A. Waiver authorization.
Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.

B. Objectives secured.
In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or

DRAFT

modified.

8. Other Requirements

A. Burden of proof.
In all instances, the burden of proof is upon the applicant proposing the development.

B. Comprehensive Plan.
Any proposed development or use must be in harmony with the Town Comprehensive Plan guidance adopted into the provisions of this title.

C. Site inspection.

(1). So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board.

D. Safe use.
The land/water area to be developed must be of such character that it can be used without danger to health or peril from fire, flood, soil failure or other hazard.

9. Review Process and Submission Requirements

A. Preapplication and Conference

(1). Process. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.

a. This meeting is optional for Minor Subdivisions, but required for Major Subdivisions.

b. Such review shall not cause the plan to be a pending application or proceeding under 1M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

c. To request a preapplication conference the applicant shall submit, at a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.

B. Sketch Plan Review

(1). Review application form.
Any person requiring subdivision review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in § 16.10.5.2. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review before the Planning Board. No more than one approved final plan for a piece of property may exist.

(2). Planning Board review and decision. The Planning Board must, within 30 days of sketch plan submission, act upon the sketch plan as follows:

a. The Planning Board must determine whether the sketch plan proposal complies with the standards contained herein and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.

b. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision., and authorize submission of the next application stage. The next application stage for a Minor Subdivision is a Final Plan

DRAFT

application and the next application stage for a Major Subdivision is a Preliminary Plan application.

c. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.

d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

(3). Plan Requirements

a. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.

b. The sketch may be a freehand penciled sketch and must include the data listed below.

(4). Written Submission Requirements

a. General subdivision information must describe or outline the existing conditions of the site, including:

i. Covenants.

ii. High-intensity Class "A" soil survey and soil interpretation sheets.

iii. Available community facilities.

iv. Utilities.

b. Proposed development, such as:

i. Number of residential or business lots and/or dwelling units;

ii. Typical lot width and depth;

iii. Price range;

iv. Business areas;

v. Playgrounds, park areas and other public areas;

vi. Protective covenants;

vii. Utilities; and

viii. Street improvements.

C. Preliminary Plan Review

(1). Applicability. Preliminary Plan Review only applies to Major Subdivision applications.

(2). General Process

a. Preliminary plan application filing and completeness review. A determination as to whether the Town Planner validates an application is based on a review of the application in accordance with the submission contents checklist filed with the plan, which indicates all elements required under §§ 16.10.5.2 and 16.10.7.2 have been received, or written request for waiver of submittal for any nonreceived items is included. The application must be accompanied by a plan and the required fee, together with a certification the applicant has notified abutters by mail of the filing of the plan application for approval.

DRAFT

b. Receipt and scheduling review. Upon validation, the Town Planner must place the application on the Planning Board's agenda for Planning Board completeness review and acceptance and, upon Planning Board acceptance, issue a dated receipt to the applicant, which is thereafter the official time of submission. **[Amended 9-26-2011 by Ord. No. 11-15]**

c. Site inspection. In the course of the review of the plan, the Planner must, and the Planning Board may at its discretion, make a physical inspection and may make photographic record of the existing conditions on the site. **[Amended 9-26-2011 by Ord. No. 11-15; 1-23-2012 by Ord. No. 12-01]**

d. Advisory opinions. At any time during review, the Planner may request an advisory opinion from the Planning Board, Conservation Commission or Port Authority on issues related to the application. Where applications are for land within wetland setbacks or the Resource Protection Overlay Zone, the Conservation Commission must be invited to review and offer recommendations from an environmental protection perspective. The Planner also must make recommendation on the necessity for independent review.

e. Planner analysis. The Planner must analyze the application and forward comments to the applicant and the Planning Board with a recommendation as to review category (e.g., site, minor/major subdivision).

f. A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the following items, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

   i. A minimum of 12 paper copies of the application form, plan and all attachments thereto plus, if applicable, an additional three paper copies of the twenty-four-inch-by-thirty-six-inch-size plan sheets.

g. Submission contents complete. Upon determination by the Planner that the preliminary plan application is complete, the Planner must receive it, together with an application fee in the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may be deemed complete by the Planning Board until payment of the proper fees.

   i. Once the Planning Board makes a finding that the preliminary plan is complete in regard to the submission requirements, it must if any studies/review or analysis is required in accordance with § 16.10.5.2D and schedule the date for a public hearing.

(3). Public hearing

a. Scheduling

   i. In the case of an accepted subdivision plan application, such public hearing must be scheduled no later than 30 days from the date of Planning Board acceptance. With the concurrence of the applicant, this deadline may be modified.

   ii. For all other development plan applications (i.e., right-of-way plan application and development in the Shoreland Overlay Zone), at the Planning Board's discretion, a public hearing may or may not be held.

b. Public notice.

   i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and

DRAFT

not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.

ii. A subdivision public notice must be published at least two times in a newspaper of general circulation in the Town. The date of the first notice must be at least seven days before the scheduled public hearing date.

c. Abutter notice.

i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.

d. Preliminary Plan Public Hearing Procedure

i. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.

ii. The Chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.

iii. Any party may be represented by agent or attorney.

iv. The Town Planner, in consultation with the Code Enforcement Officer, Commissioner of Public Works, and such other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.

v. The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.

(4). Planning Board review schedule.

a. Within six months after approval/classification of a sketch plan by the Board, the applicant must submit an application for approval of a subdivision preliminary plan or site plan preliminary plan in the form prescribed herein. [Amended 9-26-2011 by Ord. No. 11-15]

b. Within 30 days after acceptance by the Planning Board of a subdivision plan, and within 35 days after acceptance by the Planning Board of other applications, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.

c. Continuation or tabling of a review beyond the thirty-day period for subdivision applications, and the thirty-five-day period for other applications, must be for good and sufficient reason and be acceptable to both the applicant and the Planning Board.

DRAFT

d. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.

e. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

f. Failure of the Planning Board to act within the thirty-day period for an accepted subdivision application, and the thirty-five-day period for other Planning Board accepted applications, constitutes disapproval of the plan, in which case the applicant may resubmit the plan without payment of an additional application fee.

(5). Planning Board review and decision.

a.

a. The Planning Board must approve, approve with conditions or deny the preliminary plan.

b. Approval of a preliminary plan does not constitute approval of a final plan, but rather it is be deemed an expression of approval of the design submitted on the preliminary plan as a guide to the preparation of the final plan.

c. Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs, type or style of construction, and the amount of all guarantees which may be required.

d. Conditions required by the Planning Board at the preliminary plan review phase must have been met before the final plan may be given final approval unless specifically waived, upon written request by the applicant, by formal Planning Board action, wherein the character and extent of such waivers which may have been requested are such that they may be waived without jeopardy to the public health, safety and general welfare.

e. The decision of the Planning Board plus any conditions imposed must be noted on three copies of the preliminary plan. One copy must be returned to the applicant, one retained by the Planning Board and one forwarded to the municipal officials.

f. If the final plan is not submitted to the Planning Board within six months after classification of the sketch plan, the Planning Board may refuse to act on the subdivision preliminary plan or final site plan and require resubmission of the sketch plan. All such plans resubmitted must comply with all normal application requirements.

(6). Plan Requirements

a. Plan sheets drawn on a reproducible medium and must measure no less than 11 inches by 17 inches and no larger than 24 inches by 36 inches;

b. With scale of the drawings no greater than one inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;

c. Code block in the lower right-hand corner. The block must contain:

i. Name(s) and address(es) of the applicant and owner;

DRAFT

ii. Name of the project;

iii. Name and address of the preparer of the plan, with professional seal, if applicable;

iv. Date of plan preparation/revision, and a unique ID number for the plan and any revisions;

d. Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;

e. An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;

f. Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;

g. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;

h. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;

i. Names and addresses of all owners of record of property abutting the development, including those across a street;

j. Existing Development Area Conditions, including but not limited to:

i. Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;

ii. Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;

iii. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways;

k.

l.

m.

n. Proposed development area conditions including, but not limited to:

i. Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line;

ii. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;

iii. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;

iv. Domestic water source;

v. Parks, open space, or conservation easement locations;

vi. Lot lines, interior and exterior, right-of-way, and street alignments;

vii. Road and other paved ways plans, profiles and typical sections including all relevant data;

viii. Setbacks existing and proposed;

ix. Machinery permanently installed locations likely to cause

DRAFT

appreciable noise at the lot lines;

x. Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

xi. Topographic contours of existing contours and finished grade elevations within the development;

xii. Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;

xiii. Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;

xiv. Land proposed to be dedicated to public use and the conditions of such dedication;

xv. Natural features or site elements to be preserved.

(7). Written Submission Requirements

a. Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;

b. Property encumbrances currently affecting the property, as well as any proposed encumbrances;

c. Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;

d. Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;

e. Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;

f. Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;

g. Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;

h. Traffic impact analysis in accordance with § 16.10.5.2D(1) for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;

i. Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;

j. Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;

k. Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.

l. Additional submissions as may be required by other sections of this title such as for clustered development, mobile home parks, or junkyards must be provided.

(8). Additional requirements. In its consideration of an application/plan, the Planning Board may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for

DRAFT

complete understanding of the application. Such materials may include:

a. Traffic impact analysis, including the following data:

i. An executive summary outlining the study findings and recommendations.

ii. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

iii. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

iv. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

v. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.

vi. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.

vii. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.

viii. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.

ix. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.

x. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.

xi. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).

xii. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of

DRAFT

the project, the Planning Board may require these projects to be incorporated into the analysis.

xiii. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.

xiv. The base data collected and analyzed during the course of the traffic impact study.

xv. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

b. Environmental analysis. An analysis of the effects that the development may have upon surrounding lands and resources, including intensive study of groundwater, ecosystems, or pollution control systems;

c. Hydrologic analysis. An analysis of the effects that the development may have on groundwater must be conducted in accordance with § 16.8.6.9. This analysis is always required for mobile home park proposals.

D. Final Plan Review

(1). Process

a. Final plan application. The applicant must, within six months after approval of a preliminary plan, file with the Planning Board an application for approval of the final plan in the form prescribed herein.

b. Failure to submit final plan application. If the final plan is not submitted to the Planning Board within six months after the approval of the preliminary plan, the Planning Board may refuse to act on the final plan and require resubmission of the preliminary plan. Any plan resubmitted must comply with all application requirements, including payment of fees.

c. Application/plan review expiration.

i. Uncounted time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with § 16.10.5.4A(3) from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this section.

ii. Requests for extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.

(2). Final Plan Requirements

A complete final plan application must fulfill all the requirements of a preliminary plan as indicated in § 16.10.5.2 of this section and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. If no changes occurred to the preliminary plan, it also may be considered to be the final plan.

a. Preliminary plan information, including vicinity map and any amendments thereto suggested or required by the Planning Board or other required reviewing agency.

DRAFT

b. Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or dedicated to public use.

c. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.

d. Lots and blocks within a subdivision, numbered in accordance with local practice.

e. Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.

f. Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.

g. Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:

    i. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures;

    ii. All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;

    iii. Mounting height of all exterior lighting fixtures;

    iv. Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;

    v. Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and

    vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.

h. Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.

i. Materials (raw, finished or waste) storage areas, their types and location, and any stored toxic or hazardous materials, their types and locations.

j. Fences, retaining walls and other artificial features locations and dimensions proposed.

k. Landscaping plan, including location, size and type of plant material.

l. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-

DRAFT

construction stormwater management plan that defines maintenance responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord. No. 16-06]**

m. Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.

i. The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.10.9.1E.

ii. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.

iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.

iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.

v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(3). Written Submission Requirements

a. Open space land cession offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements or other documents showing the manner in which space(s), title to which is reserved by the subdivider, are to be maintained.

b. Open space land cession offers acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in § 16.10.7.2M. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in § 16.10.7.2M.

c. Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board, and written evidence the Town Manager is satisfied with the sufficiency of such guaranty.

i. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a

DRAFT

performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.

ii. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.

d. Maintenance plan and agreement defining maintenance responsibilities, responsible parties, shared costs and schedule. Where applicable, a maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed.

(4). Findings of Fact.

a. After considering all submissions, evidence and testimony in accordance with the requirements of all applicable state and the Town Code, the Planning Board must make a finding of facts for each and every proposed phase of development, including the development master plan and each subsequent development plan, and take formal action as required in this title.

b. Findings of fact. Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this title and which certify the development meets the following requirements:

i. Development conforms to local ordinances. The proposed development conforms to a duly adopted Comprehensive Plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

ii. Freshwater wetlands identified. All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

iii. River, stream or brook identified. Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. § 480-B, subsection 9.

iv. Water supply sufficient. The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

v. Municipal water supply available. The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

vi. Sewage disposal adequate. The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized.

vii. Municipal solid waste disposal available. The proposed development will not cause an unreasonable burden on the

DRAFT

municipality's ability to dispose of solid waste, if municipal services are to be used.

viii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

ix. Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

x. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one-hundred-year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.

xi. Stormwater managed. The proposed development will provide for adequate stormwater management.

xii. Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

xiii. Traffic managed. The proposed development will:

a. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and

b. Provide adequate traffic circulation, both on site and off site.

xiv. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

a. Elevation of the land above sea level and its relation to the floodplains;

b. Nature of soils and subsoils and their ability to adequately support waste disposal;

c. Slope of the land and its effect on effluents;

d. Availability of streams for disposal of effluents;

e. Applicable state and local health and water resource rules and regulations; and

f. Safe transportation, disposal and storage of hazardous materials.

xv. Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas,

DRAFT

or any public rights for physical or visual access to the shoreline.

xvi. Developer financially and technically capable. Developer is financially and technically capable to meet the standards of this section.

c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones, the proposed use will:

i. Maintain safe and healthful conditions;

ii. Not result in water pollution, erosion or sedimentation to surface waters;

iii. Adequately provide for the disposal of all wastewater;

iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

v. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

vi. Protect archaeological and historic resources as designated in the comprehensive plan;

vii. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;

viii. Avoid problems associated with floodplain development and use; and

ix. Is in conformance with the provisions of this title.

d. For a right-of-way plan. The proposed right-of-way:

i. Does not create any nonconforming lots or buildings; and

ii. Could reasonably permit the right of passage for an automobile.

e. For special exception use – special exception use permitted. If a special exception use is requested, the special exception use will: **[Added 9-26-2011 by Ord. No. 11-15]**

i. Not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

ii. Not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones; and

iii. Not adversely affect the safety, the health, and the welfare of the Town.

iv. Be in harmony with and promote the general purposes and intent of this title.

(5). Final plan approval and recording.

a. Agreement form. An approval by the Planning Board must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.

b. Agreement distribution. The Planning Board must send copies of the agreement to the Town Manager and Code Enforcement Officer. **[Amended 9-26-2011 by Ord. No. 11-15]**

c. Approved final plan signing. A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning Board.

DRAFT

d. Approved final plan recording. An approved plan involving the division of land, easements, or property boundary modification must be recorded by the York County Registry of Deeds. A Mylar copy of the recorded plan must be returned to the Town Planner. **[Amended 9-26-2011 by Ord. No. 11-15]**

10. Performance Standards and Approval Criteria

A. Monuments

(1). Stone monuments.

a. Stone monuments must be set at all street intersections and points of curvature, but not more than 750 feet apart along street lines without curves or intersections.

b. Stone monuments must be set at all corners and angle points of the development boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

c. Stone monuments must be a minimum of four inches square at the top and four feet in length and set in the ground at final grade level. Drilled holes, 1/2 inch deep, are to serve to locate the point or points described above.

(2). Other monumentation.
All other development boundary corners and angle points, as well as all lot boundary corners and angle points are to be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation must be capable of being detected by commonly used magnetic or electronic equipment and clearly show the registration number of the registered land surveyor responsible for the survey.

(3). Impractical placement.
Where the placement of a required monument at its proper location is impractical, it is permissible to set a reference monument close to that point on an adjacent property line.

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B. Water Supply

(1). The development shall be provided with a system of water supply that provides each use with an adequate supply of water.

(2). If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

(3). Service required.

a. A public water supply system with fire hydrants must be installed and approved in writing by the servicing water department.

a. If in the opinion of the Board service to each lot by a public water system is not feasible, the Board may allow individual wells or a central water supply system approved in writing by a civil engineer registered in the State of Maine.

b. If the developer proposes a central water supply system, it must also be approved in writing by the Maine Department of Human Services.

c. Water supply system installations are at the expense of the developer.

d. All required approvals of a water supply system must be secured before

official submission of the final plan.

(4). Quality and pressure.
[Amended 9-26-2011 by Ord. No. 11-15]
The developer must demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting the "Maine Rules Relating to Drinking Water (10-144 C.M.R. 231)" can be supplied to the development at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for firefighting purposes.

(5). Storage.
Storage must be provided as necessary to meet peak domestic demands and fire protection needs.

(6). Adequacy.
The developer must demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the State of Maine that the proposed development will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facilities or distribution system will be modified to meet the expanded needs. The cost of such improvements is to be borne by the developer.

(7). Water main size.
The minimum water main size permitted is to be as required by the Kittery Water District, installed at the expense of the developer.

(8). Design and installation.
The water supply system must be designed and installed in accordance with requirements of the Maine Department of Human Services.

(9). Dug wells.
Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited by deed restriction and a note on the plan, unless permitted by the Board only if it is not economically or technically feasible to develop other groundwater sources. Such dug wells permitted must be constructed so as to prevent infiltration of surface water into the well.

(10). Central water supplies.
If a central water supply system is provided by the developer, location and protection of the source, and design, construction and operation of the distribution system and appurtenances and treatment facilities must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."

(11). Hydrologic analysis.
The Board may require the developer to provide a detailed hydrologic analysis in accordance with the requirements of § 16.9.1.5.

C. Sewage Disposal [Amended 10-14-2015 by Ord. No. 15-10]

(1). Sewers.

a. As per Chapter 13.1, Sewer Service System, connection to public sewer is required, provided said sewer, located within an abutting public way, is within 100 feet of the property line as measured along the said public way. Individual dwellings and structures in approved and recorded developments where public sewer becomes available as described in this subsection must connect per the requirements of Title 13, Chapter 13.1.

b. Notwithstanding the provision above and Chapter 13.1, connection to public sewer is required for a commercial or industrial development or a residential subdivision, where public sewer, within an abutting public way,

DRAFT

is within 1,000 feet of the property line as measured along said public way. In such an event, the developer shall connect to public sewer per the Town's Superintendent of Sewer Services (SSS) specifications and in accordance with Title 13. The developer shall provide written certification to the Planning Board from the SSS that the proposed addition to public sewer is within the capacity of the collection and wastewater treatment system.

c. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to public sewer must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of the Kittery Town Code.

d. Proposal and construction drawings must be approved in writing by the Town's SSS. All required approvals must be secured before the start of final plan review.

e. When public sewer connection pursuant to Subsection **B** above is not feasible as determined by the Planning Board, the Board may allow individual or common subsurface wastewater disposal systems in accordance with § 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques, such as, but not limited to, horizontal/directional boring and low-pressure sewer. The developer's information must be accompanied by findings and recommendations of the Town Peer Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

(2). Subsurface wastewater disposal systems.

a. The developer shall submit plans for subsurface wastewater disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface wastewater disposal systems (SWDS) must be constructed according to the approved plan.

b. All first-time subsurface wastewater disposal systems must be installed in conformance with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also apply:

i. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.

ii. Clearing or removal of woody vegetation necessary to site a first-time system, and any associated fill extensions may not extend closer than is allowed in Table 16.9, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage disposal.

c. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

i. Where no expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 to the extent practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

ii. Where expansion is proposed, the SWDS must comply with § 16.8.7.2 and Table 16.9 in addition to the Maine Subsurface Wastewater Disposal Rules.

NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of the Maine Subsurface Wastewater Disposal Rules.

DRAFT

d. Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:

i. On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.

ii. In no instance may a primary or reserve disposal area be permitted on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.

iii. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.

e. The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.

(3). Holding tanks.

a. Holding tanks are not allowed for a first-time residential use.

(4). (Reserved)

(5). Sanitary facilities/restrooms.

a. Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections **B**, **C** and **D** of this section.

b. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.

c. Where a retail development exceeds 60,000 square feet, each toilet facility must contain a minimum of two water closets.

d. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.

D. Stormwater and Surface Drainage

(1). Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains.

DRAFT

(2). To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per § 16.8.8.2, Post-construction stormwater management.

(3). Where a development is traversed by a stream, river or surface water drainageway, or where the Planning Board determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is 30 feet.

a. The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

b. Except for normal thinning and landscaping, existing vegetation must be left intact to prevent soil erosion.

(4). When proposed development does not require Maine Department of Environmental (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

a. All components of the stormwater management system must be designed to limit peak discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development discharges directly to a major water body, peak discharge may be increased from predevelopment levels, provided downstream drainage structures are suitably sized.

b. The stormwater management system must be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and must include a surplus design capacity factor of 25% for potential increases in upstream runoff.

c. Downstream drainage requirements must be studied to determine the effect of the proposed development. The storm drainage must not overload existing or future planned storm drainage systems downstream from the development. The developer is responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

i. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.

ii. All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

iii. Catch basins in streets and roads must be installed where necessary and located at the curbline. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.

iv. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.

v. Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.

vi. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in

DRAFT

accordance with § 16.8.8.2, Post-construction stormwater management.

E. Post-construction stormwater management.

(1). Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plan are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.

(2). Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

(3). Applicability.

a. In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre. **[Amended 7-25-2016 by Ord. No. 16-06]**

b. Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.

c. Post-construction stormwater management plan approval.

i. General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.8.2C(2), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.

ii. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction

DRAFT

stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.

iii. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any unused balance remaining at that time will be refunded to the applicant.

d. Post-construction stormwater management plan compliance.

i. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:

a. That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;

b. If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and

c. That person or a qualified post-construction stormwater inspector hired by that person must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities, and if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.

ii. Right of entry. In order to determine compliance with this section and with the post-construction stormwater management plan, the

DRAFT

Code Enforcement Officer may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

e. Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include the following in its annual report to the Maine Department of Environmental Protection:

i. Cumulative number of sites that have stormwater management facilities discharging into its MS4;

ii. Summary of the number of sites that have stormwater management facilities discharging into its MS4 that were reported to the Town;

iii. Number of sites with documented functioning stormwater management facilities; and

iv. Number of sites that require routine maintenance in order to continue the original line and grade, the hydraulic capacity, and the original purpose of improvements; or remedial action to ensure that stormwater management facilities are functioning as intended.

f. Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the post-construction stormwater management regulations are conducted in accordance with Chapter 16.4.

(4). Storm drainage construction standards.

a. Materials:

i. Reinforced concrete pipe must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a safety factor of 1.2 on the 0.01 inch crack strength with Class B bedding. Joints are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe must conform to the requirements of AASHTO M175 for the appropriate diameters.

ii. Corrugated metal pipe must be bituminous-coated, meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads with a deflection of not more than 5%.

iii. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.

iv. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).

v. Catch basins are to be precast concrete truncated cone section construction, meeting the requirements of ASTM Designation C478, or precast concrete manhole block construction, meeting the requirements of ASTM C139, radial type. Castings are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps must be set in a full mortar bed with tops and are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or

DRAFT

AASHTO M183 (ASTM A283, Grade B or better) for structure steel.

b. Drain inlet alignment is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the Commissioner of Public Works.

c. Manholes are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot intervals.

d. Upon completion, each catch basin or manhole must be cleared of all accumulation of silt, debris or other foreign matter and kept clean until final acceptance.

F. Vehicular Traffic

(1). Adequacy of Road System. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

a. A development not meeting this requirement may be approved if the applicant demonstrates that:

i. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or

ii. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.

(2). Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a Traffic Impact Study will include the following elements related to the project and surrounding street network.

a. An executive summary outlining the study findings and recommendations.

b. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.

c. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).

d. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.

e. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.

f. Trip generation must be calculated for the proposed project and other

DRAFT

proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.

g. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.

h. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.

i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.

j. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.

k. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate factors (CRF).

l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.

m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.

n. The base data collected and analyzed during the course of the traffic impact study.

o. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;

(3). Access to the Site. Vehicular access to and from the development shall be safe and convenient.

a. Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.

b. Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.

c. The grade of any proposed drive shall be not more than ±3% for a minimum of fifty (50) feet, from the intersection.

d. The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four

DRAFT

(24) hour period.

e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.

f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

g. Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

h. The following criteria shall be used to limit the number of driveways serving a proposed project:

i. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.

ii. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.

iii. The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.

(4). Accessway Location and Spacing. Accessways shall meet the following standards:

a. Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

b. Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.

c. Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.

(5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.

a. Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.

i. If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.

b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).

c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.

d. All roadways shall be designed as follows:

DRAFT

i. To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,

ii. By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,

iii. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

e. Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

G. Cluster Residential and Cluster Mixed-Use Development [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]

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

a. Efficient use of the land and water, with small networks of utilities and streets;

a. Preservation of open space and creation of recreation areas;

b. Maintenance of rural character, preserving farmland, forests and rural viewscapes;

c. Preservation of areas with the highest ecological value;

d. Location of buildings and structures on those portions of the site most appropriate for development;

e. Creation of a network of contiguous open spaces or "greenways" by linking the common open spaces within the site and to open space on adjoining lands wherever possible;

f. Reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;

g. Preservation of historic, archaeological, and cultural features; and

h. Minimization of residential development impact on the municipality, neighboring properties and the natural environment.

(2). Permitted zones.

a. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.

a. Cluster mixed-use development is permitted only in the Business Park (B-P) Zone.

(3). Dimension standards modifications.
Notwithstanding other provisions of this title relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential or mixed-use development under this article, may modify said dimensional standards to permit

DRAFT

flexibility in approaches to site design in accordance with the standards of this title. The Board may allow subdivision or site development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with this title. Such modifications may not be construed as granting variances to relieve hardship.

(4). Property ownership.
Tracts or parcels of land involved in a development proposed under this article must be in single ownership; or must be the subject of an application filed jointly by the owners of all properties included; or must have an applicant with vested interest in all property included. Pursuant to the requirements of this article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential development.

(5). Application procedure.
All development reviewed under this article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:

a. In addition to the requirements of Chapter 16.10, the following are required at submittal of the sketch plan:

i. Calculations and maps to illustrate:

a. Proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;

a. All land area identified in Chapter 16.7, Article **VIII**, Net Residential Acreage; **[Amended 9-28-2015 by Ord. No. 15-05]**

b. Net residential density; and [Amended 9-28-2015 by Ord. No. 15-05]

c. Open space as defined in § 16.8.11.6E(2) of this article.

ii. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of 33%, easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

iii. A written statement describing the ways the proposed development furthers the purpose and objectives of this article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high-yield aquifers and important natural or historic sites worthy of preservation.

iv. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.

b. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following preliminary plan approval. Town Council acceptance is contingent upon receipt of final plan approval by the Planning Board.

(6). Standards.

a. The purpose and intent of this title must be upheld for any reviews conducted under this article.

a. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision (and site plan where applicable) and all other

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applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.

b. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with this Article **XI**.

c. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than 20,000 square feet per single-family residence and 8,000 square feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12 M.R.S. § 4807-A.

d. Open space requirements.

   i. Open space must contain at least 50% of the total area of the property and no less than 30% of the total net residential acreage, as defined.

   ii. Total calculated open space must be designated as follows (see open space definitions in Chapter 16.2):

      a. Open space, reserved;

      b. Open space, common; and/or

      c. Open space, public.

   iii. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.

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

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

   vi. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.

   vii. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g., a common green, multipurpose athletic field, gardens, and playgrounds).

e. In the Business Park (BP) Zone, the maximum building height is 40 feet. If the Planning Board finds that provisions for firesafety are adequate to allow buildings of greater height, then the Board may allow a building height of up to 60 feet as a part of the development plan review and approval process.

f. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

g. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland, must be a part of the commonly held land.

DRAFT

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

i. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.

ii. Utility installation. All utilities are to be installed underground, wherever possible. The Planning Board must require the developer to adopt a prudent avoidance approach when permitting aboveground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

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

iv. Buffering. Planting, landscaping, form and siting of buildings and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development.

v. Development setbacks. Setbacks from wetlands and water bodies must demonstrate compliance to Table 16.9 of Chapter 16.9. These setbacks must be permanently maintained as "no cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings.

i. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering, and the Municipal Plumbing Inspector must be obtained prior to Planning Board approval.

(7). Open space dedication and maintenance.

a. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.

b. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:

i. The open space must not be used for future building lots; and

ii. A part or all of the open space may be dedicated for acceptance by the Town.

c. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowners' or similar governing association for commercial owners (in the Business Park Zone) and/or the recorded covenants must specify

DRAFT

maintenance responsibilities and be submitted to the Planning Board prior to approval. See Subsection **A** above.

d. Association responsibilities.

i. Maintenance. The homeowners' association or similar association for commercial owners is responsible for the maintenance of open space(s) and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with § 16.8.8.2, Post-construction stormwater management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.

ii. Inspection. Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a maintenance compliance report, on a form prepared by the Code Enforcement Officer, certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.

e. Transition of responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

(8). Predevelopment requirements.
Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with § 16.10.8.2B.

H. Utilities

(1). Approval.
The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.

(2). Underground installation.
Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

I. Subdivision Noise Pollution Buffer

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

J. Prevention of erosion. [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

(1). No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations

DRAFT

complying with the standards of performance specified elsewhere in this title.

a. When an excavation contractor, as defined in § 16.2.2, performs an activity that requires or results in more than one cubic yard of soil disturbance within the Shoreland or Resource Protection Overlay Zones, there must be a person responsible for management of erosion and sedimentation control practices on site, and that person must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance must be included on the permit application. Excavation contractors will have one year from the date of the adoption of this subsection to comply with certification requirements.

b. The above requirement of § 16.9.1.3A(1) does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used.

c. The above requirement of § 16.9.1.3A(1) only applies to regulated activities requiring local, state or federal permits and/or Planning Board approval.

(2). All development must generally comply with the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control," published by the Maine Soil and Water Conservation Commission.

a. The developer must:

i. Select a site with the right soil properties, including natural drainage and topography, for the intended use;

ii. Utilize for open space uses those areas with soil unsuitable for construction;

iii. Preserve trees and other vegetation wherever possible;

iv. Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;

v. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;

vi. Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;

vii. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;

viii. Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;

b. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.

DRAFT

(3). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.

(4). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and sedimentation control plan in accordance with the "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. The plan must be submitted to the permitting authority for approval and must include, where applicable, provisions for:

a. Mulching and revegetation of disturbed soil;

b. Temporary runoff control features, such as straw bales, silt fencing, filter socks or diversion ditches;

c. Permanent stabilization structures, such as retaining walls or riprap.

(5). To create the least potential for erosion, development must be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever possible, and natural contours must be followed as closely as possible.

(6). Erosion and sedimentation control measures apply to all aspects of the proposed project involving land disturbance and must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.

(7). Any exposed ground area must be temporarily or permanently stabilized in accordance with the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as amended. All erosion control measures that are no longer necessary as determined by the CEO or Shoreland Resource Officer must be removed at the owner's expense.

(8). Natural and man-made drainageways and drainage outlets must be protected from erosion from water flowing through them. Drainageways must be designed and constructed in order to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or lined with riprap.

K. Soil suitability. [Amended 9-28-2015 by Ord. No. 15-07]

(1). The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this title must be met.

(2). All land uses must be located on soils upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction.

(3). Any proposed development requires a soil report based on information from the Maine Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is required and the Soil Survey for York County or information from the Maine NRCS shows soils with severe restrictions for development, a Class A (high-intensity) soil survey must be provided by a soil scientist certified in the State of Maine. The survey must be based on the Maine Association of Professional Soil Scientists Standards for Soil Survey, revised 3/2009, or subsequent revision. In addition to evaluating soil properties, the soil scientist shall analyze and document characteristics of surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions and any other data deemed appropriate by the soil scientist or required by the Planning

DRAFT

Board. The soil scientist shall include recommendations for the proposed use to counteract soil limitations where any exist. A Class A soil survey must include a written soil narrative report accompanied by a soil map that depicts soil delineations and symbols identified in the report. The soil map must be prepared at the same scale as that of the development plan, with wetlands and floodplain depicted on both.

(4). When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on a lot not subject to subdivision regulation, a Class A (high-intensity) soil survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine-certified soil scientist, a Maine-certified geologist, or a Maine-licensed site evaluator. Prior to the issuance of a building permit, the soil report must be submitted to the Code Enforcement Officer (CEO) for review and assessment of compliance with this title.

(5). Cluster residential and cluster mixed-use, commercial or industrial development and similar intensive land uses require a Class A (high-intensity) soil survey by a Maine-certified soil scientist.

(6). Where nonclustered development is limited in scale and intensity, the developer may request the Class A (high-intensity) soil survey required by § 16.9.1.4E above be waived by the Planning Board. The Board may grant said waiver only after consideration by the Town's Peer Review Engineer of the developer's explanation as to why a Class A soil survey is not warranted. In the event a Class A soil survey is not required, the site's soil suitability must be sufficiently assessed for compliance with this title.

(7). If the soil report is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a challenge by the Planning Board, the Planning Board shall determine whether a certified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in written form to the Planning Board, which evidence forms the basis for the Board's decision.

L. Water quality and wastewater pollution.

(1). No activity is allowed to deposit on or into the ground or discharge to any river, stream or brook, pond or lake, or wetland any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body.

(2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be available, must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or the Sewer Department.

(3). To meet those standards, the municipality or Sewer Department may require that such wastes undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.

(4). The disposal of wastewater by means other than a public system must comply with the laws of the State of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within 200 feet of the property line as measured along a public way, the Town requires individual entrance into said sewer.

(5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same is buried or not visible to a point below normal low water and is secured against damage and uncovering by the tides,

DRAFT

erosion or other foreseeable action.

M. Air pollution.
All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the State of Maine Department of Environmental Protection for approval before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

N. Buffer areas.
Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.

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

(1). Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall be constructed therein when there are undue flooding hazards, unless it can meet all requirements of Chapter 16.9, Article **VIII**, Floodplain Management, relating to flood hazard permit and review procedure, of this title. Floodplain areas shall be considered as those areas within the one-hundred-year frequency floodplain, as identified by an authorized federal or state agency, or where such identification is not available, are located on floodplain soils identified as described in the York County Soil Survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

P. Retention of Open Spaces and Natural or Historic Features

(1). Tree clearing.
Proposed development plans must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plans.

(2). Clearing or removal of vegetation for uses other than timber harvesting in Resource Protection or Shoreland Overlay Zone.

a. In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in a Resource Protection or Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay Zone.

b. Except in areas as described in §§ 16.9.2.1 and 16.9.2.2A above and 100 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:

i. Clearance of an opening greater than 250 square feet in the forest canopy, or other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.

ii. Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is

DRAFT

maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level

(inches)	Points
2 to < 4	1
4 to < 8	2
8 to < 12	4
12 or greater	8

a. The following governs in applying this point system:

1. The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
2. Each successive plot must be adjacent to, but not overlap a previous plot;
3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;
4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and
5. Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

iii. For the purposes of § 16.9.2.2B(2), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody stems less than two inches in diameter may be removed until five saplings have been recruited into the plot.

iv. Notwithstanding the above provisions, 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, may be removed in any ten-year period.

a. To protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, must remain uncut, uncovered or undisturbed, except to provide for a footpath or other permitted uses as described in § 16.9.2.2B(2) above.

b. Pruning of tree branches on the bottom 1/3 of the tree is

DRAFT

allowed.

c. To maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings must be replanted with tree species that are suitable to Kittery's growing conditions unless existing new tree growth is present. See Design Handbook Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages 13 and 14, for the listing of approved plant materials.

d. Article **II** of this chapter does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

c. At distances greater than 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses must be included in the forty-percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

d. It is not permissible to clear openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision does not apply to the Commercial Fisheries/Maritime Activities Zones.

e. Legally existing nonconforming cleared openings may be maintained, but must not be enlarged, except as allowed by this title.

f. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation will be regulated under the provisions of this chapter.

(3). Land dedication.
Reserved land acceptable to the Planning Board and applicant may be gifted to the municipality as a condition of approval, only when Council has agreed to the gifting.

(4). Landscape plan for preservation of natural and historic features.

a. The applicant is required to submit a proposed development design plan(s) that includes a landscape plan showing:

i. Preservation of existing trees 10 inches or more caliper at breast height;

ii. Replacement of trees and vegetation;

iii. Graded contours;

iv. Streams, wetlands and water bodies; and

v. Preservation of scenic, historic or environmentally significant areas.

b. Cutting of trees on the northerly borders of lots should be avoided as far as possible to provide a natural wind buffer.

c. Unless the applicant can demonstrate it is impracticable, street and lot

DRAFT

layout must be adapted to the topography. Extensive grading and filling must be avoided as much as possible.

(5). Archaeological or historic sites.

a. When the proposed development contains any identified archaeological or historic sites or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas must be included in a development plan's open space, and suitably protected by appropriate covenants and management plans.

b. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the National Register of Historic Places must be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action being taken by the Town Planner and/or the Planning Board. The development Review Authority will consider comments received from the Commission prior to rendering a decision on the application.

c. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay Zones, a permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

11. Post-Approval

A. Approved final plan. [Amended 9-28-2015 by Ord. No. 15-08]

(1). An approved subdivision plan must be filed with the York County Registry of Deeds within 90 days from date of such approval. Any plan not so filed and recorded is null and void, unless particular circumstances dictate and, upon petition, the Planning Board grants an extension, which may not exceed two additional ninety-day periods.

(2). Where applicable, the stormwater and erosion control maintenance agreement that must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed must be recorded with the York County Registry of Deeds.

B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the York County Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance with this title.

C. Subdivision land conveyance.

(1). No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in a subdivision which has not been approved by the Planning Board, recorded in the York County Registry of Deeds and shown on the final plan as a separate lot.

(2). Subdivision frontage street completion. No lot in a subdivision may be sold, leased or otherwise conveyed before the street upon which such lot has frontage is completed to rough grade standard up to and including the entire frontage of the lot. Prior to the issuance of certificates of occupancy by the CEO, the street from which the unit is accessed must be completed in accordance with Chapter 16.8.

D. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

(1). A subdivision plan's approval will expire if work has not commenced within one year from the Planning Board date of approval. Where work has commenced

DRAFT

within one year of such approval, the approval will expire unless work is complete within three years of the original date of Planning Board approval.

(2). For all other development plans, approval will expire if work has not commenced within one year from the date of Planning Board approval. Where work has commenced within one year of such approval, the approval will expire if work is not complete within two years of the original date of Planning Board approval.

(3). 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.

(4). When a plan's approval expires, the applicant may reapply subject to the Town Code current at the time of reapplication.

E. Approval not acceptance of property. The approval by the Planning Board of a plan, a master site development plan or any other subsequent development plan does not constitute, nor is it evidence of, any acceptance by the municipality of any street, easement or other open space shown on the plan. When a park, playground or other recreation area is shown on the plan, approval of the plan does not constitute an acceptance by the municipality of such areas. The Planning Board must require the plan to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the municipal officials covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.

F. A preconstruction meeting, in accordance with Chapter 16.4.4.1, must be held prior to any clearing or earthwork.

G. Inspection of required improvements. **[Amended 9-28-2015 by Ord. No. 15-08]**

(1). Prior to the commencement of any work associated with development approved in accordance with this title, the developer or duly authorized representative must provide a schedule of expected construction activities by phase to the inspecting official [the Code Enforcement Officer (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and coordinate a preconstruction meeting. Attendance at said meeting must at a minimum include authorized representation from the Town, the developer and their general contractor. Meeting minutes must be prepared by the Town's representative and distributed to all attendees and the Town Planner.

(2). The developer or general contractor shall coordinate inspections with the inspecting official and provide written notice at least seven days prior to commencing each major phase of construction as outlined in the construction schedule. When all phases of work are complete, the general contractor shall request a final inspection from the inspecting official, who shall prepare a punch list of any outstanding items to be completed, within seven days of the final inspection. Once all outstanding items have been completed, the developer or the general contractor shall coordinate a final walk-through where the inspecting official determines if the construction has been completed in accordance with the approved plans. The inspecting official shall provide, in writing, to the developer or the general contractor within seven days of the final walk-through what, if any, construction is not complete or confirm that the development is complete and has been constructed according to the approved plans.

(3). If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the approved plans and specifications, the inspecting official must report, in writing, to the Town Planner, the developer or duly authorized representative of the developer,

DRAFT

and, when applicable, the CEO. The Town Planner shall inform the Planning Board of any issues identified by the inspections. The Town shall take any steps necessary to preserve the municipality's rights.

(4). Where applicable and in advance of any construction, the developer must deposit sufficient funds for said inspections in an applicant's service account per Chapter 3.3. The amount is based on a scope of services and fee prepared by the Town's Peer Review Engineer after review of the developer's construction estimate prepared by a professional engineer or a qualified contractor.

(5). Stormwater and erosion control inspection.

a. During October to November of each year in which construction for grading, paving and landscaping occurs on a development site, the Town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.

b. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per § 16.8.8.2, Post-construction stormwater management.

c. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.

H. Modifications to an approved plan. Any modification to an approved plan may be considered for approval under § 16.10.3.1, General development, site and subdivision plan review, § 16.10.3.2, Other development review, and/or § 16.10.9.1B, Plan revisions after approval, or § 16.10.9.3, Modifications to approved plan.

I. Plan revisions after approval. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan, unless in accordance with the Planner's and CEO's powers and duties as found in Chapter 16.4, or unless the plan has been resubmitted and the Planning Board specifically approves such modifications. In the event a final plan is recorded without complying with this requirement, the same is null and void, and the Planning Board must institute proceedings to have the plan stricken from Town records and the York County Registry of Deeds. **[Amended 9-26-2011 by Ord. No. 11-15]**

(1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]

a. Minor. If at any time before or during the construction of the required improvements it appears to be necessary or desirable to modify the required improvements, the Code Enforcement Officer and Town Planner are authorized to approve minor plan amendments due to unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town Planner must issue any approval under this subsection in writing and transmit a copy of the

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approval to the Planning Board. Revised plans must be filed with the Town and recorded, where appropriate. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds when applicable.

b. Major. If, at any time during the construction of the required improvements, it appears necessary or desirable to modify the required improvements, major plan changes due to unforeseen field circumstances, such as relocations of rights-of-way, property boundaries, changes of grade by more than 1%, or other modifications requiring Planning Board review per § 16.10.3.2, must be reviewed by the Planning Board.

(2). Modifications to approved plan.

a. Minor modifications. Modifications to a Planning Board approved plan that do not require Planning Board review per § 16.10.3.2 may be approved by the Code Enforcement Officer and Town Planner. Such approvals must be issued in writing to the developer with a copy to the Planning Board. The developer must provide the revised plan to the Town Planner, and it shall be recorded in the York County Register of Deeds, when applicable. **[Amended 9-24-2012 by Ord. No. 12-11]**

b. Major modifications. Major modifications (e.g., relocations of principal structures, rights-of-way or property boundaries; changes of grade by more than 1%) require Planning Board approval.

J. Maintenance of improvements. The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrianways/sidewalks unless and until the improvement has been accepted by the Town Council.

K.

L. Acceptance of Streets and Ways

(1). Conditions. A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel prior to the enactment of this title must be laid out and accepted as a public street or way by the Town Council only upon the following conditions:

a. The owners must give the Town a deed to the property within the boundaries of the street at the time of acceptance by the Town.

b. A plan of said street or way must be recorded in the York County Registry of Deeds at the time of its acceptance.

c. A petition for laying out and acceptance of said street or way must be submitted to the Town Council upon a form prescribed by the Commissioner of Public Works. Said petition must be accompanied by a plan, profile and cross section of said street as follows:

i. A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must show the North point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments; waterways, topography and natural drainagecourses with contour at not greater than two-foot intervals; all angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;

ii. A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a vertical scale of four feet to one inch. Said profile

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must show the profile of the side lines and center line of said street or way and the proposed grades thereof. Any buildings abutting the street or way must be shown on said profile;

iii. A cross section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch; and

iv. The location and size of water and sewer mains and surface water drainage systems, as installed.

(2). Such street or way must have been previously constructed in accordance with the standards and criteria established in Article **IV** of this chapter.

(3). Acceptance of streets and ways required in public interest.

d. Notwithstanding the provisions of any other section hereof, the Town may at any time lay out and accept any street or way in the Town as a public street or way of said Town whenever the general public interest so requires. The cost of said street or way may be borne by the Town.

(4). Easements.

e. The Board may require easements for sewerage, other utilities, drainage and stream protection. In general, easements may not be less than 20 feet in width. Wider easements may be required.

(5). No street or way to be accepted until after report.

a. Street acceptance as Town way. Upon completion of construction of any street/road intended for proposal for acceptance as a Town way, a written certification that such way meets or exceeds the design and construction standards of this title, signed by a professional engineer registered by the State of Maine, prepared at the developer's expense, must be submitted to the Board. If underground utilities are laid in such way, the developer must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The Board is to review the proposal and forward a recommendation to the Town Council regarding acceptance.

b. No street or way may be laid out and accepted by the Town Council until the Planning Board and the Public Works Commissioner have made a careful investigation thereof and reported to the Town Council their recommendations in writing with respect thereto.

M. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code Enforcement Officer is to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

N. Subdivision lot monumentation prior to sale. Prior to the sale of any approved subdivision lot, the subdivider must provide the Planner with a letter from a registered land surveyor, stating all monumentation shown on the plan has been installed.

O. Utility service. Prior to the installation of any public utility to a site, the developer must have obtained all necessary approvals from the appropriate local, state or federal authority.

P. Grading/construction final plan required. Grading or construction of roads, grading of land or lots, or construction of buildings which require a final plan as provided in this title, until such time as the final plan has been duly prepared, submitted, reviewed, approved and endorsed as provided in this title, is prohibited until the original copy of the final plan so

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approved and endorsed has been duly recorded in the York County Registry of Deeds.

Q. Nonstormwater discharge. No person, except where exempted in Title 16.9.7, may create, initiate, originate, or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable nonstormwater discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]

R. Nuisances. Any violation of this title is deemed to be a nuisance.

S. Erosion control debris. The owner or occupant of any land in any zone must not allow erosion control materials, such as plastic erosion control fences and related stakes or other materials, to remain on the site but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.

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16.9 Shoreland and Marine-Related Development

[Amended 9-24-2012 by Ord. No. 12-11; 1-27-2014 by Ord. No. 14-01]

1. Authority and scope.

   A. The Kittery Port Authority (KPA), through its established Rules and Regulations, reviews and approves applications for piers, wharves, landings, floats, bridges, and other water-dependent structures or uses. Applications are available online and at the Town offices and are submitted to the Planning and Development Department with the required copies and application fee. Applications that contain upland development within 100 feet of the upland edge of a coastal or freshwater wetland must be submitted as a separate application for Planning Board review and approval and include all information required in § 16.11.2 below.

   B. KPA applications must be reviewed by the Town Planner and Code Enforcement Officer prior to the KPA Chairperson reviewing for completeness and placement on the Port Authority's agenda.

   C. Port Authority approval extends from the navigable tidal waters to the mean high-water line or upland edge of a coastal wetland.

   D. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high-water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width.

   E. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.

   F. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line.

   G. All other structures upland of, and abutting or built on or over, a structure extending into a water body beyond the mean high-water line or the edge of a coastal wetland require Planning Board approval.

   H. Where the Planning Board must review and approve a development plan involving a pier, ramp, flotation system or principal marine structure, and prior to Planning Board approval, the Port Authority must comment on the plan's conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure.

   I.

   J.

2. Applications.

   A. Shorefront development applications for marine-related use must include the following:

      (1). Aerial photographs (images available in the public domain) and vicinity maps and plans showing the property in relation to surrounding properties, and the location of the lots that would have use of the pier, ramp and float system. Maps and plans are to include:

         a. Construction plans for piers, ramps and floats;
         b. Areas of vegetation clearing;
         c. Location of required parking space(s); and
         d. Location of boat and/or float storage.

      (2). Rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths.

      (3). Documentation addressing visual impact and controls to assure continuing

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conformance to the shorefront development plan and this title.

(4). The applicant must show at submittal that all necessary applications for permits, leases, approvals, and any supporting documentation as may be required have been filed, including the following:

a. Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480C;

b. Army Corps of Engineers permit application;

c. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application; and

d. Building permit application.

(5). Any other details requested by the Planning Board or Port Authority.

3. Shorefront development plan review.

A. All applications containing upland development require Planning Board review, excluding development as described in § 16.11.1B.

B. If Planning Board review is not required, the Town Planner, in consultation with the Code Enforcement Officer, will review the application for land use compliance with this title and forward a written record of findings to the Planning Board and Port Authority, and forward the application to the Port Authority for processing.

C. The Town Planner must transmit copies of Planning Board decisions and the Code Enforcement Officer must transmit copies of Board of Appeals decisions and all documentation constituting the record of the decision for marine-related development to the Port Authority.

D. The Port Authority will notify the applicant and the Code Enforcement Officer, in writing, of the granting of, or denial of, the applicant's request.

E. All required local approvals (excluding Town building permits), federal and state approvals and/or permits must be received in the Planning Office prior to the issuance of a building permit by the Code Enforcement Officer.

F. Prior to the commencement of construction on any pier, dock, wharf, marina or any other proposed use that projects into a water body, the owner and/or developer must apply for, and obtain, a building permit from the Code Enforcement Officer.

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