



TOWN OF KITTERY
Planning and Development Department
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TO: PLANNING BOARD
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: TITLE 16 RECODIFICATION
DATE: OCTOBER 6, 2021

I am excited to move forward with the approval process for the new Title 16 Land Use & Development Code. Planning staff, Kittery Land Issues Committee (KLIC) members, Planning Board members, and our consultants North Star Planning worked diligently – amidst significant pandemic-related delays – to reorganize and update the Town’s zoning code.

This work involved restructuring the entire ordinance to make it easier to navigate and locate relevant standards, procedures, and requirements. Our team reorganized the existing elements of Title 16 so that all of the administration and enforcement provisions are in one place, all of the performance standards are in another, approval standards for development applications are in their own places, and land use zone regulations for each district are all together.

We also made updates to the processes, standards, and definitions in the ordinance, all with deep review and input from KLIC and the Planning Board. All uses are defined, new uses have been added, and terms that do not need definitions have been removed. A use table and dimensional table have been created to provide an “at a glance” view of zoning district regulations. Where applicable, standards have been removed from definitions and moved to the Performance Standards section. Approval standards for subdivision and site plan review have been clarified, a new Minor Site Plan classification has been created, and application procedures and submission requirements have been updated.

Summary of restructuring:

Our rule of thumb for the reorganization effort was to group similar ordinance elements together. At the highest level, this work resulted in the reconfiguration of Title 16 from eleven to nine chapters.

Existing Title 16	New Title 16
16.1 General Provisions	16.1 General Provisions
16.2 Definitions	16.2 Administration & Enforcement
16.3 Land Use Zone Regulations	16.3 Definitions

16.4 Administration & Enforcement	16. 4Land Use Zone Regulations
16.5 Building/Regulated Activity Permits	16.5 General Performance Standards
16.6 Decision Appeal, Variance and Other Requests	16.6 Master Site Development Plan Review
16.7 General Development Requirements	16.7 Site Plan Review
16.8 Design and Performance Standards for Built Environment	16.8 Subdivision Review
16.9 Design and Performance Standards for Natural Environment	16.9 Other Development Review
16.10 Development Plan Application and Review	
16.11 Marine-Related Development	

Below is a list of what remained the same, was added, or was moved around in the new draft code.

16.1 General Provisions

Same: As it does today, this section contains the basic legal framework for Title 16, and instructions on how to interpret the Title, how to handle conflicts within the Title and with other regulations, and it describes the process to amend Title 16.

Added: Elements of the ordinance that deal with conformity and nonconforming structures, uses, and lots (from existing 16.7). Added Rules of Construction section to assist with interpretation.

Moved: Elements related to Planning Board, Board of Appeals and Port Authority (to Administration and Enforcement).

16.2 Administration and Enforcement

Same: This section corresponds with the existing Administration and Enforcement section. It defines the roles and authority of the Town Planner and Code Enforcement Officer and details how provisions of the Title are to be enforced.

Added: Ordinance elements defining roles and authority of the Planning Board, Board of Appeals and the Port Authority, sections related to permits issued by Code Enforcement, how to appeal decisions and request variances.

Moved: Regulations on Performance Guarantees have been moved to the applicable development review sections.

16.3 Definitions

The following changes were made to definitions and there are a few definitions removed that, as stated in the ordinance §16.1.6, shall have their customary dictionary meaning.

Abuts definition changed to reference performance standard:

“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 § 16.5.2, §16.7.10.C(2)c and § 16.8.9.C(3)c on abutter notification process when a new development or redevelopment is proposed.”

Abutter definition removed and language combined with “Abuts” definition

Abutting Property definition and figure moved to performance standard section 16.5.2

Accessory Dwelling Unit definition edited and referenced performance standard

“An apartment which is part of an existing structure on the property where the owner of the property occupies one of the units. See § 16.5.3 for Accessory Dwelling Unit general performance standards.”

Accessory Use added reference to **Principal Use**

“A use customarily incidental and subordinate to a Principal Use and located on the same lot with such Principal Use. See Principal Use definition.”

Acre definition removed, standard measurement

Acreage definition removed, standard measurement

Age-Restricted Housing definition and term edited from 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. Age-Restricted Housing does not include Residential 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.”

Agriculture definition edited

“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 thereof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products; but excluding marijuana. Agriculture does not include forestry or sawmills, as defined in this Ordinance. See § 16.5.4 for Agriculture general performance standards.”

Agriculture, Piggery definition added

“A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. See § 16.5.5 for Agriculture, Piggery general performance standards.”

Agriculture, Poultry Facility definition added

“A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. See § 16.5.6 for Agriculture, Poultry Facility general performance standards.”

Apartment Unit definition removed, dwelling unit definition covers an apartment unit

Apartment Building definition removed, multi-unit dwelling definition covers apartment

Basement definition edited

“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.”

Boathouse definition added

“A nonresidential structure designed exclusively for the protection, storage, repairing and maintenance of boats for noncommercial purposes.”

Buffer Area definition removed, covered in Buffer definition

Building Materials and Supplies term edited to **Retail Sales,**

Building Materials and Supplies and moved to be in alphabetical order

Cemetery and Burying Ground term shortened to **Cemetery**

Cluster Mixed-Use Development definition removed, no longer a permitted use

Convenience Store, Neighborhood Grocery Facility term changed to **Retail Sales, Convenience**

Commercial School definition added

“A building or buildings which is principally used to conduct commercial educational classes including, but not limited to trade schools, schools of art, beauty, business, dancing, driving, music, martial arts, but not including private nursery, elementary or secondary schools. Retail sales of items related to the school are allowed as an accessory use to commercial schools.”

Corner Lot definition edited

“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.

In zones where yards are required:

- (1). 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.*
- (2). 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.*
- (3). 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.”*

Day Care Facility definition edited to remove state requirement

“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.”

Drive-through Facility definition added

“Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transaction.”

Dwelling, Attached Single-Family definition added

“A dwelling unit, located on its own lot that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25 percent of the length of the side of the dwelling.”

Dwelling, Manufactured Housing definition edited

“Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. See § 16.5.14 for Manufactured Housing general performance standards.”

Dwelling, Multi-family definition added **Multiunit Residential** definition removed, combined in below

“A structure that contains three (3) or more dwelling units that share common walls or floors/ceilings with one or more units. The land underneath the structure is not divided into separate lots.”

Dwelling, Single-Family definition added

“A detached dwelling unit located on its own lot.”

Dwelling, Two-Family definition added

“A building that contains two primary dwelling units on one lot. The units must share a common wall or common floor/ceiling.”

Dwelling Unit definition edited to remove Temporary, Intrafamily Dwelling Unit

Elder Care Facility definition edited and term changed to **Residential Care Facility**

“RESIDENTIAL CARE FACILITY

A house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential Care Facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. “Residential Care Facility” does not include a licensed nursing home or supportive living arrangement certified by the State.”

Elderly Housing definition edited and term changed to **Age-Restricted Housing** *see above

Fast-food Outlets, Drive-in Restaurant, or snack bar definition removed to clarify permitted uses regarding food service/restaurants

Farmers Market definition added

“An event where farmers, ranchers, and other agricultural producers sell food, plants, flowers, marine-products, and added-value products, such as jams and jellies or handmade crafts, they have grown, raised, caught, or prepared for retail sale. In addition, some vendors sell food that is available for immediate consumption on site, and some may be community groups, services, or other vendors or organizations. Farmers Markets occur on a regular basis in the same location. They are free and open to the public. Some markets are seasonal, while others occur year-round.”

Food Store definition removed, Retail Sales definition covers this use

Gambling or Gaming definition edited

“Any banking or percentage game played for money, property, or any representative of value with cards, dice, or any device or machine and located exclusively within a facility licensed for such activity.”

Gambling Casino definition edited

“A room or rooms in which legal gaming or gambling is conducted.”

Gambling Device definition removed, not necessary as gambling casino or gaming is not a permitted use

Game of Chance definition removed, not necessary as gambling casino or gaming is not a permitted use

Game of Skill definition removed, not necessary as gambling casino or gaming is not a permitted use

Glare definition removed

Direct Glare definition removed **Disability Glare** definition removed
Discomfort Glare Definition removed

Grocery Store definition removed, Retail Sales definition covers this use

Industrial definition removed; language added to Industrial Activity definition **Industrial Activity** definition edited

“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).”

Industry, Heavy term retained with a modification to the definition

“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 term retained with a modification to the definition

“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.”

Legally Nonconforming moved to be in alphabetical order with other Nonconforming definitions

Marijuana terms added to read as follows, while retaining their original definitions as codified by Town Council on August 9, 2021:

Marijuana, Adult Use Store

“Means a facility licensed under 28-B MRS Chapter 1 to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.”

Marijuana, Business

“Means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical Marijuana Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing Facility, or Marijuana Testing Facility.”

Marijuana, Cultivation Facility

“Means a facility licensed by the State of Maine to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana, marijuana seedlings, plants and seeds to products manufacturing facilities, marijuana stores, caregivers or other cultivation facilities.

Tier 1: Up to 500 square feet of plant canopy

Tier 2: Up to 2,000 square feet of plant canopy

Tier 3: Up to 7,000 square feet of plant canopy

Tier 4: Up to 20,000 square feet of plant canopy”

Marijuana, Manufacturing Facility

“Means (1) a registered tier 1 or tier 2 manufacturing facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 MRS §2423- F; or (2) a facility licensed under M.R.S. 28-B, Subchapter 2 to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package marijuana and marijuana products; and to sell marijuana and marijuana products to marijuana stores and to other products manufacturing facilities.”

Marijuana, Medical Caregiver Retail Store

“Means a store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.”

Marijuana, Medical Registered Caregiver

“Means a person or an assistant of that person registered in accordance with state law to provide care for a qualifying patient in accordance with state law”

Marijuana, Medical Registered Caregiver Home Establishment

“Means a medical marijuana registered caregiver business operating on the property of a dwelling unit serving as the primary residence of the Registered Caregiver.”

Marijuana, Medical Registered Dispensary

“Means an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.”

Marijuana, Testing Facility

“Means a public or private laboratory that is authorized and accredited in accordance with state law for the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.”

Marina definition edited

“A facility used exclusively or in part for the storing, servicing, fueling, berthing, and securing of boats and which may include eating, sleeping, and retail facilities for owners, crews, and guests.”

Mobile Home Park definition edited

“Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. See § 16.5.16.”

Mobile Home Park Lot definition removed, referenced state definitions via Manufactured Housing definition

Mobile Homes definition removed, referenced state definitions via Manufactured Housing definition

Modular Home definition removed, referenced state definitions via Manufactured Housing definition

Parking Lot term changed to **Parking Area** definition edited

“Any public or private area, under, within 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.”

Parking Space definition removed, added to performance standards

Private Assembly definition added

“A building which is owned and used as a meeting place for private or semi-private social organization and clubs such as grange halls, fraternal organizations, religious institutions, etc. in which the principal use is exclusively for members. Rental of the facilities to outside groups is clearly incidental to the principle use and shall not significantly increase the intensity of the use of the site, especially regarding parking.”

Public Assembly Area definition added

“Any area where large numbers of individuals collect to participate or to observe programs of participation.”

Public or Private School definition added

“A building or buildings and its associated grounds which is principally used to conduct educational classes including public and private elementary schools and nursery schools, including post-secondary schools, but not including commercial schools.”

Public Utility Facility definition added

“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 and sewer, to the public, excluding solar energy systems.”

Public Recreation term changed to **Recreation, Public Facility** and placed in proper alphabetical order

Recreation, Public Open Space definition added

Low Intensity Recreation term changed to **Recreation, Passive** and placed in proper alphabetical order

Selected Commercial Recreation term changed to **Recreation, Commercial Indoor and Recreation, Commercial Outdoor** and placed in proper alphabetical order

“RECREATION, COMMERCIAL INDOOR

The use of a building for play, sports, games, fitness, and other similar diversions operated as a business and open to the public for a fee.

“RECREATION, COMMERCIAL OUTDOOR

The use of a land outside of a fully enclosed building, as defined, for play, sports, games, and other similar diversions operated as a business and open to the public for a fee.”

Recreational Vehicle definition edited

“A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is primarily designed as temporary living accommodations for one or more persons. The vehicle must be registered with the State Division of Motor Vehicles.”

Recreational Vehicle Park definition added

“Any lot or parcel of land upon which two or more sites are located, established, or maintained for occupancy by recreational vehicle for a fee as temporary living quarters for recreation or vacation purposes.”

Religious Use definition added

“A structure or place in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held.”

Retail Use term changed to **Retail Sales**

Roulette definition removed, not necessary as gambling casino or gaming is not a permitted use

Sawmill, Permanent definition added

“A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or producing firewood that is in operation on a permanent basis. Sawmill operations may be subject to State regulations.”

Sawmill, Temporary definition added

“A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or producing firewood that is in operation for a cumulative duration of two (2) months or fewer in any twelve (12)

month period. Sawmill operations may be subject to State regulations.
This definition does not include the use of handheld chainsaws.
Slot Machine definition removed, not necessary as gambling casino or gaming is not a permitted use

Something of Value definition removed, not necessary as gambling casino or gaming is not a permitted use

Temporary, Intrafamily Dwelling Unit definition removed, Accessory Dwelling Unit is an allowed use in all zones Temporary, Intrafamily Dwelling Unit would have been allowed

Theater, Drive-in definition added
“An open lot devoted primarily to the showing of motion pictures and theatrical productions on a paid admission basis to patrons seated in automobiles”.

Trailer definition removed, referenced state definitions via Manufactured Housing definition

Trailer Park definition removed, referenced state definitions via Manufactured Housing definition

Yard definition removed, other Yard definitions cover this
Dwelling definitions moved to be in alphabetical order under *Dwelling*

Wetland definitions moved to be in alphabetical order under *Wetlands*
Flood definitions moved to be in alphabetical order under *Flood*

16.4 Land Use Regulations

Same: This section enumerates the town's zoning districts, including permitted and special exception uses, dimensional standards and district standards by zone.

Added/Moved: This project did not move new elements into or out of this section. There are no substantive changes to this section, only organizational. The biggest organizational change was to move all of the shoreland zone regulations for each zone so they are grouped with other regulations and standards for each zone.

16.5 General Performance Standards

This section contains performance standards that apply town-wide, regardless of context or location, and include standards for:

- defined uses, like Agriculture, Home Occupation, or Wireless Communications Services Facilities
- regulatory topics like Floodplain Management, Net Residential Acreage, and Sprinkler Systems

This section is made up of standards found in the current ordinance sections for Performance Standards for the Built Environment and Performance Standards for the Natural Environment, as well as drawing out performance standards from existing definitions.

Also note that there were some standards in the existing standards sections that were not related to uses or regulatory topics, but were in fact approval criteria for projects going through a development review process. They contained the approval criteria that projects must meet and are used by the Planning Board and others when making decisions on voting to approve projects or not. These standards include things like Water Supply, Sewage Disposal, and Exterior Lighting, and are now located in the proposed Site Plan Review and Subdivision Review sections. The following are notable changes in 16.5:

Abutter Notice: language removed from definitions and add performance standards for applicability and *Figure 1. Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters*. Also included other Abutter Notice language from throughout the code, specific to Planning Board acceptance and review.

Accessory Dwelling Unit: performance standard taken out of definition and added to applicability of the Accessory Dwelling 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."*

Affordable Housing: the standards that were ratified by Town Council were added.

Agriculture, Piggery: performance standards added:

A. *“Number of animals. There may be no more than three (3) pigs allowed on a lot.*

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 feet

(2) *Feed lots, pens, and extensively used areas:* 100 feet

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.”*

Agriculture, Poultry Facility: performance standards added...

A. *“Number of Animals. These standards apply to the keeping of thirteen (10) 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 feet

(2) *Feed lots, pens and extensively used areas:* 100 feet

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.”*

Mobile Home Parks, Recreational Vehicle Park or Campground: language adjusted to reflect updated definitions and terms including “*Recreational Vehicle Park*” rather than “*seasonal trailer park*” and “*Recreational Vehicles*” rather than “*trailers*”.

Temporary Intrafamily Dwelling Unit: standards removed to be consistent with removal of the use. This use was removed because Accessory Dwelling Units are a similar use with fewer restrictions, permitted in more zones than Temporary Intrafamily Dwelling Units.

Marijuana Standards: added as ratified by Town Council at their August 9, 2021 meeting.

16.6 Master Site Development Plan Review

This section and the following two proposed ordinance sections were split out of the existing Development Plan Application and Review. Because the purpose of these sections and the procedures for each are so different, dividing these out adds clarity to the review process for applicants, review boards and staff. This small section remains essentially the same based on existing requirements and process, though there should be discussion later on what thresholds to set for projects that qualify.

16.7 Site Plan Review

Most of the changes in this section was not related to moving existing ordinance elements around. The changes here are more substantive regarding the creation of Minor Site Plan and Major Site Plan review processes, grouping Performance Standards and Approval Criteria together as discussed above, and adding new language to clarify post approval activities like recording plans and how performance guarantees are established and released.

Added: New wording regarding applicability to make it clearer which types of projects are subject to Site Plan Review, and specifies those that are not. Generally, these are projects subject to review are of 1,000 square feet or more of floor area, or projects that involve the development of 25,000 square feet or more of land, or more than 1 acre of development cumulatively within 5 years.

Added: Distinction between Minor and Major Site Plans:

- o Minor Site Plans are developments between 1,000 and 2,500 square feet, or 25,000 square feet of developed area, but less than 1 acre of developed area in the instance of the establishment of a new nonresidential use. These Plans are reviewed and approved by Planning staff.

o Major Site Plans, which are above 2,500 square feet or more or more than an acre of developed area in the instance of the establishment of a new nonresidential use. These Plans are reviewed and approved by the Planning Board.

Added: Wording regarding the purpose of the optional Sketch Plan review stage.

Removed: The requirement for a high-intensity soil survey as a Sketch Plan submission item.

Modified: Changed submission requirements to require an electronic copy of the complete submission.

Modified: Clarification on which review stages are optional and which are required for Major and Minor Site Plans:

- o Pre-application meeting – optional for Major and Minor
- o Sketch Plan Review – optional for Major, N/A for Minor
- o Preliminary Plan Review – required for Major, N/A for Minor
- o Final Plan Review – required for Major, required for Minor

Removed: Performance guarantee has been removed from the Additional Requirements the Board may require at Preliminary Plan.

Modified: Updated Findings of Fact section to reflect the Review and Approval Criteria for Site Plan Review.

- o Performance standards for Floodplain mapping have been moved out of the Findings of Fact to the Water quality and wastewater pollution approval criteria section.
- o New Parking and Loading finding for that review criteria.
- o New Utilities finding
- o New Environmental Considerations finding covers Exterior Lighting, Air Pollution, Noise Abatement, Radiation, Storage of Materials review criteria.
- o New utilization of the site finding, to cover considerations around that review criteria, primarily related to the natural capacities/constraints of soils, slopes, aquifers, etc. Note that there are several items in the review criteria that are addressed in the Aesthetics findings (scenic areas, endangered and unique plants, animals, habitats, etc.)

Added: GIS file submission requirement at Final Plan Stage

Moved: Shoreland Development Review and Right of Way Plan review sections are now in proposed section 16.9, the proposed 16.7 Site Plan Review and 16.8 Subdivision Review have been divided out from the existing Development Plan Application and Review section, and all submission requirements and review procedures for each application stage in all sections are grouped together.

16.8 Subdivision Review

Added: Wording in the waiver section to make it clearer that the Planning Board has the authority to waive any provisions of General Performance Standards or the Subdivision submission requirements or performance standards. At the same time, the following has been added:

Added: Any waiver granted must improve the ability of the project to take the property's pre-development natural features into consideration. Natural features include but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, and relation to abutting properties or land uses.

Added: Clarification that the Planning Board is "accepting" Sketch Plans, not "approving" or "classifying" as noted in Preliminary Plan, Planning Board review schedule; Preliminary Plan, Planning Board review and decision; and Final Plan, Process, Final Plan application.

Added: Wording for electronic submission in PDF format for all submission materials at each submission stage.

Removed: Wording that gives the Planning Board the ability to make requirements around the "period of maintenance sureties" and "the amount of all guarantees which may be required." These functions best left to staff as part of Post approval activities.

Added: Require applicant to submit street names approved by the public safety officials and the assessor as part of Final Plan requirements.

Removed: language related to Performance Guarantees from Final Plan review stage. This is now in Post approval activities. New recommended Final Plan submission requirement is for "an itemized estimate of the total value of all public improvements to be covered by a performance guarantee."

Modified: Updated Findings of Fact to mirror requirements in state statute, as follows:

- o Added Farmland;
- o Added Spaghetti-lots;
- o Added Lake phosphorus concentrations;
- o Added Impact on adjoining municipality;
- o Added lands subject to liquidation harvesting;
- o Updated the existing traffic criteria to match the statute wording;
- o Reordered standards so that they match the order in statute; and

o Removed any wording beyond the state standards, such as, “In making this determination...” or “If the proposed development...” All the information the Board needs to make determinations on these standards should be located in the Performance Standards and Approval Criteria section.

Removed: Requirement for submission of mylar copies of the plan to reflect state law to have only paper copies submitted to the Registry.

Modified: Simplified the Vehicular Traffic performance standards as many of the specific design standards for streets/sidewalks are now in 16.5 General Performance Standards.

Removed: Standards related to Subdivision Noise Pollution Buffer are proposed to be removed because they are vague and of questionable value in actually attenuating noise impacts from the subdivision on surrounding uses or vice versa.

Removed: The ability for parties to challenge the findings of a soils report submitted as part of the review process.

Removed: Wording requiring staff to notify the Planning Board of construction inspection issues.

Removed: The category of Major Field Change has been removed from the Post-Approval section. That kind of change would need to go back to the Planning Board for review and approval.

Added: Wording has been added to the Post-Approval section:

o No plans to be released until performance guarantee received. Hold for 1 year before plan expiration.

o Performance Guarantees

- ☐ Types of Guarantees
- ☐ Contents of Guarantees
- ☐ Provisions for the release of guarantees
- ☐ Procedures for collecting on the guarantee with the applicant is in default

o Applicant responsibility for maintenance. Made the following change: “The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrian ways/sidewalks unless and until the improvements have been accepted by the Town Council or responsibility for ongoing maintenance is transferred to a Home Owners Association.

16.9 Other Plan Development Review

This section incorporates the Maritime and Shoreland Related Development sections, as well as the existing Right of Way Plan review procedures.

Added: Clarified the review process, submission requirements, and findings of fact for Shoreland Development and Right of Way Plan Reviews.

Policy discussions for future updates:

The following topics represent areas of discussion that are beyond the scope of this project. Each topic will require dedicated time from staff and conversations with Town committees, jurisdictional boards, Town Council, and the community to determine the right path forward. These topics are not presented in priority order but represent a running list of items identified for further discussion.

Agriculture, Piggery & Agriculture, Poultry Facility definitions and performance standards.

These specific Agriculture uses have a high potential for impacts on surrounding properties. There should be additional conversations about where such uses would be appropriate in Kittery and what kinds of standards would adequately protect or buffer surrounding properties from impacts.

Master Site Development Plan Review. Thresholds that require the need for such master planning should be reviewed. The current trigger threshold is for projects one acre or more in size, which even for a multi-building phased project could be too low. A threshold for requiring this extra master planning process might be more appropriately set for project of a minimum of 3 acres or 5 acres in size.

Potential need for additional waiver direction within the ordinance. The Planning Board has the authority to consider waivers from the Subdivision and Site Plan Performance Standards and Approval Criteria, and the General Performance Standards. Additional direction is provided with the suggested wording, “Any waiver granted must improve the ability of the project to take the property’s pre-development natural features into consideration.” The Town should consider additional direction and standards around waiver requests.

Signed Plan requirements. The Town should consider moving from signed hardcopies of approved plans to electronically signing PDFs of approved plans to save physical filing space and facilitate easier access to approved site and subdivision plans.

Strengthen local stormwater standards. There are several areas the current standards could be made stronger, such as requiring 15-inch minimum on all new culverts, including new driveway culverts not regulated by Title 16, designing for the 50- or 100-year storm, prohibiting any increase in post-construction runoff quantities, or requiring all subdivisions to meet DEP stormwater quantity and quality standards, even if they don’t meet DEP permitting thresholds. Other Town departments and committees are also doing work on the standards necessary to alleviate the impacts of storm surge and flooding from more frequent or heavier weather events. Those recommendations eventually should be codified in Title 16.

Soil Suitability Performance Standard in Subdivision Review. The draft ordinance proposes to remove review procedures regarding challenges to soil reports but this section consists of information that is either required in the Sewage Disposal standards or are simply submission requirements. Additionally, the Town should consider making medium-intensity soil surveys the default submission requirement with high-intensity soil surveys reserved only for sites with complex or diverse soil conditions.

Consider Site Plan Review only for multi-family developments that currently require both Site Plan Review and Subdivision Review. State law allows communities like Kittery to simplify the review process for multi-family development as long as the Site Plan Review process is stringent enough to meet state standards. This would make it somewhat easier to do these types of projects in town.

Reviewing Authority for Various Land Use Approvals. The Planning Board and Board of Appeals (BOA) are the jurisdictional boards that deal with land use issues. BOA's traditionally act when there is an appeal of the decision of the Code Enforcement Officer, or to grant relief on dimensional standards where there is a hardship (granting of variances). Kittery's current zoning code requires the BOA to review and approve certain uses, such as home occupations, that are typically more in line with a Planning Board's purview to review developments via a site plan process. Staff should conduct an examination of which entity should be the reviewing authority for various approvals.

Dimensional Standards Review for Zoning Districts. Town staff, committees, and the Planning Board have begun this process with some of the recent housing-related zoning amendments. Every one of the Town's zoning districts has some dimensional standard or requirement that complicates or prohibits desired development or property improvement. A comprehensive review of these outdated standards should be done per zoning district.

Contract Zoning. Kittery does not allow "contract zoning," which is a process where a property owner, in consideration of rezoning a property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties. It is a way to tailor a specific use or site plan to a property when the underlying zoning would otherwise not allow the project. Contract zoning has been used by several Maine communities to create flexibility of design and gain desired development that otherwise would not happen. But contract zoning can also be abused and should be considered carefully. The debate on whether to allow this flexibility in the zoning code has been broached recently by at least one Town committee.

Timeline:

Planning Department staff, KLIC, and the Planning Board reviewed these proposed changes line by line over the past year and several months. The Planning Board held a public hearing for the draft Title 16 recodification on Thursday, September 23rd and continued the public hearing to the Thursday, October 14, 2021 meeting. Depending on the Board's discussion and recommendation

at that meeting, I expect Town Council could hold a workshop and public hearing in November 2021.

Thank you,

Adam Causey, AICP
Director of Planning & Development