

1 16.1 General Provisions

2
3 16.1.1 Title; Applicability

4
5 A. This title is known, and may be cited as, the "Land Use and Development Code of the Town
6 of Kittery, Maine."

7
8 B. Application of title. The provisions of this title pertain to all the land and water areas as
9 herein defined within the boundaries of the Town.

10
11
12 16.1.2 Purpose

13
14 A. This title is designed for all the purposes of zoning embraced in the Maine Revised Statutes
15 and has been created as an integral part of a growth management program, comprehensive
16 planning, and implementation process for the Town to promote the health, safety and general
17 welfare of its residents.

18
19 B. Among other things, zoning is designed to:

20
21 (1). Encourage the most appropriate use of land and water throughout the Town;

22
23 (2). Promote traffic safety;

24
25 (3). Provide safety from fire and other elements;

26
27 (4). Provide adequate light and air;

28
29 (5). Prevent overcrowding of real property;

30
31 (6). Prevent development in unsuitable areas;

32
33 (7). Promote an adequate transportation and circulation system;

34
35 (8). Control and manage the coordinated development of unbuilt areas;

36
37 (9). Encourage the formation of community units;

38
39 (10). Provide an allotment of land area in new developments sufficient for all the

40 requirements of community life;

41

42 (11). Conserve energy and natural resources and protect the environment;

43

44 (12). Preserve land values; and

45

46 (13). Provide for adequate public services.

47

48 **16.1.3 Administration of Title 16 by Planning Board**

49

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

51

52 **16.1.4 Conflicting requirements**

53

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

56

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

60

61 **16.1.5 Severability**

62

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

67

68 **16.1.6 Rules of Construction**

69

70 A. For the purposes of this Ordinance:

71

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

74

75 C. The present tense includes the future tense;

76

77 D. Words used in the singular include the plural and words used in the plural include the
78 singular;

79

80 E. The words “shall” and “must” are mandatory, the word “may” is permissive;

81

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

84

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

86

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

88

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

91

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

93

94 **16.1.7 Amendments**

95

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

100

101 **16.1.8 General Development Requirements**

102

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

106

107 B. Conformity

108

109 (1). Conformity required.

110 No building, structure or land may hereafter be used or occupied, and no building or
111 structure or part thereof may hereafter be erected, constructed, expanded, moved or
112 altered, and no new lot may be created except in conformity with all of the regulations
113 herein specified for the zone where it is located, unless such structure or use exists as a
114 legally nonconforming use or a variance is granted. See §16.7.11.B. and §16.8.10.D.,
115 for specific requirements related to septic waste disposal systems.

116

117 (2). Minimums and uniformity.

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

120

- 121 (3). Land within street lines.
122 Land within the lines of a street on which a lot abuts is not considered as part of such
123 lot for the purposes of meeting the area/frontage requirements of §16.4,
124 notwithstanding the fact that the fee to such land may be in the owner of such lot.
125
- 126 (4). Yard, parking or loading space.
127 No part of a yard or other space or off-street parking or loading space about or in
128 connection with any building and required for the purpose of complying with this title
129 may be included as part of a yard, open space or off-street parking or loading space
130 similarly required for any other building, except as authorized in § 16.7.11.F.
131
- 132 (5). Zone boundary line extension.
133 Where a zoning district boundary line divides a lot, the regulations applicable to either
134 zone of such lot may extend not more than 50 feet into the portion in the other zone(s),
135 except when a less restrictive portion abuts the Resource Protection Zone.
136
- 137 (a) Before granting any such extension, the Planning Board must determine that the
138 proposed use of the extended portion will:
139
- 140 [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
141
- 142 [2] Be in harmony with the character of the adjacent zone;
143
- 144 [3] Not adversely affect the property values of adjacent zone's immediate
145 neighborhoods;
146
- 147 [4] Not create any traffic hazards or undue traffic congestion on streets in the
148 adjacent zone;
149
- 150 [5] Not give off obnoxious gases, odors, smoke or soot;
151
- 152 [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or
153 noise; and
154
- 155 [7] Be adequately screened from the adjacent zone.
156
- 157 (b) The Planning Board may require a study to be performed or commissioned by the
158 applicant to ensure compliance with the above requirements.
159
- 160 (6). Averaging building setbacks.
161 Building setback from the street line need not be greater than the average of the setback

162 distances of the buildings on the lots next thereto on either side.

163

164 C. Nonconformance

165

166 (1). Purpose.

167 The purpose of this title is to promote land use conformities and to regulate
168 nonconforming structures, uses, and lots, and to promote the following objectives.

169

170 (2). Prohibitions and allowances.

171

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

174

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

176

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

179

180 (3). General.

181

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

185

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

191

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

197

198 (4). Nonconforming structures.

199

200 (a) Nonconforming structure relocation. Except where otherwise permitted in this title,
201 relocation of a nonconforming structure must be approved by the Board of Appeals.
202 In cases where the structure is located in the Shoreland or Resource Protection

203 Overlay Zone, the relocation must be approved by the Planning Board.

204

205 [1] A nonconforming structure may be relocated within the boundaries of the parcel
206 on which the structure is located provided the site of relocation conforms to all
207 dimensional requirements, to the greatest practical extent, as determined by the
208 Planning Board or Board of Appeals, and provided the applicant demonstrates
209 the present subsurface sewage disposal system meets the requirements of state
210 law and the State of Maine Subsurface Wastewater Disposal Rules, or a new
211 system can be installed in compliance with the law and said rules. In no case
212 may the relocation of a structure be permitted that causes the structure to be
213 more nonconforming. See Chapter §16.7.11.B and §16.8.10.D, for other specific
214 requirements related to septic waste disposal systems.

215

216 [2] In determining whether the structure relocation meets the setback to the greatest
217 practical extent, the Planning Board or Board of Appeals must consider the
218 following conditions:

219

220 [a] The size of the lot;

221

222 [b] The slope of the land;

223

224 [c] The potential for soil erosion;

225

226 [d] The location of other structures on the property and on adjacent properties;

227

228 [e] The location of the septic system and other on-site soils suitable for septic
229 systems;

230

231 [f] The type and amount of vegetation to be removed to accomplish the
232 relocation.

233

234 [3] When it is necessary to remove vegetation within the water or wetland setback
235 area to relocate a structure, replanting of native vegetation to compensate for the
236 destroyed vegetation is required. The Planning Board or Board of Appeals may
237 restrict mowing around and pruning of the replanted native vegetation to
238 encourage a more natural state of growth. Tree removal and vegetation
239 replanting is required as follows, effective 2-28-15:

240

241 [a] Prior to the commencement of on-site construction, areas to remain
242 undisturbed must be clearly marked with stakes and caution tape. All stakes,
243 caution tape, silt fences, and other materials used during construction must
244 remain until all on-site work is completed. Prior to removal, written

245 permission to remove such materials must be given by the Code Enforcement
246 Officer.

247

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

253

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

260

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

264

265 [4] If the total footprint of the original structure can be relocated beyond the
266 required setback area, no portion of the relocated structure may be constructed at
267 less than the setback requirement for a new structure.

268

269 (b) Nonconforming structure repair and/or expansion.

270

271 [1] The Code Enforcement Officer may approve the repair and/or expansion of a
272 nonconforming structure provided the proposed expansion is not located in the
273 base zone setback of the Shoreland Overlay Zone or at any location and meets
274 either of the following criteria:

275

276 [a] A vertical expansion that follows the existing building footprint;

277

278 [b] Will not result in setbacks less than those existing.

279

280 [2] Except where otherwise permitted in this title, repair and/or expansion of a
281 nonconforming structure must be approved by the Board of Appeals. In cases
282 where the structure is located in the base zone setback of the Shoreland Overlay
283 or Resource Protection Overlay Zone, the repair and/or expansion must be
284 approved by the Planning Board.

285

286 [3] This subsection does not apply to any proposed vertical expansion of a patio,

287 deck or accessory structure permitted to be closer to a water body or to a
288 principal structure in accordance with Table 16.5.30s - Minimum Setbacks from
289 Wetlands and Water Bodies.

290

291 [a] A nonconforming structure may be repaired or maintained and may be
292 expanded in conformity with the dimensional requirements, such as setback,
293 height, etc., as contained in this title. If the proposed expansion of a
294 nonconforming structure cannot meet the dimensional requirements of this
295 title, the Board of Appeals or the Planning Board will review such expansion
296 application and may approve proposed changes provided the changes are no
297 more nonconforming than the existing condition and the Board of Appeals or
298 the Planning Board makes its decision per § 16.2.12.F(-2).

299

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

305

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

314

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

319

320 [e] In addition to the standards in the above § 16.1.8.C(4)(b)[3][a] through
321 [d], the expansion of nonconforming and the construction of new, enlarged,
322 or replacement foundation beneath a nonconforming structure located in the
323 Shoreland or Resource Protection Overlay Zone must meet the following:

324

325 [i] Wherever a new, enlarged, or replacement foundation is constructed under
326 a nonconforming structure the structure and new foundation must be
327 placed such that setback requirements are met to the greatest practical
328 extent as determined by the Planning Board, basing its decision on the
329 criteria specified in § 16.1.8.C(4)(a). Nonconforming structure relocation.

330

331 [ii] All new principal and accessory structures, excluding functionally water-
332 dependent uses, must meet the water body, tributary stream, or wetland
333 setback requirements contained in § 16.4.28.E. A nonconforming structure
334 may be added to or expanded after obtaining a permit from the same
335 permitting authority as that for a new structure, if such addition or
336 expansion does not increase the nonconformity of the structure and is in
337 accordance with § 16.1.8(4)(b)[3][e][iv] and [v] below.

338
339 [iii] If a legally nonconforming principal structure is located partially within
340 25 feet from the normal high-water line of a water body, tributary stream,
341 or upland edge of a coastal or freshwater wetland, expansion of the
342 footprint and/or height of any portion of the structure that is located within
343 25 feet of the normal high-water line of a water body, tributary stream, or
344 upland edge of a coastal or freshwater wetland is prohibited even if the
345 expansion will not increase nonconformity with the water body, tributary
346 stream, or wetland setback requirement. Expansion of an accessory
347 structure that is located closer to the normal high-water line of a water
348 body, tributary stream, or upland edge of a coastal or freshwater wetland
349 than the principal structure is prohibited, even if the expansion will not
350 increase nonconformity with the water body, tributary stream, or coastal or
351 freshwater wetland setback requirement.

352
353 [iv] Notwithstanding § 16.1.8.C(4)(b)[3][e][ii] - , if a legally existing
354 nonconforming principal structure is entirely located less than 25 feet from
355 the normal high-water line of a waterbody, tributary stream, or upland
356 edge of a coastal or freshwater wetland, that structure may be expanded as
357 follows, as long as all other applicable municipal land use standards are
358 met and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii]:

359
360 [A] The maximum total footprint for the principal structure may not be
361 expanded to a size greater than 800 square feet or 30% larger than the
362 footprint that existed on January 1, 1989, whichever is greater. The
363 maximum height of the principal structure may not be made greater than
364 15 feet or the height of the existing structure, whichever is greater.

365
366 [v] All other legally existing nonconforming principal and accessory
367 structures that do not meet the water body, tributary stream, or coastal or
368 freshwater wetland setback requirements may be expanded or altered as
369 follows, as long as other applicable municipal land use standards are met
370 and the expansion is not prohibited by § 16.1.8.C(4)(b)[3][e][ii] and [iii].
371 above:

372
373 [A] For structures located less than the base zone setback from the
374 normal high-water line of a water body, tributary stream, or upland edge

375 of a coastal or freshwater wetland, the maximum combined total footprint
376 for all structures may not be expanded to a size greater than 1,000 square
377 feet, or 30% larger than the footprint that existed on January 1, 1989,
378 whichever is greater. The maximum height of any portion of a structure
379 that is located within the base zone setback may not be made greater than
380 20 feet, or the height of the existing structure, whichever is greater. .

381
382 [B] In addition to the limitations in § 16.1.8.C(4)(b)[3][e][v] above, for
383 structures that are legally nonconforming due to their location within the
384 Resource Protection Overlay Zone when located at less than 250 feet from
385 the normal high-water line of a water body or the upland edge of a coastal
386 or freshwater wetland, the maximum combined total footprint for all
387 structures may not be expanded to a size greater than 1,500 square feet, or
388 30% larger than the footprint that existed at the time the Resource
389 Protection Overlay Zone was established on the lot, whichever is greater.
390 The maximum height of any structure may not be greater than 25 feet, or
391 the height of the existing structure, whichever is greater, except that any
392 portion of those structures located less than the base zone setback from the
393 normal high-water line of a waterbody, tributary stream, or upland edge of
394 a coastal or freshwater wetland must meet the footprint and height limits
395 in § 16.1.8.C(4)(b)[3][e][iv][A], and [v][A] above.

396 [vi] An approved plan for expansion of a nonconforming structure must be
397 recorded by the applicant with the York County Registry of Deeds within 90
398 days of approval. The recorded plan must show the existing and proposed
399 footprint of the nonconforming structure, the existing and proposed structure
400 height, the footprint of any other structures on the parcel, the Shoreland
401 Overlay Zone and/or the Resource Protection Overlay Zone boundary and
402 evidence of approval by the municipal review authority.

403

404 (c) Nonconforming structure reconstruction.

405

406 [1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
407 structure which is located less than the required setback from a water body,
408 tributary stream, or coastal or freshwater wetland and which is removed,
409 damaged or destroyed, by any cause, by more than 50% of the assessed value of
410 the structure before such damage, destruction or removal, may be reconstructed
411 or replaced provided that a permit is obtained within 18 months of the date of
412 said damage, destruction, or removal, and provided that such reconstruction or
413 replacement is in compliance with the water body, tributary stream or coastal or
414 freshwater wetland setback requirement to the greatest practical extent as
415 determined by the Planning Board. In determining whether the structure
416 reconstruction meets the setback to the greatest practical extent the Planning
417 Board must consider, in addition to the criteria in § 16.1.8.C(4)(a),
418 Nonconforming structure relocation, the physical condition and type of

419 foundation present, if any.

420

421 [2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
422 structure which is located less than the required setback from a water body,
423 tributary stream, or coastal or freshwater wetland and removed, damaged or
424 destroyed by any cause by 50% or less of the assessed value of the structure
425 before such damage, destruction or removal, may be reconstructed in place if a
426 permit is obtained from the Code Enforcement Officer within 12 months of the
427 established date of damage or destruction.

428

429 [3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any
430 nonconforming structure which is removed, damaged or destroyed by any cause
431 may be restored or reconstructed in place if a permit is obtained from the Code
432 Enforcement Officer within 18 months of the date of said removal, damage or
433 destruction. Such restoration or reconstruction must not make the structure more
434 nonconforming than the prior nonconforming structure.

435

436 [4] Nothing in this section prevents the demolition of the remains of any structure
437 damaged or destroyed. Application for a demolition permit for any structure that
438 has been partially damaged or destroyed must be made to the Code Enforcement
439 Officer.

440

441 [5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of
442 the original structure can be reconstructed beyond the required setback area, no
443 portion of the reconstructed structure may be reconstructed at less than the
444 setback requirement for a new structure. If the reconstructed or replacement
445 structure is less than the required setback, it may not be any larger than the
446 original structure, except as allowed in § 16.1.8.C(4)(b), Nonconforming
447 structure repair and expansion.

448

449 [6] When it is necessary to remove vegetation to reconstruct a structure, vegetation
450 will be replanted in accordance with § 16.1.8.C(4)(a)[3], Nonconforming
451 structure relocation.

452

453 [7] Except where expressly permitted in this title, in no case may a structure be
454 reconstructed or replaced so as to increase its nonconformity.

455

456 (5). Nonconforming uses.

457

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

461

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

469
470 (c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited,
471 except nonconforming residential uses may be expanded within existing residential
472 structures. Where the expansion of a nonconforming residential use involves the
473 expansion of a structure, the structure must be expanded in conformity with all
474 requirements as outlined in § 16.1.8.C(4), Nonconforming structures.

475
476 (d) Nonconforming use change: review authority and evaluations. The reviewing
477 authority may require evaluations be prepared by a person certified and/or qualified
478 to perform the required evaluation. It is the burden and responsibility of the
479 applicant to bear the costs for such evaluations. In the event there are existing
480 official maps, data and/or reports for general use, the applicant is encouraged to
481 submit copies of these documents to the reviewing authority. In determining that no
482 greater adverse impact will occur, the applicant may be required to submit an
483 evaluation in writing regarding the probable effects on public health and safety,
484 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative
485 cover, visual and actual points of public access to waters, natural beauty, floodplain
486 management, archaeological and historic resources, and commercial fishing and
487 maritime activities, and other functionally water-dependent uses.

488
489 [1] The Town Planner and the Code Enforcement Officer may approve the change
490 of use of a nonconforming structure where it can be deemed the proposed use is
491 a conforming use and the proposed use does not impact a water body, tributary
492 stream, or wetland.

493
494 [2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
495 Overlay Zone, an existing nonconforming use may be changed to another
496 nonconforming use with approval of the Board of Appeals.

497
498 [3] Within areas regulated by Shoreland Overlay Zone or Resource Protection
499 Overlay Zone, an existing nonconforming use may be changed to another
500 nonconforming use with the approval of the Planning Board.

501
502 (6). Nonconforming lots.

503
504 (a) Nonconforming lots of record.

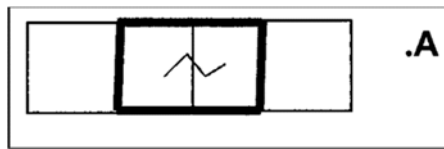
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[1] Nonconforming lots. In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions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

(b) Contiguous nonconforming lots.

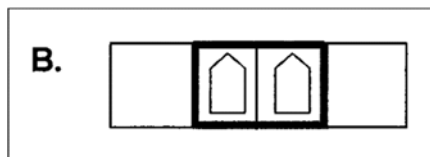
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[1] Contiguous nonconforming lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this title, and if one or more 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.



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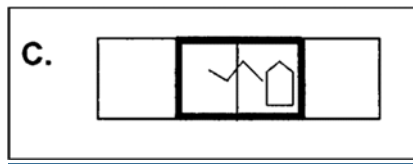
[2] Contiguous-built upon nonconforming lots. If two or more contiguous lots or parcels are in a single or joint ownership of record prior to July 13, 1977, and prior to December 15, 1973, for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements 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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[3] 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

539 combined to the extent necessary to meet the applicable dimensional
 540 requirements of this title.



543

544 [4] This subsection does not apply:

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

549 [b] If one or more of the contiguous lots is served by a public sewer, or can
 550 accommodate a subsurface sewage disposal system in conformance with this
 551 title § 16.8.10.D, Septic Waste Disposal, and the State of Maine Subsurface
 552 Wastewater Disposal Rules; and

553

554 [i] If each lot contains at least 100 feet of shore frontage and at least 20,000
 555 square feet of lot area; or

556

557 [ii] If any lot(s) that do not meet the frontage and lot size requirements of
 558 § 16.4.28.E(1) are reconfigured or combined so each new lot contains at
 559 least 100 feet of shore frontage and 20,000 square feet of lot area.

560

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

569

570 (d) Adjustment of common boundary line of nonconforming lots.

571

572 [1] The common property line of two nonconforming lots of record, each
 573 with legally created principal structures, can be adjusted if:

574

575 [a] The Code Enforcement Officer (CEO) determines that the resulting

576 lots are not more nonconforming than the existing lots with respect to
 577 the dimensional requirements of this title; or

578
 579 [b] Where the lots are located entirely outside the Shoreland Overlay
 580 Zone and the CEO determines the proposed lot line adjustment makes
 581 the lot more nonconforming, the Board of Appeals determines that each
 582 resulting lot is as conforming as practicable to the dimensional
 583 requirements of this title; and

584
 585 [i] Each resulting lot is not less than 20,000 square feet in lot size when
 586 not served by public sewer; or

587
 588 [ii] Each resulting lot is not less than the smallest residential lot
 589 permitted under the Town's land use base zones, Title 16.3, when
 590 served by public sewer; or

591
 592 [c] Where all or part of either lot is located in the Shoreland Overlay
 593 Zone and the CEO determines the proposed lot line adjustment makes
 594 the lot more nonconforming, the Planning Board determines that each
 595 resulting lot is as conforming as practicable to the Maine Department of
 596 Environmental Protection (MDEP) Mandatory Shoreland Zoning
 597 minimum lot standards for principal structures and uses¹; and

598
 599 [i] Each resulting lot is not less than 20,000 square feet in lot size and
 600 not less than 100 feet in shore frontage^{2,3}; and

601
 602 [ii] A lot that is conforming to the MDEP Mandatory Shoreland Zoning
 603 minimum lot standards for principal structures and uses remains
 604 conforming to those requirements¹; and

605
 606 [iii] Common boundary lines may not be adjusted when both subject lots
 607 are nonconforming per MDEP Mandatory Shoreland Zoning
 608 minimum lot standards.³

609
 610 [2] It is not the intention of the above subsection (Adjustment of common
 611 boundary line of nonconforming lots) to allow for the creation of an
 612 additional lot. A property line adjustment in accordance with this
 613 subsection and Title 16.8 does not constitute the creation of a new lot
 614 and the adjusted lot remains a legally non-conforming lot of record, not
 615 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 16.1.8.C(6)[d] 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.

616

1 16.2 Administration and Enforcement

2 16.2.1. Administration and Enforcement

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

5 16.2.2. Planning Board appointment and powers.

6 A. Appointment and composition.

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

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

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

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

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

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

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

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

28 B. Powers and duties.

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

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

37 (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings
38 to perform duties.[1]

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

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(5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A). [2]

(6). The Board is to:

a. Perform duties as provided by law.

b. 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.

c. 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.

16.2.3. Board of Appeals

A. Appointment and composition.

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

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

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

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

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

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

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

(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. [3]

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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).[4]
- (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 § 16.1.8;
 - ii. Standards contained in § 16.7.E, § 16.7.F, or § 16.5.23 Sign violation and appeal; or
 - iii. Accessory dwelling unit standards per § 16.5.3.
 - 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 (§16.7) procedures and review criteria and other provisions in this title.

16.2.4. Port Authority

A. Appointment and composition.

- (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter 163, as

131 amended, and Town Charter, Article IX.

- 132
- 133 (2). The Port Authority consists of seven members, who are Kittery residents, serving staggered
134 terms of office of five years.
- 135
- 136 (3). Members of the Port Authority are appointed by the Town Council.
- 137
- 138 (4). A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.
- 139
- 140 (5). Members serve until their successors are appointed and qualified.
- 141
- 142 (6). No member shall serve more than two consecutive terms of five years. Any member who has
143 served two consecutive terms of five years is ineligible to serve on the Board for a period of one
144 year. Computation of term limits commences with the first term of five years following the
145 effective date of this provision. Computation of term limits does not include service prior to the
146 effective date of this provision nor to terms of fewer than five years after the effective date.
- 147
- 148 (7). A member of the Port Authority may be dismissed for cause by the Town Council before the
149 expiration of such member's term after notice and hearing.
- 150
- 151 (8). Vacancies are filled by Town Council appointment for the unexpired term.

152

153 B. Powers and duties.

- 154
- 155 (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a
156 secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings
157 of the Port Authority and show the vote of each member upon each question
- 158
- 159 (2). The Port Authority is to:
- 160
- 161 a. Perform duties as provided by law.
- 162
- 163 b. Where Town Council action is required under 38 M.R.S. § 1021 et seq., Wharves and Fish
164 Weirs, the Council may appoint the Port Authority as its designee for on-site inspection and
165 to issue a written report on the same to the Council.[5]
- 166
- 167 c. Water area development powers and duties.
- 168
- 169 i. The Port Authority is to provide advice to the Planning Board on development
170 applications dealing with piers, wharfs, marinas and other uses projecting into water
171 bodies.
- 172
- 173 ii. Where Port Authority review is required, such review must be completed prior to
174 Planning Board review.
- 175

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

180
181 iv. The Port Authority may approve, for convenience of access to a pier from land upland of
182 the mean high-water line or the edge of a coastal wetland, an extension of the pier that is
183 the shortest practicable extension at its nominal height and width. All other structures
184 upland of, and abutting or built on or over, a structure extending into a water body
185 beyond the mean high-water line or the edge of a coastal wetland require Planning
186 Board approval. Only one pier, ramp and float structure is permitted on any
187 noncommercial or nonindustrial lot.

188
189 v. Where the Planning Board is the lead reviewing authority, a shorefront development
190 plan must be submitted for Planning Board approval. A Port Authority ruling on the
191 shorefront development plan's conformance with Port Authority rules and regulations
192 and navigational aspects of any proposed pier, ramp and float system or principal marine
193 structure is required prior to Planning Board approval.

194
195 vi. Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
196 other structure beyond the normal high-water line. The standards contained in § 16.5.22.
197 are to be met.

198 16.2.5. Town Planner

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

207
208 B. Plan submission.

209
210 (1). All plan submission requirements for an application for land/water area use and development are
211 to be submitted to the Town Planner.

212
213 (2). The Town Planner must review all plan submission contents to ascertain that they meet the
214 requirements of this title before they are delivered for review or consideration by the Planning
215 Board.

216
217 (3). The Town Planner, upon confirmation of a plan's submission contents sufficiency, is to place the
218 application on the Board's agenda for a scheduling hearing.
219 NOTE: Town Planner confirmation does not constitute substantive review under Maine law,
220 which commences at the first public hearing for an application held by the Planning Board.

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16.2 ADMINISTRATION & ENFORCEMENT

DRAFT: December 13, 2021

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

225

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

228

229 **16.2.6. Code Enforcement Officer (CEO)**

230

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

233

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

236

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

239

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

242

243 E. Business use changes. The Town Planner and the Code Enforcement Officer are to review and
244 approve, or refer to the Planning Board for action, all business use changes which occur that fall
245 below Planning Board review thresholds as outlined in § 16.7.2.B. Approval must be based on
246 compliance with all requirements of this title.

247

248 **16.2.7. Enforcement; general**

249 A. If the Code Enforcement Officer (CEO) finds any of the provisions of this title are being violated, the
250 CEO must notify by certified mail, return receipt requested, the person responsible for such violations,
251 indicate the nature of the violation, and order the action necessary to correct it. The CEO must order
252 discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures
253 or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being
254 done; or take any other action authorized by this title to ensure compliance with or to prevent
255 violations of its provisions.

256

257 **16.2.8. Building/Regulated Activity Permits and Requirements**

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

260

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

264

16.2 ADMINISTRATION & ENFORCEMENT

DRAFT: December 13, 2021

- 265 B. Conformity. No building/regulated activity permit may be issued except in conformity with this title,
266 except after written order of the Board of Appeals.
267
- 268 C. Permit records. The CEO must maintain a public record of all building/regulated activity permits and
269 applications thereof.
270
- 271 D. Permit period.
272
- 273 (1). A permit expires if the Code Enforcement Officer determines no substantial work has been
274 commenced within six months from date of issue. A permit expires if work is not substantially
275 complete within two years from date of issue. Expired permits may be renewed upon written
276 request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction.
277 Written request for renewal must be made prior to the permit expiration.
278
- 279 (2). The permit may be renewed one time only for a single six-month period to commence work,
280 upon payment of the base application fee. If the Code Enforcement Officer determines
281 substantial work has not commenced upon expiration of the six-month renewal period, a new
282 permit application and payment of all applicable new permit fees must be submitted.
283
- 284 (3). The permit may be renewed one time only for a single six-month period to complete work, upon
285 payment of the base application fee. If work is not substantially complete as determined by the
286 Code Enforcement Officer upon expiration of the six-month renewal period, a new permit
287 application and payment of all applicable new permit fees must be submitted based on the value
288 of the remaining permitted work.
289
- 290 (4). Any work commenced or completed without the issue of a permit as required by this title is
291 subject to an after-the-fact permit with all applicable fees doubled.
292
- 293 E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as
294 determined by the Code Enforcement Officer:
295
- 296 (1). Fair market value of the work is greater than \$2,000;
297
- 298 (2). Changes to electric, plumbing or septic systems;
299
- 300 (3). Increase in coverage;
301
- 302 (4). Construction of a building or expansion of a structure;
303
- 304 (5). Structural alteration;
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- 306 (6). Change in use or new business occupancy;
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- 308 (7). Erection or expansion of signage;

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(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.

F. Application.

(1). Plans.

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

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

(2). Drainage and sewage disposal. Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal and prior obtainment of a subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the Maine State Plumbing Code and § 16.7 or § 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.)

(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, [6] 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.

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- a. All developments must be in conformance with the procedures, standards and requirements of this title.
- b. All work that requires a building/regulating 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.
- 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:
- a. NFPA 1 - Fire Code.
- b. NFPA 101 - Life Safety Code.
- c. NFPA 54 - Fuel Gas Code.
- d. 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/regulating 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.

401 16.2.9. Certificate of occupancy

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

407

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

411

412 C. Temporary certificate.

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

417

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

423

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

426

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

428

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

432

433 16.2.10. Numbering of buildings

434 A. Street-numbering map.

435

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

439

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

442

16.2 ADMINISTRATION & ENFORCEMENT

DRAFT: December 13, 2021

- 443 B. Display of number. The number is to be displayed upon the front of the building and/or on the side
444 facing the street. The number must be plainly visible from the street. Owners of buildings and houses
445 that are set back out of view from the road must place a post or sign at the driveway entrance with the
446 specified numbers. Said post/sign is not considered a structure which must conform to Land Use and
447 Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said
448 post/sign must be placed out of the Town's right-of-way and be six feet in height.
- 449
- 450 C. Multi-Family Dwellings. For multi-family dwellings, the house number is to be displayed as outlined
451 in Subsection B. Each individual apartment or living unit must be clearly sublettered.
- 452
- 453 D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in
454 color with the color of the building or background to which they are attached.
- 455
- 456 E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police
457 Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of
458 this section within the time limit of not more than 30 days specified in such notice is liable to a fine of
459 not less than \$50 nor more than \$100 per violation.
- 460

461 16.2.11. Plumbing and septic system permit fees

- 462 A. Applicability. This section applies to fees charged by the Town for plumbing and subsurface
463 wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. § 4201 et seq. and
464 pursuant to rules promulgated by the Department of Health and Human Services (DHHS) under the
465 authority of 30-A M.R.S. § 4201 et seq. ("State Plumbing Code"). For purposes of this section, the
466 terms contained in this section have the meanings given to them in the State Plumbing Code.
- 467
- 468 B. Plumbing permit fees.
- 469 (1). At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. § 4201 et
470 seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance
471 with the following schedule and at the rate provided for each classification shown herein:
- 472
- 473 a. Any person who begins any work for which a permit is required by the State Plumbing Code
474 without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is
475 liable to pay double the permit fee fixed by this section for such work. However, this
476 provision does not apply to emergency work when it is proven to the satisfaction of the local
477 plumbing inspector that such work was urgently necessary and that it was not practical to
478 obtain a permit before the commencement of the work. In all such emergency cases, a
479 permit must be obtained within four working days, or else a double permit fee as
480 hereinabove provided is to be charged.
- 481
- 482 b. For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture
483 or appliance may be set or attached is construed to be a fixture. Fees for reconnection and
484 retest of existing plumbing systems in relocated buildings are to be based on the number of
485 plumbing fixtures, water heaters, etc., involved.
- 486
- 487 c. The following permit fees are to be charged:

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- i. Minimum fee for all permits, see Appendix A.
- ii. Fixture fee, see Appendix A.
- iii. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
- iv. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
- v. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
- vi. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
- vii. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stick-built 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.

16.2.12. 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 § 16.4, 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

532 within 45 days from the date the decision by the Planning Board was rendered.

533

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

537

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

541

542 C. Appeal of Code Enforcement Officer decision.

543 A Code Enforcement Officer decision may be appealed to the Board of Appeals as provided below in
544 § 16.2.12.D.(2).

545

546 D. Appeals/requests to Board of Appeals.

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

548

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

554

555 (2). Variance request.

556

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

558

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

561

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

563

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

566

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

568

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

571

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

573

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

575

576 b. Notwithstanding § 16.2.12.D(2)a, the Board of Appeals may grant a variance to an owner of

577 a residential dwelling for the purpose of making that dwelling accessible to a person with a
578 disability who resides in or regularly uses the dwelling. The Board of Appeals must restrict
579 any variance granted under this subsection solely to the installation of equipment or the
580 construction of structures necessary for access to or egress from the dwelling by the person
581 with the disability. The Board of Appeals may impose conditions on the variance, including
582 limiting the variance to the duration of the disability or to the time that the person with the
583 disability lives in the dwelling. The term "structures necessary for access to or egress from
584 the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness
585 of the structure.

586

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

593

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

598

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

601

602 a. Nonconformance as prescribed in § 16.1.8;

603

604 b. Parking, loading and traffic standards contained in § 16.7.11.E and § 16.7.11.F;

605

606 c. Sign violation and appeal standards contained in § 16.5.23.M; or

607

608 d. Accessory dwelling unit standards contained in § 16.5.3.

609

610 (4). Special exception use request.

611

612 a. The Board of Appeals will hear, decide and may grant an applicant's special exception use
613 request where authorized in § 16.4 for any application excluded from Planning Board
614 review as stated in § 16.7.2.B, if the proposed use meets the criteria set forth in § 16.2.12.F,
615 Basis for decision.

616

617 b. The Planning Board will review, decide and may approve an applicant's special exception
618 use request where the proposed project requires Planning Board review as defined in
619 § 16.7.2.B or is located in a Shoreland or Resource Protection Overlay Zone. The Planning
620 Board must find the proposed project and use meets the criteria set forth in § 16.7.10.D and
621 § 16.2.12.F.

622

623 E. BOA appeal/request filing procedures.

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

628
629 a. The appeal or request must be filed with the Code Enforcement Officer on forms approved
630 by the Board of Appeals and the party must specifically state on such forms the grounds for
631 such appeal or request, including claimed discrepancies in the interpretation of this title and
632 reasons why the appeal or request should be granted. Incomplete applications for appeals
633 and/or requests will not be accepted. Upon receipt of an appeal or request application, the
634 Code Enforcement Office must stamp a receipt date on the appeal or required form. Said
635 date constitutes the filing date of the appeal or request. Applications for appeals or requests
636 must include the following:

637
638 i. The appeal or request must be made by the property owner, an aggrieved party or their
639 respective duly authorized agent.

640
641 ii. The appeal or request must include a concise written statement, indicating what relief is
642 requested and why the appeal or request should be granted.

643
644 iii. Where the appeal or request is made from a decision by the Code Enforcement Officer,
645 the applicant must submit plans, maps and related documentation to the code
646 enforcement office for distribution to the Board of Appeals members at least two weeks
647 prior to the meeting of the Board of Appeals. A minimum of 10 sets of all submissions
648 is required.

649
650 iv. The Board of Appeals must hold a public hearing on an appeal or request within 35
651 days of its receipt of a complete written application, unless this time period is extended
652 by the applicant and BOA.

653
654 b. At any time between the initial acceptance by the Code Enforcement Officer of an
655 appeal/request and final approval or denial of the appeal/request by the Board of Appeals,
656 the owner or applicant must allow members of the Board of Appeals full access to the
657 subject property, not including building interiors, without obtaining prior permission,
658 written or oral.

659
660 (2). Hearing and notice.

661
662 a. Before taking any action on any appeal/request, the Board of Appeals must hold a public
663 hearing and provide the following notifications:

664
665 i. By mail at least seven and not more than 14 days prior to the scheduled hearing date, to
666 owners of abutting property that an appeal/request is made, the nature of the
667 appeal/request and the time and place of the public hearing thereon; and

668
669 ii. Notice of all such actions must also be published in a newspaper of general circulation
670 in the Town at least seven days prior to the public hearing.

671

- 672 b. Failure of any property owner to receive a notice of public hearing will not necessitate
673 another hearing or invalidate any action by the Board of Appeals.
674
- 675 (3). Notification and timing constraints. Following the filing of an appeal/request, the Code
676 Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation
677 Commission of the filing. The appeal or request must be complete for hearing at a subsequent
678 meeting of the Board of Appeals occurring no less than 10 days after the mailing of notices but
679 within 30 days of the appeal filing date.
680
- 681 (4). Decisions of the Board of Appeals.
682
- 683 a. The person filing the appeal or request has the burden of proof.
684
- 685 b. A minimum of four like votes is required for a decision by the Board of Appeals, except on
686 procedural matters.
687
- 688 c. The Board of Appeals must decide the appeal or request within 30 days after the close of the
689 hearing and issue a written decision.
690
- 691 d. Written notice of the decision of the Board of Appeals must be sent to the appellant or
692 petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and
693 municipal department heads within seven days of the decision. The vote of each member
694 must be part of the record. The written notice of the decision of the Board of Appeals must
695 include the statement of findings. In the case of denials, the statement of findings must
696 include the reason for the denial.
697
- 698 (5). Order of review.
699
- 700 a. Where a special exception request or appeal is necessary as an integral part of a
701 development review process, Board of Appeals action is encouraged prior to Planning
702 Board review where required. The findings of the Board of Appeals as well as any file
703 material must be made available to the Planning Board.
704
- 705 b. The Planning Board may give approval to the preliminary plan as an overall development
706 prior to the applicant filing an appeal/request.
707
- 708 (6). Special exception referral.
709
- 710 a. Before granting any special exception, the Board of Appeals may refer the application to the
711 Planning Board and/or Port Authority for a report prior to any subsequent BOA review of
712 the application.
713
- 714 b. The Planning Board and/or Port Authority report must be considered informational in
715 character and may take into consideration the effect of the proposal upon the character of
716 the neighborhood or any other pertinent data.
717
- 718 c. The Planning Board and/or Port Authority report must be submitted to the BOA for its

719 consideration prior to the officially scheduled time of public hearing on the request.

720

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

723

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

727

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

731

732 (10). Expiration of approval.

733

734 a. Approvals granted under the provisions of this chapter expire if work or change in use
735 involved is not commenced within six months of the date on which approval is granted, or if
736 the work or change in use is not substantially completed within one year of the date on
737 which such approval is granted, unless as otherwise provided for in the approval decision.

738

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

744

745 c. Should a successful appellant not be able to commence and/or substantially complete the
746 work or change in use before the time constraints contained in Subsection 10(a) above, the
747 appellant may reappear before the Board before the original approval expires and request an
748 extension of the approval.

749

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

752

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

755

756 a. A request for the Board of Appeals to reconsider a decision must be filed with the Code
757 Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to
758 reconsider and the action taken on that reconsideration must occur and be completed within
759 45 days of the date of the vote on the original decision. Reconsideration of a decision
760 requires a positive vote of the entire Board and proper notification to the landowner,
761 petitioner, Planning Board, the Town Planner, including abutters and those who testified at
762 the original hearing(s). The Board may conduct additional hearings and receive additional
763 evidence and testimony.

764

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

766 the decision on reconsideration.

767

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

774

775 (13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount
776 as set by the Town Council.[7]

777

778 F. Basis for decision.

779

780 (1). Conditions.

781

782 a. In hearing appeals/requests under this section, the appropriate jurisdictional board must first
783 establish that it has a basis in law to conduct the hearing and decide the question.

784

785 b. In hearing appeals/requests under this section, the appropriate jurisdictional board must use
786 the following criteria as the basis of a decision, that:

787

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

790

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

794

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

797

798 iv. The use will be in harmony with and promote the general purposes and intent of this
799 title.

800

801 (2). Factors for consideration. In making such determination, the appropriate jurisdictional board
802 must also give consideration, among other things, to:

803

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

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

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810 c. The effect that the location of the proposed use may have upon the congestion or undue

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- 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 § 16.6 and 16.7.
- (3). Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the appropriate jurisdictional board, including the following:

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- a. Front, side or rear yards in excess of minimum requirements;
 - b. Modifications of the exterior features of buildings or other structures;
 - c. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
 - d. Regulation of design of access drives, sidewalks and other traffic features;
 - e. Off-street parking and loading spaces in excess of the minimum requirements; or
 - f. Restrictions on hours of operation.
- (4). Findings of fact. After reaching a decision on an appeal/request under this section, the appropriate jurisdictional board 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 § 16.5.11, Floodplain Management, § 16.5.11.A et seq., consistent with state law and the following criteria:
- 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:

- 903 a. That the land in question cannot yield a reasonable return unless a variance is granted;
904 and
905
- 906 b. That the need for a variance is due to the unique circumstances of the property and not
907 to the general conditions in the neighborhood; and
908
- 909 c. That the granting of a variance will not alter the essential character of the locality; and
910
- 911 d. That the hardship is not the result of action taken by the applicant or a prior owner.
912
- 913 c. Variances may only be issued upon a determination that the variance is the minimum
914 necessary, considering the flood hazard, to afford relief.
915
- 916 d. Variances may be issued by a community for new construction, substantial improvements,
917 or other development for the conduct of a functionally dependent use, provided that:
918
- 919 i. Other criteria of this section and § 16.5.11.H.(9) are met; and
920
- 921 ii. The structure or other development is protected by methods that minimize flood
922 damages during the base flood and create no additional threats to public safety.
923
- 924 e. Variances may be issued by a community for the reconstruction, rehabilitation or restoration
925 of structures listed on the National Register of Historic Places or a State Inventory of
926 Historic Places, without regard to the procedures set forth in Subsection 6(a) through (d) of
927 this section.
928
- 929 f. Any applicant who meets the criteria of Subsection 6(a) through (e) of this section is to be
930 notified by the Board of Appeals, in writing, over the signature of the Chairperson of the
931 Board of Appeals, that:
932
- 933 i. The issuance of a variance to construct a structure below the base flood level will result
934 in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per
935 \$100 of insurance coverage;
936
- 937 ii. Such construction below the base flood level increases risks to life and property; and
938
- 939 iii. The applicant agrees, in writing, that the applicant is fully aware of all the risks inherent
940 in the use of land subject to flooding, assumes those risks and agrees to indemnify and
941 defend the municipality against any claims filed against it that are related to the
942 applicant's decision to use land located in a floodplain and that the applicant individually
943 releases the municipality from any claims the applicant may have against the
944 municipality that are related to the use of land located in a floodplain.
945
- 946 g. The Board of Appeals must submit to the Planning Board a report of all variance actions,
947 including justification for the granting of the variance and an authorization for the Code
948 Enforcement Officer to issue a flood hazard development permit, which includes any
949 conditions to be attached to said permit.

950

951 16.2.13. Violations and Enforcement

952 When any violation of any provision of this title or § 16.5.19, Nonstormwater Discharge, is found to
953 exist, the Town Attorney or the CEO, as provided by Maine Rules of Civil Procedure Rule 80K and any
954 provisions of this title and relevant statute, with the advice and consent of the Town Manager, is
955 authorized and directed to institute any and all appropriate actions and proceedings either legal or
956 equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same
957 to be brought in the name of the Town.

958

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

963

964 B. Applications for permits or approvals involving sites with a violation. An application for a
965 building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign permit,
966 subdivision approval or development review approval will be denied for any property where a
967 violation exists until such violation has been corrected or resolved.

968

969 C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an
970 alternative method in addition to § 16.2.7 for enforcing and securing compliance with the provisions
971 of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance
972 the public health, safety and general welfare.

973

974 D. Notice of violation and order (notice).

975

976 (1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and
977 any other person or entity responsible (hereafter termed "violator") for such violation. The
978 notice must describe the nature of the violation, include a specific reference to the provision(s)
979 of this title and/or state statute violated, and direct the discontinuance of the illegal action or
980 condition. The notice must also contain an order setting forth the action necessary to correct the
981 violation specifying a time period for correction as provided in § 16.2.13.H and must set forth a
982 fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452

983

984 (2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this
985 title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice
986 must also set forth, in addition to the fine to be imposed, an order of remediation or other
987 corrective action(s) consistent with and in compliance with 30-A M.R.S. § 4452 deemed
988 necessary by the CEO to correct or mitigate the violation to the affected area(s), unless the
989 correction or mitigation would result in a threat or hazard to public health or safety, substantial
990 environmental damage or a substantial injustice.

991

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

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(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 § 16.5.19, 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:

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

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

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

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

E. Procedure to serve notice of violation and order. The notice pursuant to § 16.2.13.D 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

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§ 16.2.12.E(1).

- (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 § 16.2.12.E(2) 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 § 16.2.13.J, 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 § 16.2.13.J, 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 § 16.2.13.D 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.

1088 (2). If a violator in a timely fashion files a completed administrative appeal application with the
1089 Town Clerk as provided in § 16.2.13.F, any period of time from date of receipt of such an
1090 appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time
1091 period described in this section. If the BOA upholds the CEO's determination, the timeline set
1092 forth in the notice of violation and order resumes, beginning the day after the decision is
1093 rendered, unless it is extended by the BOA.

1094
1095 I. Penalties.

1096
1097 (1). The Code Enforcement Officer must impose the following penalties for the failure to correct a
1098 cited violation within the prescribed time set forth in the notice:

1100 a. Fine imposed: \$200 for the first seven-day period the violation continues beyond the
1101 time specified for corrective action. Thereafter, each day the violation continues, a
1102 separate and specific violation with an additional minimum of \$100 per day penalty for
1103 each day of the continuing violation up to a maximum penalty imposed of \$2,500 for
1104 each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.

1105
1106 b. When the violation set forth in the notice involves any cutting of tree(s) or other
1107 vegetation in violation of § 16.8.10.O(2) or 30-A M.R.S. § 4452(3), the penalty provided
1108 by this section will be imposed from the date of notification of the violation in writing in
1109 addition to the required corrective action set forth in the § 16.2.13.D.

1110
1111 (2). After the time specified to correct the violation in the notice of violation and order passes, it is
1112 the responsibility of the violator to inform the Code Enforcement Officer in writing when the
1113 violation has been corrected and seek an inspection to verify the violation has been corrected.
1114 For the purposes of this section, the violation will be assumed to have continued to exist
1115 uncorrected until the violator has informed the Code Enforcement Officer in writing that the
1116 violation has been corrected or the Code Enforcement Officer discovers through inspection of
1117 the premises that the violation has been corrected, whichever comes earlier.

1118
1119 J. Consent agreements.

1120
1121 (1). In special cases, particularly minor, unintentional violations that are unduly difficult to
1122 correct, the Town Manager, with advice of the Code Enforcement Officer, is authorized to
1123 enter into a consent agreement with the violator to resolve the violation without further
1124 enforcement action or appeal. Consent agreements are not intended to allow a violator to
1125 substitute fines for corrective actions.

1126
1127 (2). Any such violation that is allowed to continue pursuant to a consent agreement is not granted
1128 the status of a nonconforming use. Any further actions by the violator with regard to the
1129 property must comply in all respects to the existing terms and provisions of this title.

1130
1131 K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and order as
1132 provided in § 16.2.13.D are payable to the Town and due within 30 days after the notice of violation
1133 and order become final. All such civil penalties not paid when due accrue interest on the unpaid
1134 penalties at the rate provided for judgments in 14 M.R.S. § 1602-A. If the violator fails to pay this

1135 penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.

1136

1137 L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor,
1138 who violates any provision or requirement of this title will be penalized in accordance with this title
1139 and 30-A M.R.S. § 4452.

1140

1141 16.2.14. Enforcement and Penalties

1142

1143 A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.5.11,
1144 Floodplain Management, pursuant to 30-A M.R.S. §4452.

1145

1146 B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this chapter.

1147

1148 C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation
1149 exists, is to submit a declaration to the Administrator of the Federal Insurance Administration
1150 requesting a denial of flood insurance. The valid declaration is to consist of:

1151

1152 (1). The name of the property owner and address or legal description of the property sufficient to
1153 confirm its identity or location;

1154

1155 (2). A clear and unequivocal declaration that the property is in violation of a cited state or local law,
1156 regulation or ordinance;

1157

1158 (3). A clear statement that the public body making the declaration has authority to do so and a
1159 citation to that authority;

1160

1161 (4). Evidence that the property owner has been provided notice of the violation and the prospective
1162 denial of insurance; and

1163

1164 (5). A clear statement that the declaration is being submitted pursuant to Section 1316 of the
1165 National Flood Insurance Act of 1968, as amended.

16.3 Definitions

16.3.1. 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.

16.3.2. Definitions

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 § 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.

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)

A dwelling unit 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 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 a Principal Use and located on the same lot with such Principal Use. See Principal Use definition.

ADJACENT GRADE

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

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:

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

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

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

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

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

48 **AFFORDABLE**

49 The percentage of income a household is charged in rent and other housing expenses, or must
50 pay in monthly mortgage payments (including insurance, HOA fees, and taxes), does not
51 exceed 30% of a household's gross income, or other amount established in town regulations
52 that does not vary significantly from this amount.

53 **AFFORDABLE HOUSING UNIT**

54 One dwelling unit of either affordable housing for rent or affordable housing for sale.

55 **AFFORDABLE HOUSING FOR RENT**

56 A dwelling unit that may be rented for year-round occupancy for which the rental cost does
57 not exceed the maximum cost set forth for households making up to 80% of area median
58 income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market Area
59 (HMFA) limits. Annual rent increases are limited by deed restriction, lease agreement or
60 other legally binding agreement to the percentage increase in the HUD York-Kittery-South
61 Berwick Metro Fair Market Area (HMFA) median income figures for a household of that
62 size.

63 **AFFORDABLE HOUSING FOR SALE**

64 A dwelling unit that may be purchased for year-round occupancy for which the selling price
65 does not exceed the maximum price set forth for households making up to 120% of area
66 median income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market
67 Area (HMFA) limits. The resale price is limited by deed restriction or other legally binding
68 agreement for all future sales of the unit, or a lesser term if permitted by regulations, to the
69 percentage increase in the HUD York-Kittery-South Berwick Metro Fair Market Area
70 (HMFA) median income figures for a household of that size.

71 **AGE-RESTRICTED HOUSING**

72 A residential use occupied principally by residents who are at least 55 years of age (or in the
73 case of a couple, at least one of whom is at least 55 years of age) in which the
74 accommodations are all dwelling units with private bathrooms and cooking facilities.
75 Occupants of this residential use may also include handicapped individuals of any age. Age-
76 Restricted Housing does not include Residential Care Facilities that are typically referred to

77 as independent living units, congregate care units, assisted living units, dementia or
78 Alzheimer's units or hospice units, or a nursing care or convalescent care facility that
79 provides nursing services.

80 **AGGRIEVED PARTY**

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

85 **AGRICULTURE**

86 The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or
87 maintenance for sale or lease of plants and/or animals, including but not limited to: forages
88 and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry
89 products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any
90 mutations or hybrids thereof, including the breeding and grazing of any or all such animals;
91 bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral,
92 ornamental, and greenhouse products; but excluding marijuana. Agriculture does not
93 include agriculture for personal use nor forestry or sawmills, as defined in this Ordinance.
94 See § 16.5.5 for Agriculture general performance standards.

95 **AGRICULTURE, PIGGERY**

96 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed
97 for the keeping of pigs. See § 16.5.6 for Agriculture, Piggery general performance standards.
98

99 **AGRICULTURE, POULTRY FACILITY**

100 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed
101 for the keeping of poultry or fowl. See § 16.5.7 for Agriculture, Poultry Facility general
102 performance standards.
103

104 **ALTERNATIVE TOWER STRUCTURE**

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

108 **ANTENNA**

109 Any apparatus designed for telephonic, radio, television or similar communications through
110 the sending and/or receiving of electromagnetic waves.
111

112 **ANNUAL AVERAGE DAILY TRAFFIC (AADT)**

113 The total volume of vehicle traffic of a road, street, or highway for a year divided by 365
114 days.
115

116 **AQUACULTURE**

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

119

120 **ART STUDIO OR GALLERY**

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

122 **ASSESSED VALUE**

123 A value of real property derived from a mass appraisal technique in accordance with market
124 value and is equitable to similarly situated properties within the Town.

125 **BANNER**

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

128 **BASAL AREA**

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

131 **BASE FLOOD**

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

134 **BASEMENT**

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

137 **BED-AND-BREAKFAST**

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

141 **BEST MANAGEMENT PRACTICES ("BMP")**

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

146 **BILLBOARD**

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

150 **BOARD OF APPEALS**

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

152 **BOAT LAUNCHING FACILITY**

153 A facility designed primarily for the launching and landing of watercraft, and which may

154 include an access ramp, docking area, and parking spaces for vehicles and trailers.

155 **BOAT YARD**

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

158 **BOATHOUSE**

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

161 **BREAKAWAY WALL**

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

165 **BROOK**

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

170 **BUFFER**

171 A combination of physical space and vertical elements, such as, but not limited to plants,
172 berms, fences or walls, the purpose of which is to separate and screen incompatible land
173 uses from each other.

174 **BUILDING**

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

178 **BUILDING COVERAGE**

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

184 **BUILDING FRONTAGE**

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

187 **BUSINESS**

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

BUSINESS AND PROFESSIONAL OFFICES

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

BUSINESS FACILITY

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

BUSINESS SERVICES

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

CAMPGROUND

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

CANNABIS

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

CANOPY, TREE (TREE CANOPY)

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

CEMETERY

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

CERTIFICATE OF COMPLIANCE

223 A document signed by the Code Enforcement Officer stating that a structure is in compliance
224 with all of the provisions of § 16.5.11.I

CERTIFICATE OF OCCUPANCY

226 A permit issued by the Code Enforcement Officer that authorizes the recipient to make use of
227

228 property in accordance with the requirements of this title and applicable state and federal
229 requirements.

230 **CHARACTER**

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

232 **CLEAN WATER ACT**

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

235 **CLEAR-CUT**

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

239 A. If after harvesting the average residual basal area of trees over one inch in diameter
240 measured at 4.5 feet above the ground is 30 square feet per acre or more, a clear cut does
241 not occur until the average residual basal area of trees six inches or larger measured at
242 4.5 feet above the ground is less than 10 square feet per acre; or

243 B. After harvesting, the site has a well-distributed stand of trees at least five feet in height
244 that meets the regeneration standards applicable under 12 M.R.S. Chapter 805,
245 § 8869(1).

246 **CLUSTER RESIDENTIAL DEVELOPMENT**

247 A form of land use improvements and/or change in which certain dimensional requirements
248 limited to lot area, lot coverage, frontage and setbacks may be reduced below that normally
249 required in the zoning district in which the land use improvements and/or change is located
250 in return for the provision to set aside a portion of the tract as of permanent open space and
251 other environmental enhancements owned and maintained jointly in common by individual
252 lot/unit owners, the Town, or a land conservation organization.

253 **CODE ENFORCEMENT OFFICER (CEO)**

254 The person duly authorized by the Town to carry out the duties as prescribed herein and in
255 the Town Administrative Code.^[1]

256 **CO-LOCATION**

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

259 **COMMERCIAL FISHERIES/MARITIME ACTIVITIES (USE)**

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

264 **COMMERCIAL GREENHOUSE**

265 A building or structure used by a business or in the production of income, which is designed
266 and/or used for the indoor propagation and/or cultivation of plants.

267 **COMMERCIAL KENNEL**

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

271 **COMMERCIAL MARINA USE STRUCTURE**

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

274 **COMMERCIAL OR HOME OCCUPATION VESSEL**

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

279 **COMMERCIAL SCHOOL**

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

285 **COMMERCIAL USE**

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

289 **COMMUNITY**

290 The Town of Kittery and its people.

291 **COMPACT OR BUILT-UP SECTION**

292 The "compact or built-up section" of the Town means a section of the Street or way where
293 structures are nearer than 200 feet apart for a distance of 1/4 mile.[2]

294 **COMPREHENSIVE PLAN**

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

298 **CONFERENCE CENTER**

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

302 **CONSTRUCTION DRAWINGS**

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

305 **CONSTRUCTION SERVICES**

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

310 **CONTIGUOUS LOTS**

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

313 **CONTRACTOR, EXCAVATION**

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

317 **CONVALESCENT CARE FACILITY**

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

323 **CORNER LOT**

324 A lot or parcel of land abutting on two or more streets at their intersection or on two parts of
325 the same street forming an interior angle of less than 135 degrees. In zones where yards are
326 required:

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

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

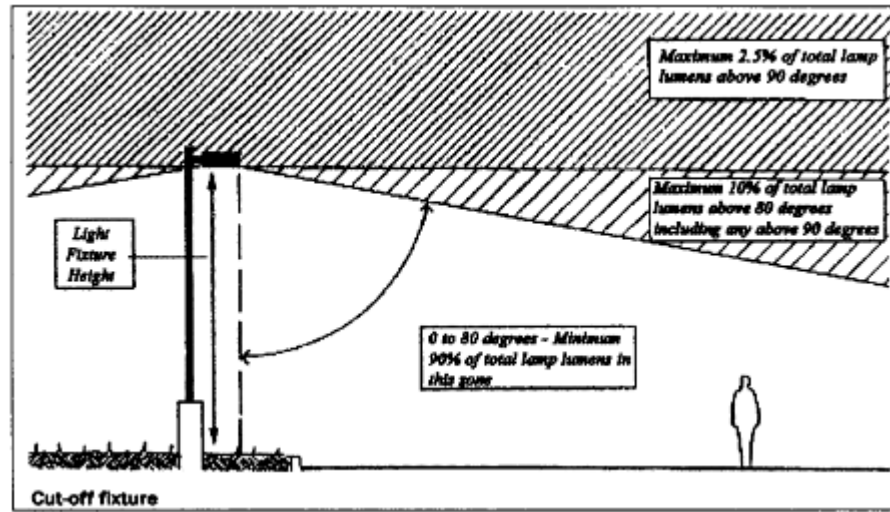
334 C. All such side yards described above must conform to the specific regulations related to
335 yard space and related building height contained in the district provisions of this title.

336 **COTTAGE CLUSTER**337 **COVERAGE (LOT, BUILDING)**

338 See definition for "building coverage."

339 **CUTOFF FIXTURE**

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

345 **DAY**

346 A calendar day unless otherwise indicated.

347 **DAY CARE FACILITY**

348 A house or other place conducted or maintained by anyone who provides on a regular basis
 349 and for consideration, care and protection for three or more unrelated children under 16 years
 350 of age, who are unattended by their parent(s) or guardian(s), for any part of a day. [SD3]Any
 351 facility, the chief purpose of which is to provide education, is not considered a Day Care
 352 Facility.

353 **DECK**

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

357 **DESIGNATED HISTORIC BUILDING**

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

361 **DESIGN HANDBOOK**

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

364 **DEVEGETATED AREA**

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

367 **DEVELOPER**

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

370 **DEVELOPMENT**

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

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

373 **DIMENSIONAL REQUIREMENTS**

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

376 **DISABILITY**

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

383 **DISCHARGE**

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

390 **DISTRIBUTION CENTER**

391 A warehouse or specialized building with refrigeration or climate control, stocked with
392 products to be shipped to retailers, wholesalers or directly to consumers.

393 **DISTURBED AREA**

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

399 **DOCK**

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

DRAINAGE DITCH

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

DREDGE

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

DRIVEWAY

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

DRIVE-THROUGH FACILITY

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

DWELLING

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

DWELLING, ATTACHED SINGLE-FAMILY

423 A dwelling unit, located on its own lot that shares one or more common or abutting walls
424 with one or more dwelling units. The common or abutting wall must be shared for at least
425 25 percent of the length of the side of the dwelling.

DWELLING, COTTAGE CLUSTER

427 A dwelling unit that shares a common lot as well as common open space and may
428 share a parking area and/or accessory structures.

DWELLING, MANUFACTURED HOUSING

430 Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended
431 from time to time. See § 16.5.15 for Manufactured Housing general performance
432 standards.

DWELLING, MULTI-FAMILY

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

DWELLING, SINGLE-FAMILY

440 A detached dwelling unit located on its own lot.

441

442 **DWELLING, TWO-FAMILY**

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

445 **DWELLING UNIT**

446 A room or group of rooms forming a habitable unit for one household, with facilities used
447 or intended to be used for living, sleeping, cooking, eating and sanitary facilities. Such a
448 unit must meet the building code standards adopted and amended from time to time by
449 Maine’s Bureau of Building Codes and Standards.

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

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

457 **EASEMENT**

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

460 **EAVE**

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

462 **ELDERLY DAY CARE FACILITY**

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

465 **ELEVATED BUILDING**

466 A. A non-basement building:

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

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

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

476 **ELEVATION CERTIFICATE**

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

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

480 B. Is required for purchasing flood insurance.

481 **EMERGENCY OPERATIONS**

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

486 **ESSENTIAL SERVICES**

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

495 **EXEMPT PERSON OR DISCHARGE**

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

506 **EXPANSION OF STRUCTURE**

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

509 **EXPANSION OF USE**

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

512 **FAA**

513 The Federal Aviation Administration.

514 **FAMILY**

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

516 **FARMERS MARKET**

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

524 **FCC**

525 The Federal Communications Commission.

526 **FILL**

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

528 **FILLING**

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

530 **FINGER FLOAT**

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

533 **FLAG**

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

536 **FLOAT**

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

539 **FLOOD, AREA OF A SHALLOW FLOODING**

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

545 **FLOOD, AREA OF SPECIAL FLOOD HAZARD**

546 The land in the floodplain having a one-percent or greater chance of flooding in any given
547 year, as specifically identified in the Flood Insurance Study cited in § 16.5.11.C,
548 Establishment of areas.

549 **FLOOD ELEVATION STUDY**

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

552 **FLOOD HAZARD ZONE**

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

557 **FLOOD INSURANCE RATE MAP (FIRM)**

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

561 **FLOOD INSURANCE STUDY**

562 See "flood elevation study."

563 **FLOOD OR FLOODING**

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

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

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

568 B. The collapse or subsidence of land along the shore of a lake or other body of water as a
569 result of erosion or undermining caused by waves or currents or water exceeding
570 anticipated cyclical levels or suddenly caused by an unusually high water level in a
571 natural body of water, accompanied by a severe storm, or by an unanticipated force of
572 nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and
573 unforeseeable event which results in flooding as defined in Subsection A(1) of this
574 definition.

575 **FLOOD, ONE-HUNDRED-YEAR**

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

578 **FLOODPLAIN MANAGEMENT**

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

582 **FLOODPLAIN MANAGEMENT REGULATIONS**

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

588 **FLOODPLAIN OR FLOOD-PRONE AREA**

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

FLOODPROOFING

590 Any combination of structural and nonstructural additions, changes or adjustments to
591 structures which reduce or eliminate flood damage to real estate or improved real property,
592 water and sanitary facilities, structures and contents.
593

FLOODWAY

594 See "regulatory floodway."
595

FLOODWAY ENCROACHMENT LINES

596 The lines marking the limits of floodways on federal, state and local floodplain maps.
597

FLOOR AREA

598 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus
599 the horizontal area of any unenclosed portions of a structure such as porches and decks.
600

FOREST MANAGEMENT ACTIVITIES

601 Timber cruising and other forest resource evaluation activities, pesticide or fertilizer
602 application, management planning activities, timber stand improvement, pruning,
603 regeneration of forest stands, and other similar or associated activities, exclusive of timber
604 harvesting and the construction, creation or maintenance of roads.
605
606

FOUNDATION

607 The supporting substructure of a building or other structure, including, but not limited to,
608 basements, slabs, sills, posts or frost walls.
609

FREEBOARD

610 A factor of safety usually expressed in feet above a flood level for purposes of floodplain
611 management. Freeboard tends to compensate for the many unknown factors, such as wave
612 action, bridge openings, and the hydrological effect of urbanization of the watershed, that
613 could contribute to flood heights greater than the height calculated for a selected size flood
614 and floodway conditions.
615

FULFILLMENT CENTER

616 A physical location, often a warehouse or a specialized building with automation, from
617 which a fulfillment provider fills customer orders from multiple e-commerce retailers.
618

FUNCTIONALLY WATER-DEPENDENT USES

619 Those uses that require, for their primary purpose, location on submerged lands or that
620 require direct access to, or location in, coastal and inland waters and which cannot be
621 located away from these waters. The uses include, but are not limited to, commercial and
622 recreational fishing and boating facilities, finfish and shellfish processing, fish storage and
623 retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding
624 recreational boat storage buildings, shipyards and boat-building facilities, marinas,
625 navigation aids, basins and channels, industrial uses dependent upon waterborne
626 transportation or requiring large volumes of cooling or processing water and which cannot
627 reasonably be located or operated at an inland site, and uses which primarily provide
628

629 general public access to marine or tidal waters.

630 **GAMBLING OR GAMING**

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

634 **GAMBLING CASINO**

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

636 **GASOLINE SALES**

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

641 **GASOLINE SERVICE STATION**

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

645 **GLARE**

646 Excessive brightness that makes it difficult to see or that causes discomfort. Glare includes
647 direct glare, disability glare, and discomfort glare.

648 **GLARE, DIRECT**

649 Glare resulting from insufficiently shielded light sources or areas of excessive luminance
650 within the field of view.

651 **GLARE, DISABILITY**

652 The effect of stray light in the eye whereby visibility and visual performance are reduced.
653

654 **GLARE, DISCOMFORT**

655 Glare producing discomfort. It does not necessarily interfere with visual performance or
656 visibility.

657 **GRADE PLANE**

658 A reference plane representing the average of finished ground level adjoining the building
659 at all exterior walls. Where the finished ground level slopes away from the exterior walls,
660 the reference plane is to be established by the lowest points within the area between the
661 building and the lot line or, where the lot line is more than six feet (1,829 mm) from the
662 building, between the building and a point six feet (1,829 mm) from the building.

663 **GROSS FLOOR AREA**

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

666 merchandise, or outdoor sales.

667 **GROUND COVER**

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

670 **HAZARDOUS WASTE**

671 As defined in 38 M.R.S. § 1319-O, a waste substance or material in any physical state,
672 designated as hazardous by the Board of Environmental Protection under 38 M.R.S. § 1303-
673 C.[4]

674 **HEIGHT OF BUILDING**

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

686 **HEIGHT OF STRUCTURE**

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

690 **HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES**

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

693 **HIGH INTENSITY SOIL SURVEY**

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

701 **HISTORIC STRUCTURE**

702 Any structure that is:

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

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

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

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

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

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

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

715 HOME OCCUPATION

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

718 HOME OCCUPATION, MAJOR

719 A type of home occupation that fails to meet all of the standards for a "minor home
 720 occupation" established in § 16.5.12, but is found by the Board of Appeals to satisfy the
 721 standards established in § 16.5.12 to ensure that a business results in no more than a minor
 722 intrusion in the quality of life of residents in the surrounding neighborhood.

723 HOME OCCUPATION, MINOR

724 The least intensive type of home occupation that meets the standards established in §
 725 16.5.12 to ensure compatibility with the surrounding neighborhood.

726 HOSPITAL

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

731 HOTEL

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

737 HYDRIC SOIL

738 A soil that in its undrained condition is saturated, flooded or ponded long enough during the
 739 growing season to develop anaerobic conditions that favor the growth and regeneration of
 740 wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric
 741 soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic,
 742 Sebago, Vassalboro, Naumberg, Raynham and Waskish. All hydric soils listed in the

743 Natural Resources Conservation Service list entitled "National Hydric Soils List by State"
744 are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

745 **HYDROPHYTIC VEGETATION**

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

751 **ILLCIT DISCHARGE**

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

755 **IMPERVIOUS SURFACE**

756 The total area of a parcel that consists of buildings and any associated structures as well as
757 roads, driveways, and parking areas, whether paved or unpaved and any additional area that
758 is covered with a low-permeability material such as asphalt, stone or concrete or compacted
759 through design or use to reduce permeability.

760 **IMPROVEMENT PLANS**

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

763 **INDIVIDUAL PRIVATE CAMPSITE**

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

768 **INDUSTRIAL ACTIVITY**

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

771 **INDUSTRIAL ACTIVITY, STORMWATER REGULATION**

772 Activity or activities subject to National Pollutant Discharge Elimination System
773 industrial permits as defined in 40 CFR 122.26(b)(14).

774 **INDUSTRY, HEAVY**

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

780 **INDUSTRY, LIGHT**

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

786 **INN**

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

791 **INTERMITTENT STREAM**

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

794 **INVASIVE NONNATIVE PLANT**

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

797 **JULY 13, 1977**

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

801 **JUNKYARD**

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

806 **LANDING**

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

808 **LANDSCAPE PLANTER STRIP**

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

812 **LARGE, HEALTHY TREE**

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

815 **than 20 years.LEGISLATIVE BODY**

816 Town Council.

817 **LIGHT FIXTURE HEIGHT**

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

820 **LINER BUILDING**

821 A building that lines the edge of a street or other public space. Liner Buildings are typically
822 used to shield public space, like a street or sidewalk, from something less desirable to view,
823 such as a parking garage. They can also be used to enclose a space such as protecting a
824 courtyard from a busy street. Where allowed, a Liner Building must be a minimum of eight
825 feet deep and a maximum of 14 feet deep.

826 **LOCALLY ESTABLISHED DATUM**

827 For purposes of § 16.5.11 Floodplain Management, an elevation established for a specific
828 site to which all other elevations at the site are referenced. This elevation is generally not
829 referenced to the National Geodetic Vertical Datum (NGVD) or any other established
830 datum and is used in areas where mean sea level is too far from a specific site to be
831 practically used.

832 **LOT**

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

835 **LOT AREA**

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

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

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

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

841

842 **LOT WIDTH**

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

844 **LOWEST FLOOR**

845 The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-
846 resistant enclosure, usable solely for parking of vehicles, building access or storage in an
847 area other than a basement area, is not considered a building's lowest floor, provided that
848 such enclosure is not built so as to render the structure in violation of the applicable non-
849 elevation design requirements described in § 16.5.11.H.

850 **LUMEN**

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

853 **MANUFACTURED HOUSING**

854 Manufactured Housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended
855 from time to time. See § 16.5.15.

856 **MARIJUANA**

857 Cannabis. See Cannabis definition.

858 **MARIJUANA, ADULT USE STORE**

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

863 **MARIJUANA, BUSINESS**

864 Means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical Marijuana
865 Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
866 Facility, or Marijuana Testing Facility.

867 **MARIJUANA, CULTIVATION FACILITY**

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

872 Tier 1: Up to 500 square feet of plant canopy

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

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

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

876 **MARIJUANA, MANUFACTURING FACILITY**

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

883 **MARIJUANA, MEDICAL CAREGIVER RETAIL STORE**

884 Means a store that has attributes generally associated with retail stores, including, but not
885 limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales

886 of goods or services directly to a consumer, and that is used by a registered caregiver to offer
887 marijuana plants or harvested marijuana for sale to qualifying patients.

888 **MARIJUANA, MEDICAL REGISTERED CAREGIVER**

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

891 **MARIJUANA, MEDICAL REGISTERED CAREGIVER HOME ESTABLISHMENT**

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

894 **MARIJUANA, MEDICAL REGISTERED DISPENSARY**

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

899 **MARIJUANA, TESTING FACILITY**

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

903 **MARINA**

904 A facility constructed for water-dependent uses, used exclusively or in part for the storing,
905 servicing, fueling, berthing, and securing of boats.

906 **MARKET VALUE**

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

910 **MASS TRANSIT STATION**

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

914 **MASTER SITE DEVELOPMENT PLAN**

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

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

919 B. The standards are applied to the proposed master site development boundary rather than

920 to individual lots, tracts and parcels within the development.

921 **MEAN SEA LEVEL**

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

925 **MECHANICAL SERVICE**

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

930 **MINERAL EXTRACTION**

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

934 **MINERAL/EARTH MATERIAL EXPLORATION**

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

938 **MINI STORAGE**

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

942 **MINIMUM LAND AREA PER DWELLING UNIT**

943 The gross area of a parcel not subject to subdivision regulations minus the land area listed
944 below. Where land areas to be subtracted overlap, the area therein shall be subtracted once.
945 For land area subject to subdivision, see "net residential acreage."

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

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

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

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

953 **MIXED-USE BUILDING**

954 A building occupied by two or more types or categories of principal uses (for example,
955 residential and office, or office and retail) in which any category of uses occupies at least
956 10% of the gross floor area of the building.

957 **MOBILE HOME PARK**

958 Mobile Home Park shall be defined according to 30-A, M.R.S.A. § 4358, as amended from
959 time to time. See § 16.5.17.

960 **MOTEL**

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

965 **MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4**

966 A conveyance or system of conveyances designed or used for collecting or conveying
967 stormwater [other than a publicly owned treatment works (POTW), as defined at 40 CFR
968 122.2, or a combined sewer], including, but not limited to, roads with drainage systems,
969 municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm
970 drains owned or operated by any municipality, sewer or sewage district. Maine Department
971 of Transportation (MaineDOT), Maine Turnpike Authority (MTA), state agency or federal
972 agency or other public entity that discharges directly to waters of the state other than
973 groundwater. See also "regulated small MS4" and "small MS4."

974 **MUNICIPALITY**

975 Town of Kittery, Maine.

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

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

981 **NAVIGABLE WATERS**

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

984 **NET RESIDENTIAL ACREAGE**

985 The land area subject to subdivision that is identified for regulatory purposes as developable
986 and is the gross available acreage minus land area identified in § 16.5.18, Net Residential
987 Acreage, unless otherwise exempt in § 16.5.18.D, Exemptions to net residential acreage
988 calculations.

989 **NET RESIDENTIAL DENSITY**

990 The number of dwelling units in a subdivision per net residential acre. This is calculated by
991 dividing the net residential acreage by the square feet specified as minimum land area per
992 dwelling unit in the dimensional standards in § 16.4, for the relevant base zone or overlay
993 zone(s) where applicable.

994 **NEW CONSTRUCTION**

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

998 **NEW MOTOR VEHICLE SALES**

999 A commercial establishment whose primary business is the buying and selling or offering to
1000 negotiate a sale of new motor vehicles, including related service activities, and has a
1001 franchise from a distributor or manufacturer. An establishment is "engaged in the business
1002 of buying, selling or offering to negotiate the sale of a vehicle" if that business buys motor
1003 vehicles for the purpose of resale, sells or offers to negotiate the sale of more than five
1004 motor vehicles in any twelve-month period, or displays or permits the display of three or
1005 more motor vehicles for sale at any one time or within any thirty-day period upon the
1006 premises, unless that person has owned and registered each vehicle for at least six months.

1007 **NONCONFORMING LOT OF RECORD**

1008 A single lot of record which was created prior to July 13, 1977, or subsequently created by
1009 legislative or judicial decision, which does not meet the area and/or frontage requirements
1010 of the district in which it is located; or is the result of legally authorized development
1011 created between July 13, 1977 and April 26, 1990, and became nonconforming as a direct
1012 result of the implementation of this title.

1013 **NONCONFORMING STRUCTURE**

1014 A structure that does not meet one or more of the following dimensional requirements:
1015 setbacks, yard, height or lot coverage. It is allowed solely because it was lawful when
1016 created and became legally nonconforming as a direct result of a change in the provisions of
1017 this title.

1018 **NONCONFORMING USE**

1019 Use of buildings, structures, premises, land or parts thereof which is not allowed in the
1020 district and/or zone in which it is situated, but which is allowed to remain solely because it
1021 was in lawful existence when created or became legally nonconforming as a direct result of
1022 a change in the provisions of this title.

1023 **NONCONFORMING, LEGALLY**

1024 It was lawfully created but became nonconforming due to a change in the Town Code.

1025 **NONSTORMWATER DISCHARGE**

1026 Any discharge to an MS4 that is not composed entirely of stormwater.

1027 **NORMAL HIGH-WATER LINE**

1028 The line which is apparent from visible markings, changes in the character of soils due to
1029 prolonged action of the water or changes in vegetation, and which distinguishes between
1030 predominantly aquatic and predominantly terrestrial land.

1031 **NURSERY SCHOOL**

1032 A house or other place in which a person or combination of persons maintains or otherwise

1033 carries out for consideration during the day a regular program which provides care for three
1034 or more children in accordance with 22 M.R.S. § 8401, provided that:

1035 A. No session conducted for the children is longer than 3 1/2 hours in length;

1036 B. No more than two sessions are conducted per day;

1037 C. Each child in attendance at the nursery school attends only one session per day; and

1038 D. No hot meal is served to the children.

1039 **NURSING CARE FACILITY, LONG-TERM**

1040 A facility that is licensed by the State of Maine to provide nursing care to persons who are
1041 unable to care for themselves. The facility provides long-term residential and nursing care
1042 to its residents. The facility does not provide hospital services except as incidental to the
1043 delivery of nursing care. A long-term nursing care facility does not include any facility that
1044 is defined as a Residential Care Facility.

1045 **OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)**

1046 Any sign erected and maintained in accordance with the Maine Traveler Information
1047 Services Act, 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which
1048 complies with the requirements of this title.

1049 **OFFICIAL MAP**

1050 The map adopted by the municipality showing the location of public property, ways used in
1051 common by more than two owners of abutting property, and approved subdivision or site
1052 plan, and any amendments thereto adopted by the municipality or additions thereto resulting
1053 from the approval of a subdivision or site plan by the Planning Board and the subsequent
1054 filing for record of such plan.

1055 **OFFICIAL SUBMITTAL DATE**

1056 The date upon which the Town Planner receives a complete application and issues a receipt
1057 so indicating.

1058 **ONE-HUNDRED-YEAR FLOOD**

1059 See "base flood."

1060 **OPEN SPACE**

1061 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed
1062 natural state. "Open space" does not include areas occupied by a building or a parking area,
1063 except where required by the management plan in place to govern the open space and as
1064 approved by the Planning Board.

1065 **OPEN SPACE, COMMON**

1066 Usable land within or related to a development, not individually owned, which is designed
1067 and intended for the common use or enjoyment of the residents of the development and may
1068 include such complementary structures, improvements and uses approved by the Planning
1069 Board. Such uses may include active or passive recreation or agriculture, where permitted.

1070 **OPEN SPACE, PUBLIC**1071 Land accessible or dedicated for public use.1072 **OPEN SPACE, RESERVED**

1073 Dedicated land that is permanently protected from further development and remains in a
1074 natural condition or is managed according to an approved management plan for natural
1075 resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or
1076 limited uses as approved by the Planning Board as part of cluster residential developments.

1077 **OUTDOOR DINING**

1078 A dining area with seats and/or table(s) located outside of a restaurant, which is either: a)
1079 located entirely outside of the walls of the building of the subject business, or b) enclosed
1080 on two (2) sides or fewer by the walls of the building with or without a solid roof cover, or
1081 c) enclosed on three (3) sides by the walls of the building without a solid roof cover.

1082 **OUTDOOR SERVICE AREAS**

1083 Areas located outside of a building or structure that are used for the delivery, handling,
1084 storage or processing of materials, goods or wastes, including areas used for the servicing,
1085 repairing, washing or fueling of motor vehicles and equipment.

1086 **OWNER**

1087 Any person, corporation or other legal entity having record title ownership to the property
1088 or the expressly authorized agent or designee thereof.

1089 **PARAPET**1090 The extension of the wall(s) of a building above the roof eave and/or roofline.1091 **PARCEL**1092 See "tract or parcel of land."1093 **PARKING AREA**

1094 Any public or private area, under, within or outside of a building or structure, designed and
1095 used for parking motor vehicles, including parking lots, garages, private driveways, and
1096 legally designated areas of public streets.

1097 **PATIO**

1098 An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or
1099 concrete, situated no higher than 18 inches above ground level, accessory to a dwelling and
1100 serving as an area for outdoor living.

1101 **PERSON**

1102 Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more
1103 individuals having a joint or common interest, state agency or federal agency or other legal
1104 entity.

1105 **PERSONAL SERVICES**

1106 Establishments primarily engaged in providing services generally involving the care of
1107 one's personal appearance or apparel, including, but not limited to, barbers and beauty
1108 shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

1109 **PIER**

1110 A structure built out into the water generally with piles for use as a landing place.

1111 **POLLUTANT**

1112 Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage,
1113 sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum
1114 products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and
1115 industrial, municipal, domestic, commercial or agricultural wastes of any kind.

1116 **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

1117 An inspection and maintenance plan as required by rule for projects that require approval by
1118 the Maine Department of Environmental Protection (MDEP) under Chapter 500,
1119 Stormwater Management; or a plan to inspect and maintain best management practices
1120 (BMPs) and stormwater management facilities employed by a new development or
1121 redevelopment, not subject to MDEP Chapter 500 rules, to meet the stormwater standards
1122 of this Code.

1123 **PRACTICABLE**

1124 Available and feasible, considering cost, existing technology, and logistics, based on overall
1125 project purposes.

1126 **PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS**

1127 Legally existing prior to December 21, 1997, wireless communication system facility
1128 (WCSF), towers/antennas and alternative tower structures. Enlargements of WCSF,
1129 accessory use towers/antennas legally existing prior to December 21, 1997 must conform to
1130 the requirements of this title.

1131 **PREMISES**

1132 For the purposes of stormwater regulation, means any building, lot, parcel of land, or
1133 portion of land, whether improved or unimproved, including adjacent sidewalks and parking
1134 strips, located within the municipality from which discharges into the storm drainage
1135 system are or may be created, initiated, originated or maintained.

1136 **PRIMARY CAREGIVER**

1137 A person or an employee of that person, a licensed hospice provider or licensed nursing
1138 facility that provides care for a qualifying patient and is registered under 22 M.R.S. § 2425
1139 and receives Board of Appeals approval for a major home occupation.

1140 **PRINCIPAL BUILDING**

1141 The primary building on a lot or a building that shelters or encloses the principal use on a
1142 lot.

1143 **PRINCIPAL STRUCTURE**

1144 The primary structure on a lot or a structure that supports, shelters or encloses the principal
1145 use on the lot.

1146 **PRINCIPAL USE**

1147 The primary or predominant use. An activity that is conducted in conjunction with the
1148 principal use and such activity that either constitutes only an incidental or insubstantial part
1149 of the total activity that takes place on a lot; or is commonly associated with the principal
1150 use and integrally related to it, is regarded as "accessory to the principal use." An accessory
1151 to the principal use is regarded as "incidental or insubstantial" if it is both incidental and
1152 insubstantial in and of itself, and in relation to the principal use. Quantitative measures for
1153 consideration in this determination include the percentage and total amount of square
1154 footage attributed to the accessory to the principal use and sales or income derived from the
1155 accessory to the principal use.

1156 **PRIVATE ASSEMBLY**

1157 A building which is owned and used as a meeting place for private or semi-private social
1158 organization and clubs such as grange halls, fraternal organizations, religious institutions,
1159 etc. in which the principal use is exclusively for members. Rental of the facilities to outside
1160 groups is clearly incidental to the principle use and shall not significantly increase the
1161 intensity of the use of the site, especially regarding parking.

1162 **PRIVATE MARINA USE STRUCTURE**

1163 A structure which is owned and/or used by a private group, club, association or other legal
1164 entity's organization, and is used by its members only, and has frontage on navigable water,
1165 and as its principal use provides offshore moorings and/or docking facilities for vessels for
1166 use by its members and/or guests. The private marina may also provide accessory boating
1167 services. These accessory boating services may be provided to the boating public, members
1168 or guests.

1169 **PRUDENT AVOIDANCE**

1170 In any case where aboveground electrical utilities are approved, the plan is to be designed to
1171 avoid human residences as distant as possible without prohibitive cost.

1172 **PUBLIC ASSEMBLY AREA**

1173 Any area where large numbers of individuals collect to participate or to observe programs of
1174 participation.

1175 **PUBLIC FACILITY**

1176 Any facility, including, but not limited to, buildings, property, recreation areas and roads
1177 which are owned, leased or otherwise operated, or funded by a governmental body or public
1178 entity

1180 **PUBLIC OR PRIVATE SCHOOL**

1181 A building or buildings and its associated grounds which is principally used to conduct
1182 educational classes including public and private elementary schools and nursery schools,
1183 including post-secondary schools, but not including commercial schools.

1184 **PUBLIC UTILITY**1185 As defined in Title 35-A M.R.S. § 102, as amended.1186 **PUBLIC UTILITY FACILITY**

1187 Buildings, structures, and facilities, including generating and switching stations, poles,
1188 lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, and all
1189 buildings and structures relating to the furnishing of utility services, such as electric, gas,
1190 telephone, water and sewer, to the public, excluding solar energy systems.

1191 **QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR**

1192 A person who conducts post-construction stormwater management facilities inspections for
1193 compensation and who has received the appropriate training for the same from the Maine
1194 Department of Environmental Protection.

1195 **RECENT FLOODPLAIN SOILS**

1196 The following soil series as described and identified by the National Cooperative Soil
1197 Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak,
1198 Ondawa, Podunk, Rumney, Saco, Suncook, Sunday and Winooski.

1199 **RECREATION, COMMERCIAL INDOOR**

1200 The use of a building for play, sports, games, fitness, and other similar diversions operated
1201 as a business and open to the public for a fee.

1202 **RECREATION, COMMERCIAL OUTDOOR**

1203 The use of a land outside of a fully enclosed building, as defined, for play, sports, games,
1204 and other similar diversions operated as a business and open to the public for a fee.

1205 **RECREATION, PASSIVE**

1206 Outdoor recreational activities which have a low impact on the environment and
1207 neighborhood and require no motorized vehicles, significant earthmoving or substantial
1208 structures, such as hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife
1209 observation and study. Benches and boardwalks, steps, railings and other structures
1210 necessary to provide safe accessibility for physically handicapped persons are allowed.

1211 **RECREATION, PUBLIC FACILITY**

1212 Means a facility open to the general public, for no charge or a subsidized charge, where
1213 organized recreational or athletic activities and events are held.

1214

1215 **RECREATION, PUBLIC OPEN SPACE**

1216 Open Space owned by a public agency and maintained by it for the use and enjoyment of the
1217 general public.

1218 **RECREATIONAL VEHICLE**

1219 A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is
1220 primarily designed as temporary living accommodations for one or more persons. The
1221 vehicle must be registered with the State Division of Motor Vehicles.

1222 **RECREATIONAL VEHICLE PARK**

1223 Any lot or parcel of land upon which two or more sites are located, established, or
1224 maintained for occupancy by recreational vehicle for a fee as temporary living quarters for
1225 recreation or vacation purposes.

1226 **REGULATED SMALL MS4**

1227 Any small municipal separate storm sewer system (MS4) regulated by the State of Maine
1228 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
1229 Sewer Systems" dated July 2013 ("general permit"), including all those located partially or
1230 entirely within an urbanized area (UA) and those additional small MS4s located outside an
1231 UA that as of the issuance of the general permit have been designated by the DEP as
1232 regulated small MS4s. The Town of Kittery is a regulated small MS4.

1233 **REGULATORY FLOODWAY**

1234 A. The channel of a river or other watercourse and the adjacent land areas that must be
1235 reserved in order to discharge the base flood without cumulatively increasing the water
1236 surface elevation more than one foot; and

1237 B. In riverine areas, is considered to be the channel of a river or other watercourse and the
1238 adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the
1239 normal high-water mark to the upland limit of the floodplain.

1240 **RELIGIOUS USE**

1241 A structure of place in which worship, ceremonies, rituals, and education pertaining to a
1242 particular system of beliefs are held.

1243 **REPAIR GARAGE**

1244 An establishment providing for the repair or servicing of motor vehicles. A repair garage
1245 does not include activities that are defined as mechanical service or a junkyard.

1246 **REPAIR SERVICE**

1247 A business providing for the repair of personal or small business property, such as radios
1248 and televisions, household or office electrical or electronic equipment, watches, clocks and
1249 jewelry, furniture and upholstery, sporting equipment, and similar items, but not including
1250 items included under mechanical services or automotive services and repair.

1251 **REPLACEMENT SYSTEM**

1252 A system intended to replace:

1253 A. An existing system which is either malfunctioning or being upgraded with no significant
1254 change of design flow or use of the structure; or

1255 B. Any existing overboard wastewater discharge.

1256 **RESEARCH AND DEVELOPMENT**

1257 A building or group of buildings in which are located facilities for technical or scientific
1258 research, investigation, testing or experimentation, but not facilities for the manufacture or
1259 sale of products, except as incidental to the main purpose of the facility.

1260 **RESIDENTIAL CARE FACILITY**

1261 A house or other place that, for consideration, is maintained wholly or partly for the purpose
1262 of providing residents with assisted living services. Residential Care Facilities provide
1263 housing and services to residents in private or semi-private bedrooms in buildings with
1264 common living areas and dining areas. “Residential Care Facility” does not include a
1265 licensed nursing home or supportive living arrangement certified by the state.

1266 **RESIDENTIAL CARE UNIT**

1267 A type of residential accommodation in a Residential Care Facility that has private sleeping
1268 and bathroom facilities but does not have permanent complete cooking facilities within the
1269 unit. The occupant of a residential care unit typically eats all or most of meals in a shared
1270 dining room. Residential care units may have a portable or removable kitchen or partial
1271 kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be
1272 a unit with a separate bedroom, a suite or a room. A residential care unit is distinct from a
1273 dwelling unit that is defined separately.

1274 **RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM**

1275 A pier and/or ramp and float system which is used in common by lot owners or residents of
1276 a subdivision or residential planned development. The purpose is to provide waterfront
1277 access to the owners of lots in a residential development that has the potential for more than
1278 one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting
1279 from new development.

1280 **RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM**

1281 A pier and/or ramp and float system which is used for the residential home occupation
1282 workers in an approved functionally water-dependent home occupation (minor or major) in
1283 addition to its customary residential accessory use.

1284 **RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM**

1285 A pier and/or ramp and float system which is used by the owners of not more than four
1286 residential shorefront lots, at least one boundary of whose building lot lies within 1,000 feet
1287 of the lot on which the joint/shared-use pier is constructed.

1288 **RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM**

1289 A pier and/or ramp and float system which is used by the owner(s) of a single residential
1290 shorefront lot.

1291 **RESIDUAL BASAL AREA**

1292 The sum of the basal area of trees remaining on a harvested site.

1293 **RESIDUAL STAND**

1294 A stand of trees remaining in the forest following timber harvesting.

1295 **RESTAURANT**

1296 An establishment where food or food and drink are prepared and sold for consumption on
1297 the premises by the public and includes cafes, coffee shops and similar establishments that

1298 serve food.

1299 **RESUBDIVISION**

1300 The division of an existing subdivision or any change of lot size therein or the relocation of
1301 any street or lot in a subdivision, or any changes thereto.

1302 **RETAIL SALES**

1303 Any business engaged primarily in the sale of goods for personal or household consumption
1304 and/or use, and not for resale. The term "retail sale" does not include specific types of retail
1305 uses that are individually listed in § 16.4.

1306 **RETAIL SALES, BUILDING MATERIALS AND GARDEN SUPPLY**

1307 A retail establishment primarily engaged in selling lumber and other building materials;
1308 paint, glass, floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or
1309 nursery stock, lawn and garden supplies; modular homes and mobile homes.

1310 **RETAIL SALES, CONVENIENCE STORE**

1311 A retail store containing less than 2,000 square feet of gross floor area that is designed and
1312 stocked to sell primarily food, beverages and other household supplies to customers who
1313 purchase only a relatively few items (in contrast to a grocery store). It is designed to attract
1314 and depends upon a large volume of stop-and-go traffic. Supplementing these uses with
1315 accessory gasoline sales requires additional parking and traffic considerations.

1316 **RIGHT-OF-WAY, PRIVATE**

1317 A platted and dedicated access route normally to back lot(s); and as approved by the
1318 Planning Board and recorded in the York County Registry of Deeds.

1319 **RIPRAP**

1320 Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and
1321 soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical
1322 or less.

1323 **RIVER**

1324 A free-flowing body of water, including its associated floodplain wetlands, from that point
1325 at which it provides drainage for a watershed of 25 square miles to its mouth.

1326 **RIVERINE**

1327 Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

1328 **ROAD**

1329 A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other
1330 surfacing material constructed for or created by the repeated passage of motorized vehicles,
1331 excluding driveways

1332 **ROOMING HOUSE**

1333 A residential use in which the owner or manager of the facility resides on the premises and

1334 in which more than three persons who are not part of the owner's/manager's family are
 1335 housed in rooms for compensation with or without meals. This includes fraternities and
 1336 sororities.

1337 **SALT MARSH**

1338 Areas along coastal waters (most often along coastal bays) which support salt-tolerant
 1339 species, and where, at average high tide during the growing season, the soil is regularly
 1340 inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina*
 1341 alterniflora). More open areas often support widgeon grass, eelgrass and Sago pondweed.

1342 **SALT MEADOW**

1343 Areas which support salt-tolerant plant species bordering the landward side of salt marshes
 1344 or open coastal water, where the soil is saturated during the growing season, but which is
 1345 rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass
 1346 (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

1347 **SAWMILL, PERMANENT**

1348 A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or
 1349 producing firewood that is in operation on a permanent basis. Sawmill operations may be
 1350 subject to State regulations.

1351 **SAWMILL, TEMPORARY**

1352 A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or
 1353 producing firewood that is in operation for a cumulative duration of two (2) months or fewer
 1354 in any twelve (12) month period. Sawmill operations may be subject to State regulations.
 1355 This definition does not include the use of handheld chainsaws.

1356 **SCREEN**

1357 A method of significantly reducing the impact of noise and unsightly visual intrusions with
 1358 less offensive or more harmonious elements, such as plants, berms, fences, walls, or any
 1359 appropriate combination thereof.

1360 **SCREENING**

1361 Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural
 1362 growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type
 1363 that will grow to a year-round dense screen at least six feet high in three years; or 2) an
 1364 opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of
 1365 either type must be maintained in good condition at all times.

1366

1367 **SEPTIC SYSTEM**

1368 See "subsurface wastewater disposal system."

1369

1370 **SERVICE DROP**

1371 Any utility line extension which does not cross or run beneath any portion of a water body,

1372 provided that:

1373 A. In the case of electric service:

1374 (1). The placement of wires and/or the installation of utility poles is located entirely upon
1375 the premises of the customer requesting service or upon a roadway at the right-of-way;
1376 and

1377 (2). The total length of the extension is less than 1,000 feet.

1378 B. In the case of telecommunications service:

1379 (1). The extension, regardless of length, will be made by the installation of telephone wires
1380 to existing utility poles; or

1381 (2). The extension requiring the installation of new utility poles or placement underground
1382 is less than 1,000 feet in length.

1383 SETBACK

1384 The minimum horizontal distance from an identified object, line, boundary or feature to the
1385 nearest part of a regulated object, use or feature. (Note: See § 16.1, for setbacks from water
1386 bodies and wetlands. See § 16.7.8 for applying setbacks in special situations.)

1387 SETBACK FROM STREAMS, WATER BODIES AND WETLANDS

1388 The minimum horizontal distance allowed from the upland edge of a wetland and/or from
1389 the normal high-water line to the nearest part of a structure (excluding cornices, eaves or
1390 gutters projecting not more than 24 inches), roads, parking areas, or other regulated
1391 activities. See Table 16.5.30. Minimum Setbacks from Wetlands and Water Bodies, for
1392 required horizontal distances, and § 16.7.8 and § 16.8.7 for applying setbacks in special
1393 situations. Adjacent to tidal waters, setbacks are measured from the upland edge of the
1394 coastal wetland.

1395 SHOP IN PURSUIT OF TRADES

1396 An establishment occupied by a business or craftsman in a skilled trade, including, by
1397 way of example only, plumbing, carpentry or electrical work. Not more than 10 people may
1398 be employed at and/or work from the shop. The shop may include work space, storage
1399 space and/or office space. A shop in pursuit of trades does not include "construction
1400 services," which is separately defined.

1401 SHOPPING FULFILLMENT CENTERS

1402 A physical location that combines a business's retail functions and its warehouse or
1403 distribution activities into one Building. These facilities provide customers options for
1404 viewing goods and placing orders online or onsite. Products are stored and orders are
1405 processed onsite.

1406 SHORE FRONTAGE

1407 The width of a lot as it fronts the shore as measured in a straight line between the point of
1408 intersection of the side lot lines with the shoreline at normal high-water elevation.

1409 SHOREFRONT DEVELOPMENT PLAN

1410 A plan for any development extending into or within 100 feet of the upland edge of a
1411 coastal wetland, or into or within 100 feet of the upland edge of a fresh water wetland
1412 shown on the Zoning Map, including but not limited to public and private access paths;
1413 piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact
1414 and controls to assure continuing conformance to the plan.

1415 **SHORELINE**

1416 The normal high-water line or upland edge of a wetland.

1417 **SIGN**

1418 Any structure or part of the structure attached thereto or painted or represented thereon,
1419 which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade
1420 name, trademark, logo, device or representation used as, or which is in the nature of, any
1421 announcement of the purpose of a business, entity or person, direction or advertisement.
1422 The term "sign" does not include a flag.

1423 **SIGN AREA**

1424 The enclosed space within a geometric figure which contains the advertising message,
1425 illustration, insignia or display, together with any frame, color or other material which
1426 comprises the display and is used to differentiate or draw attention to the sign and away
1427 from the background. Each face of a sign is considered a separate sign for area
1428 computations, but supporting brackets and posts are not included.

1429 **SIGN, CHANGEABLE MESSAGE**

1430 Any sign or portion thereof designed to allow characters, letters and numbers on the face of
1431 the sign to be changed or rearranged.

1432 **SIGN, FREESTANDING**

1433 Any sign supported by a structure or supports that are permanently anchored in the ground
1434 and that is independent from any building.

1435 **SIGN, REAL ESTATE**

1436 Any sign advertising real estate for sale, lease or rent.

1437 **SIGN, TEMPORARY**

1438 A sign that is intended to remain where it is erected or placed for a period of time not to
1439 exceed 21 days in any calendar quarter.

1440 **SIGN, TRAILER**

1441 A portable sign mounted on a chassis and wheels or supported by legs.

1442 **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4**

1443 Any MS4 that is not already covered by the Phase I MS4 stormwater program including
1444 municipally owned or operated storm sewer systems, state or federally owned systems, such
1445 as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike

1446 Authority Road systems and facilities, and military bases and facilities. The Town of
 1447 Kittery is a small MS4.

1448 **SOILS**

1449 A soil's drainage class must be determined by a Maine certified soil scientist and based on
 1450 the most-recent Natural Resources Conservation Service Supplemental Key for the
 1451 Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil
 1452 Scientists, Key to Drainage Classes. The Key includes, among other terms, the following:

1453 A. VERY POORLY DRAINED Water is removed from the soil so slowly that the water
 1454 table remains at or above the surface most of the year. A seasonal high-water table is at
 1455 or above the surface from at least October through July and sometimes throughout the
 1456 year. In August and September, the water table may recede below 12 inches. The high-
 1457 water table severely limits the use of these soils for most agricultural, forestry, and
 1458 urban activities. These soils are hydric and typically support a wetland plant community.

1459 B. POORLY DRAINED Water is removed from the soil so slowly that the soil remains
 1460 wet most of the year. A seasonal high-water table is at or near the surface from October
 1461 through June. In July, August and September, it may recede below 16 inches. The
 1462 seasonal high-water table limits the use of these soils for most agricultural, forestry, and
 1463 urban activities. These soils are hydric and typically support a wetland plant community.

1464 C. SOMEWHAT POORLY DRAINED Water is removed from the soil slowly enough to
 1465 keep it wet for significant periods of time but not the entire year. A seasonal high-water
 1466 table is at seven inches to 16 inches in depth from October through May and sometimes
 1467 June. From July to October, it may recede below 30 inches in depth. A seasonal water
 1468 table limits the use of these soils for some agricultural, forestry and urban activities.
 1469 These soils are not hydric in Maine and are commonly found in the transitional
 1470 landscape positions between wetland and upland soils.

1471 **SPECIAL EXCEPTION**

1472 A use that would not be appropriate generally or without restriction throughout the zoning
 1473 district, but which, if controlled as to number, area, location or relation to the neighborhood,
 1474 would promote the public health, safety, welfare, morals, order, comfort, convenience,
 1475 appearance, prosperity or general welfare. Such uses may be permitted in such zoning
 1476 districts as special exceptions, if specific provision for such special exceptions is made in §
 1477 16.4.

1478 **SPECIAL FLOOD HAZARD AREA**

1479 See "Flood, area of special flood hazard."

1480 **SPECIALTY FOOD AND/OR BEVERAGE FACILITY**

1481 A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis,
 1482 distributed, and/or consumed on the premises. This may include, but not be limited to, a
 1483 brew pub, microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or
 1484 nonalcoholic beverages and/or artisan food.

1485 **START OF CONSTRUCTION**

1486 The date the building/regulated activity permit was issued, provided the actual start of
 1487 construction, repair, reconstruction, rehabilitation, addition, placement, substantial
 1488 improvement or other improvement was within 180 days of the permit date. The "actual
 1489 start" means either the first placement of permanent construction of a structure on a site,
 1490 such as the pouring of slab or footings, the installation of piles, the construction of columns,
 1491 or any work beyond the stage of excavation; or the placement of a manufactured home on a
 1492 foundation. Permanent construction does not include land preparation, such as clearing,
 1493 grading and filling; nor does it include the installation of streets and/or walkways; nor does
 1494 it include excavation for basement, footings, piers, or foundations or the erection of
 1495 temporary forms; nor does it include the installation on the property of accessory buildings,
 1496 such as garages or sheds not occupied as dwelling units or not part of the main structure.
 1497 For a substantial improvement, the "actual start of construction" means the first alteration of
 1498 any wall, ceiling, floor, or other structural part of a building, whether or not that alteration
 1499 affects the external dimensions of the building.

1500 **STORM DRAINAGE SYSTEM**

1501 The entire Town's storm drainage system.

1502 **STORMWATER**

1503 Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

1504 **STORY**

1505 That portion of a building included between the upper surface of a floor and the upper
 1506 surface of the floor or roof next above. For any building that contains no floors in the vertical
 1507 plane, every 10 feet or portion thereof counts as a floor.

1508 **STORY ABOVE GRADE**

1509 Any story having its finished floor surface entirely above grade, except that a basement is
 1510 considered as a story above grade where the finished surface of the floor above the basement
 1511 is:

1512 A. More than six feet (1,829 mm) above the grade plane;

1513 B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the
 1514 total building perimeter; or

1515 C. More than 12 feet (3,658 mm) above the finished ground level at any point.

1516 **STREAM OR BROOK**

1517 A channel between defined banks, including the floodway and associated floodplain
 1518 wetlands, where the channel is created by the action of surface water and characterized by
 1519 the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed
 1520 devoid of topsoil containing waterborne deposits on exposed soil, parent material or
 1521 bedrock.

1522 **STREET**

1523 A way established or maintained under public authority, or a minimum forty-foot-wide
 1524 private way constructed to Town standards as contained in § 16.5 and § 16.8, approved by

1525 the Planning Board and plotted, dedicated and recorded, or a way shown on a plan of a
 1526 subdivision duly approved by the Planning Board. Also included are such ways as alleys,
 1527 avenues, boulevards, highways, roads, streets and other rights-of-way.

1528 **STREET FRONTAGE**

1529 A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the
 1530 front of the lot. When a lot is bounded by more than one street, any one of them, but only
 1531 one, may be designated as the frontage street by the owner, provided that the lot meets the
 1532 frontage requirement on that street, front, side and rear yard setbacks, and that the principal
 1533 building is numbered on that street.

1534 **STREET LINE**

1535 The exterior line of a street right-of-way which separates it from abutting lots.

1536 **STRUCTURALLY ALTERED**

1537 Any work which requires or contemplates any changes to the structural capabilities of a
 1538 building.

1539 **STRUCTURE**

1540 Anything built for the support, shelter or enclosure of persons, animals, goods or property
 1541 of any kind, or anything constructed or erected with a fixed location on or in the ground, or
 1542 attached to something having a fixed location on or in the ground. The term includes decks.
 1543 The term does not include fences less than eight feet in height, nor any required by the
 1544 Planning Board or Town Planner to be taller; flagpoles no higher than 50 feet in height;
 1545 signs located in conformance with § 16.5.23; and electricity generators and propane and oil
 1546 tanks for residential use only and the pads on which they are located, provided the pad is
 1547 less than 20 square feet in size.

1548 **SUBDIVIDER**

1549 Any person, firm, corporation or other legal entity making application for the subdivision of
 1550 land or buildings within the Town.

1551 **SUBDIVISION**

1552 The division of a tract or parcel of land into three or more lots within any five-year period
 1553 that begins on or after September 23, 1971. This definition applies whether the division is
 1554 accomplished by sale, lease, development, building or otherwise. The term "subdivision"
 1555 also includes the division of a new structure of structures on a tract or parcel of land into
 1556 three or more dwelling units within a five-year period, the construction or placement of
 1557 three or more dwelling units on a single tract or parcel of land and the division of an
 1558 existing structure or structures previously used for commercial or industrial use into three or
 1559 more dwelling units within a five-year period, as set forth in 30-A M.R.S. § 4401, as
 1560 amended.[5]

1561 **SUBDIVISION, MAJOR**

1562 Any subdivision containing more than four lots or any subdivision requiring any new public
 1563 street extension or the extension of public or municipal facilities.

1564 **SUBDIVISION, MINOR**1565 A subdivision containing not more than four lots.[6]1566 **SUBDIVISION PLAN, FINAL**1567 The final drawings on which an applicant's plan of a subdivision is presented to the
1568 Planning Board for approval and which, if approved, must be filed for the record with the
1569 Municipal Clerk and York County Registry of Deeds.1570 **PRELIMINARY SUBDIVISION PLAN**1571 The preliminary drawings indicating the proposed layout of the subdivision to be submitted
1572 to the Planning Board for its consideration.1573 **SUBSTANTIAL DAMAGE**1574 Damage of any origin sustained by a structure whereby the cost of restoring the structure to
1575 its before-damage condition would equal or exceed 50% of the assessed value of the structure
1576 before the damage occurred.1577 **SUBSTANTIAL IMPROVEMENT**1578 Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of
1579 which equals or exceeds 50% of the market value of the structure before the start of
1580 construction of the improvement. This term includes structures which have incurred
1581 substantial damage, regardless of the actual repair work performed. The term does not,
1582 however, include either:1583 A. Any project for improvement of a structure to correct existing violations of state or local
1584 health, sanitary or safety code specifications which have been identified by the local
1585 code enforcement official and which are the minimum necessary to assure safe living
1586 conditions; or1587 B. Any alteration of an historic structure, provided that the alteration will not preclude the
1588 structure's continued designation as an historic structure.1589 **SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)**1590 Any system designed to dispose of waste or wastewater on or beneath the surface of the
1591 earth. These include, but are not limited to, septic tanks, disposal fields, holding tanks,
1592 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such
1593 purposes. This definition does not include any discharge system licensed under 38 M.R.S.
1594 § 414, any surface wastewater disposal system or any municipal or quasi-municipal sewer
1595 or wastewater treatment system. (See also "wastewater" and "domestic wastewater.")1596 **SUSTAINED SLOPE**1597 A change in elevation where the referenced percent grade is substantially maintained or
1598 exceeded throughout the measured area.1599 **TEMPORARY STRUCTURE**1600 A structure which by type and materials of its construction is erected for not more than 30
1601 days with a permit from the CEO. Such structures include tents, portable bandstands,

1602 bleachers, reviewing stands, a mobile home, tractor trailers or structures of a similar
1603 character. Temporary structures erected in conjunction with licensed circuses are not
1604 construed to be temporary structures under this title.

1605 **THEATER**

1606 A building or portion of a building for the showing of motion pictures or the presentation of
1607 dramatic, musical or other live performances.

1608 **THEATER, DRIVE-IN**

1609 An open lot devoted primarily to the showing of motion pictures and theatrical productions
1610 on a paid admission basis to patrons seated in automobiles.

1611 **TIDAL LAND, FILLED**

1612 Portions of the submerged and intertidal lands that have been rendered by human activity to
1613 be no longer subject to tidal action or below the natural low-water mark after October 1,
1614 1975.

1615 **TIDAL WATERS**

1616 All waters where the high-water line is affected by the ebb and flow of tidal action.

1617 **TIMBER HARVESTING**

1618 A. TIMBER HARVESTING Selective cutting or removal of 10 or more cords, or the
1619 equivalent thereof, but no more than 40% of the total volume of trees four inches or more
1620 in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period
1621 for the purpose of selling or processing forest products. Clearing of land necessary for
1622 approved construction is not considered as timber harvesting.

1623 B. For the purposes of this title, timber harvesting activities taking place outside the
1624 shoreland overlay zone on land classified by the Town Assessor as enrolled in the state
1625 tree growth program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance
1626 with a forest management and harvest plan prepared by a licensed professional forester, is
1627 not considered timber harvesting.

1628 **TOWER**

1629 Any structure, whether freestanding or in association with a building or other permanent
1630 structure, that is designed and constructed primarily for the purposes of supporting one or
1631 more antennas, including self-supporting lattice towers, guyed towers, or monopole towers.
1632 The term includes radio and television transmission towers, microwave towers, common-
1633 carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

1634 **TRACT OR PARCEL OF LAND**

1635 All contiguous land in the same ownership, except those lands located on opposite sides of a
1636 public or private street are considered separate tracts or parcels of land unless the street was
1637 established by the owner of land on both sides of the street after September 22, 1971.

1638 **TRANSPORTATION TERMINAL**

1639 Land and buildings used as a relay station for the transfer of a load from one vehicle to

1640 another. The terminal facility may include storage areas for trucks and buildings or areas for
1641 the repair of trucks associated with the terminal.

1642 **TRAVELED WAY**

1643 That portion of a road or driveway designed for vehicle travel. Where a road or driveway
1644 surface is paved, the traveled way is that portion of the road surface between the edges of
1645 the paved width.

1646 **TRIBUTARY STREAM**

1647 A channel between defined banks created by the action of surface water, whether
1648 intermittent or perennial, and which is characterized by the lack of upland vegetation or
1649 presence of aquatic vegetation and by the presence of a bed devoid of topsoil, containing
1650 waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water
1651 body or wetland as defined. This definition does not include the term "stream" as defined
1652 elsewhere in this title and only applies to that portion of the tributary stream located within
1653 the shoreland or resource protection overlay zones of the receiving water body or wetland.

1654 **UPLAND EDGE**

1655 The boundary between upland and wetland. For purposes of a coastal wetland, this
1656 boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the
1657 elevation being six feet above mean sea level based on the North American Vertical Datum
1658 of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater
1659 wetland, the upland edge is formed where the soils are not saturated for a time period
1660 sufficient to support wetland vegetation or where the soils support the growth of wetland
1661 vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller;
1662 whichever is more restrictive.

1663 **URBANIZED AREA (UA)**

1664 The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau
1665 of the Census.

1666 **USED CAR LOT**

1667 A lot exposed to the elements which is used for the sale of secondhand automobiles or
1668 trucks which can pass the state inspection tests in their existing conditions.

1669 **VARIANCE**

1670 A. A relaxation of the terms of this title where such relaxation will not be contrary to the
1671 public interest and where, owing to conditions peculiar to the property and not the result
1672 of the actions of the applicant or prior owner, a literal enforcement of the title will result
1673 in unnecessary or undue hardship.

1674 B. As used in this title, a variance is authorized only for dimensional requirements related to
1675 height, area and size of structure, or size of yards and open spaces. Establishment or
1676 expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be
1677 granted because of the presence of nonconforming uses in the particular zone or
1678 adjoining zone.

1679 **VEGETATION**1680 All live trees, shrubs, ground cover and other plants.1681 **VETERINARY HOSPITAL**1682 A commercial establishment, operated by a licensed veterinarian, for the medical and
1683 surgical care of sick or injured animals.1684 **VOLUME OF A STRUCTURE**1685 The volume of all portions of a structure enclosed by roof and fixed exterior walls, as
1686 measured from the exterior faces of these walls and roof.1687 **WAREHOUSING AND STORAGE**1688 Premises where goods or materials are stored in an enclosed structure or in specific outdoor
1689 areas.1690 **WASTE**1691 Any unwanted or discarded substance or material, whether or not such substance or material
1692 has any future use, and includes any substance or material that is spilled, leaked, pumped,
1693 poured, emitted, disposed of, emptied, or dumped onto the land or into the water.1694 **WASTEWATER**1695 Any domestic wastewater, or other wastewater from commercial, industrial or residential
1696 sources that has attributes similar to those of domestic wastewater. This term specifically
1697 excludes hazardous or toxic wastes and materials. (Applicable only to Title 16. If there is a
1698 conflict with the definition of "wastewater" in Title 13, the Title 13 definition takes
1699 precedence.)1700 **WASTEWATER, DOMESTIC**1701 Any wastewater produced by ordinary living uses, including liquid waste containing animal
1702 or vegetable matter in suspension or solution, or the water-carried waste from the discharge
1703 of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of
1704 water-carried wastes of human origin.1705 **WATER BODY**1706 Any pond, river, brook, stream, intermittent stream or coastal wetland.1707 **WATER CROSSING**1708 Any project extending from one bank to the opposite bank of a water body, whether under,
1709 through or over the watercourse. Such projects include but may not be limited to roads,
1710 fords, bridges, culverts, waterlines, sewer lines and cables, as well as maintenance work on
1711 these crossings.1712 **WATER-DEPENDENT USE**1713 See "functionally water-dependent use."1714 **WATER FRONT COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE**

1715 **STRUCTURE**

1716 A structure which is used by a business entity, Port Authority or municipality having
1717 frontage on navigable water and, as its principal use, provides for hire to the general public
1718 offshore mooring and/or docking facilities for vessels used for any marine-related
1719 commercial, industrial or fisheries use

1720 **WETLAND**

1721 Areas that under normal circumstances have hydrophytic vegetation, hydric soils and
1722 wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual
1723 — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual).
1724 This definition of wetland is based on the 1987 manual and is not subject to further
1725 revisions and/or amendments.

1726 **WETLAND ALTERATION**

1727 Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the
1728 hydrology; construction or repair of a structure. On a case-by-case basis and as determined
1729 by the Planning Board, the term "alteration" may exclude:

1730 A. An activity of installing a fence post or planting shrubs by hand;

1731 B. Alteration of an existing structure such as a bench or handrail; and

1732 C. The construction, repair or alteration of a structure with minimal impact such as a
1733 nesting box, pasture fence or staff gauge.

1734 **WETLAND, COASTAL**

1735 All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all
1736 lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water
1737 or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land
1738 which is subject to tidal action during the maximum spring tide level as identified in tide
1739 tables published by the National Ocean Service. Coastal wetlands may include portions of
1740 coastal sand dunes.

1741 **WETLAND CREATION**

1742 Conversion of a non-wetland area into a wetland, where a wetland never existed.

1743 **WETLAND ENHANCEMENT**

1744 An activity increasing the value of one or more functions in an existing wetland. Activities
1745 may also include improvements to upland buffers where timber harvesting or other
1746 activities have degraded the value for wildlife.

1747 **WETLAND, FORESTED**

1748 A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

1749 **WETLAND, FRESHWATER**

1750 Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes,
1751 bogs and similar areas.

1752 **WETLAND, FRESHWATER (IN THE SHORELAND AND RESOURCE**
1753 **PROTECTION OVERLAY ZONES)**

1754 A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which
1755 are: [Added 5-22-2017 by Ord. No. 17-04]

1756 (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to a
1757 surface water body, excluding any river, stream or brook, such that in a natural state,
1758 the combined surface area is in excess of 10 acres; and

1759 (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration
1760 sufficient to support, and which under normal circumstances do support, a prevalence
1761 of wetland vegetation typically adapted for life in saturated soils.

1762 B. Freshwater wetlands may contain small stream channels or inclusions of land that do not
1763 conform to the criteria in this definition.

1764
1765 **WETLAND FUNCTIONS**

1766 The roles wetlands serve which are of value to society or the environment, including, but
1767 not limited to, floodwater storage, floodwater conveyance, groundwater recharge and
1768 discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic
1769 use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

1770 **WETLAND HYDROLOGY**

1771 In general terms, a condition where permanent or periodic inundation or prolonged soil
1772 saturation is sufficient to create anaerobic conditions in the soil. According to the 1989
1773 Manual, inundation or saturation for one week or more during the growing season and a
1774 water table within at least 18 inches of soil surface is required to meet the wetland
1775 hydrology criterion.

1776 **WETLAND PRESERVATION**

1777 The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or
1778 undeveloped condition. Preservation measures include, but are not limited to, conservation
1779 easements and land trusts.

1780 **WETLAND RESTORATION**

1781 An activity returning a wetland from a disturbed or altered condition with lesser acreage or
1782 fewer functions to a previous condition with greater wetland acreage or function.

1783 **WETLAND VALUE**

1784 The importance of a wetland with respect to the individual or collective functions it
1785 provides.

1786 **WETLAND VEGETATION**

1787 Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and
1788 Wildlife Service publication, Wetland Plants of the State of Maine, 1986, as amended or
1789 superseded.

1790 **WETLANDS ASSOCIATED WITH RIVERS**

1791 Wetlands contiguous with or adjacent to a river, and which during normal high water are
1792 connected by surface water to the river. Also included are wetlands which are separated
1793 from the river by a berm, causeway or similar feature less than 100 feet in width, and which
1794 have a surface elevation at or below the normal high-water line of the river. Wetlands
1795 associated with rivers are considered to be part of that great pond or river.

1796 **WETLANDS IMPACT**

1797 Any disturbance, including but not limited to filling, dredging, draining, bridging and
1798 cutting or clearing of vegetation in the wetland and buffer areas.

1799 **WHARF**

1800 A structure on the shore, parallel to the shoreline of navigable waters, alongside of which
1801 vessels can be brought for loading or unloading.

1802 **WHOLESALE BUSINESS**

1803 The sale of goods not produced on the premises primarily to customers engaged in the
1804 business of reselling the goods.

1805 **WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)**

1806 Any structure, antenna, tower or other device which provides radio/television transmission,
1807 commercial mobile wireless services, unlicensed wireless services, cellular phone services,
1808 specialized mobile radio communications (SMR), common carrier wireless exchange access
1809 services, and personal communications service (PCS) or pager services, and associated
1810 development. Telecommunications facilities are considered a principal use.

1811 **WORK**

1812 Activity related to physical change for improvements and not the engineering, production or
1813 correction of construction drawings, or real estate marketing.

1814 **YARD, ACCESSORY BUILDING SIDE AND REAR**

1815 In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that
1816 are at least 10 feet, except no building may be closer than 30 feet to a principal building on
1817 an adjoining lot.

1818 **YARD, FRONT**

1819 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1820 not more than 24 inches, on the same lot with the building between the front line of the
1821 building and the front line of the lot and extending the full width of the lot as it abuts along
1822 a public or private street.

1823 **YARD, REAR**

1824 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1825 not more than 24 inches, on the same lot with the building between the rear line of the
1826 building and the rear line of the lot and extending the full width of the lot.

1827 YARD, SIDE

1828 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting
1829 not more than 24 inches, on the same lot with the building situated between the building and
1830 the side line of the lot and extending from the front yard to the rear yard. Any lot line not a
1831 rear line or a front line will be deemed a side line.

1 **16.4 Land Use Zone Regulations**

2 **16.4.1 Purpose**

3 The purpose of this chapter is to establish zones, uses, standards and dimensional
4 requirements for the Town to implement the adopted Comprehensive Plan.

5 **16.4.2 Establishment of Zones**

6 To implement the provision of this title, the Town is divided into the following base and
7 overlay zones:

8 **16.4.3 Base zones**

9 A. Residential – Rural (R-RL)

10 B. Residential – Suburban (R-S)

11 C. Residential – Kittery Point Village (R-KPV)

12 D. Residential – Urban (R-U)

13 E. Residential – Village (R-V)

14 F. Residential – Rural Conservation (R-RC)

15 G. Conservation (CON)

16 H. Business – Local (B-L)

17 I. Business – Local 1 (B-L1)

18 J. Commercial 1 (C-1)

19 K. Commercial 2 (C-2)

20 L. Commercial 3 (C-3)

21 M. Industrial (IND)

22 N. Mixed-Use (MU)

23 O. Mixed-Use – Badgers Island (MU-BI)

24 P. Mixed-Use – Kittery Foreside (MU-KF)

25 Q. Mixed Use – Neighborhood (MU-N)

26 R. Transportation – Maine Turnpike (T-MT)

27 **16.4.4 Overlay zones**

28 A. Shoreland Overlay Zones

29 (1) Water Body/Wetland Protection Area – 250 feet (OZ-SL-250)

30 (2) Stream Protection Area – 75 feet (OZ-SL-75)

31 B. Commercial Fisheries/Maritime Uses Overlay Zone (OZ-CFMU)

32 C. Resource Protection Overlay Zone (OZ-RP)

33 16.4.5 Zoning Map

34 A. Zone boundaries

35 The location and boundaries of the zones are established as shown on the current Official
36 Zoning Map titled "Town of Kittery Maine Land Use Zoning Map," as may be amended
37 by law. The Zoning Map with all explanatory matter thereon is hereby made part of this
38 title and must be kept on file at the Town office. Said Zoning Map must be drawn at a
39 scale of not less than one-inch equals 1,000 feet. Zone boundaries must be clearly
40 delineated, and the Map must have a legend indicating the name and symbol for each
41 zone.

42 16.4.6 Boundary line interpretation

43 A. Where uncertainty exists with respect to property or natural resource boundaries of the
44 various zones as shown on the Zoning Map, the following rules apply:

45 (1) Unless otherwise shown, zone boundary lines are coincidental with street center lines
46 and lot lines. Where zone boundary lines are designated on the Zoning Map, those lines
47 are construed to be the boundary of the zone.

48 (2) Where the zone boundary lines are not otherwise indicated and where the property has
49 been or may hereafter be divided into blocks and lots, the zone boundaries are construed
50 to be the lot lines, and where the zones designated on the Map accompanying and made
51 a part of this title are bounded approximately by lot lines, the lot lines are construed to
52 be the boundary of the zones unless the boundary lines are otherwise indicated on the
53 Zoning Map.

54 (3) Where unsubdivided property lies within two or more zones, the zone boundary lines on
55 the Zoning Map are determined by use of the scale appearing on the Zoning Map.

56 (4) Where there is uncertainty regarding a zone boundary, the Planning Board is the local
57 decision authority as to the exact location of said boundary. In the Shoreland and
58 Resource Protection Overlay Zones, boundary redefinition must be supported by
59 documentation from an appropriate certified Maine state land surveyor.

60 16.4.7 Overlay zone

61 A. An overlay zone is a special purpose zone where additional regulations, beyond those set
62 forth in the base zone, apply. The regulations of the underlying zone must apply unless
63 specified otherwise in the overlay zone.

64 16.4.8 Zoning Map amendments to Resource Protection and Shoreland 65 Overlay Zones

66 A. If Zoning Map amendments are adopted that change the Shoreland or Resource Protection
67 Overlay Zones, said amendments also must be approved by the Maine Commissioner of
68 the State Department of Environmental Protection and then implemented within 30 days
69 of approval.

70 16.4.9 Prohibited uses

71 A. Uses in all zones are defined in § 16.4 of this ordinance by zone as permitted or special
72 exception uses. Any use not listed as a permitted or a special exception use is prohibited in
73 the zone.

74 **16.4.10 Residential – Rural (R-RL)**

75 A. Purpose

76 The purpose of the Residential – Rural R-RL Zone is to protect the prevailing rural
77 character of the Town and its natural rural quality from development sprawl by
78 prescribing the most appropriate uses and standards.

79 B. Permitted uses

80 The following uses are permitted in the R-RL Zone:

- 81 (1) Accessory Dwelling Unit
- 82 (2) Cluster Residential Development
- 83 (3) Dwelling, Manufactured Housing
- 84 (4) Dwelling, Single-Family
- 85 (5) Convalescent Care Facility
- 86 (6) Nursing Care Facility, Long-Term
- 87 (7) Accessory Buildings, Structures, and Uses
- 88 (8) Home Occupation, Minor
- 89 (9) Individual Private Campsite
- 90 (10) Day Care Facility
- 91 (11) Hospital
- 92 (12) Private Assembly
- 93 (13) Public Facility
- 94 (14) Public or Private School
- 95 (15) Religious Use
- 96 (16) Recreation, Public Open Space
- 97 (17) Agriculture
- 98 (18) Commercial School

99

100 C. Special exception uses

101 The following uses are permitted as special exception uses in the R-RL Zone:

- 102 (1) Mobile Home Park, subject to § 16.5.17.D
- 103 (2) Home Occupation, Major
- 104 (3) Campgrounds
- 105 (4) Rooming House
- 106 (5) Public Utility Facility
- 107 (6) Recreation, Commercial Indoor
- 108 (7) Recreation, Commercial Outdoor
- 109 (8) Agriculture, Piggery

- 110 [\(9\) Commercial Kennel](#)
- 111 [\(10\) Sawmill^{SDI}, Permanent](#)
- 112 [\(11\) Sawmill, Temporary](#)
- 113 [\(12\) Veterinary Hospital](#)
- 114 [\(13\) Cemetery](#)
- 115 [\(14\) Shops in Pursuit of Trade](#)
- 116 [\(15\) Junkyard](#)
- 117 [\(16\) Mineral extraction, subject to § 16.5.16](#)
- 118 [\(17\) Major or Minor Subdivision](#)

119

120 D. Standards

121 The following standards must be met unless modified per § 16.8.10.H, Cluster Residential
122 Development:

123

124 (1) Design and performance standards in § 16.5, 16.7 and 16.8

125 (2) Dimensional standards:

126 (a) Minimum land area per dwelling unit: 40,000 square feet.*

127 *As per §16.3 definition of "minimum land area per dwelling unit," except to
128 exempt properties which are unable to meet the square feet required for a single-
129 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

130 (b) Minimum lot size: 40,000 square feet.

131 (c) Minimum street frontage: 150 feet.

132 (d) Minimum front yard: 40 feet.

133 (e) Maximum building coverage: 15%.

134 (f) Minimum rear and side yards: 20 feet

135 (NOTE: Buildings higher than 40 actual feet are to have side and rear yards not
136 less than 50% of building height.)

137 (g) Maximum building height: 35 feet

138 (NOTE: Minimum distance between principal buildings on the same lot is the
139 height equivalent to the taller building.)

140 (h) Minimum water body setback for functionally water-dependent uses: zero feet

141 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
142 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

143

144 (3) Subdivision types and standards

145 Subject to net residential acreage and net residential density per § 16.3.

146

147 (a) Cluster residential development

148 In a cluster residential development, the above standards may be modified in
149 accordance with special provisions of § 16.8.10.H, including that there is no
150 minimum lot size, and with the conditions that:

151 [1] Minimum principal building separation as required by the Fire Chief, but not

152 less than 20 feet.

153

154 (b) Subdivision development [per special exception uses, § 16.4.10.C].

155 In a subdivision development, standards in § 16.4.10.D(2)(a) and (i) apply and
156 include:

157 [1] Minimum percentage of common open space: 15%

158

159 (4) Junkyards

160 In the case of junkyards, the following special standards apply, which are in addition
161 to the standards and provisions prescribed in Maine State Statutes, 30-A M.R.S.
162 §§ 3751 to 3760, and any changes thereto:

163 (a) Minimum land area: 400,000 square feet.

164 (b) Minimum street frontage: 600 feet.

165 (c) Minimum distance from street or highway to junk concentration area: 200 feet.

166 (d) Other standards as prescribed in § 16.5.13.

167

168 (5) Mobile Home Parks

169 In the case of Mobile Home Parks, sites must be at least 10 acres, subject to the special
170 provisions of § 16.5.17.

171

172 E. Shoreland Overlay Zone OZ-SL – Residential – Rural Zone (R-RL)

173 (1) Permitted uses

174 (a) Accessory Buildings, Structures, and Uses

175 (b) Agriculture

176 (c) Dwellings, if located farther than 100 feet from the normal high-water line of any
177 water bodies, or the upland edge of a wetland Individual Private Campsite

178 [1] Dwelling, Single-Family

179 (d) Recreation, Public Open Space

180

181 (2) Special exception uses

182 (a) Day Care Facility

183 (b) Home occupation, Major

184 (c) Home Occupation, Minor

185 (d) Mineral extraction subject to § 16.5.16;

186 (e) Public Utility Facility

187 (f) Recreation, Commercial Indoor

188 (g) Recreation, Commercial Outdoor

189 (h) Commercial School

190 (i) Public or Private School

191 (j) Hospital

192 (k) Nursing Care Facility, Long-Term

193 (l) Convalescent Care Facility

194 (m) Public Facility

195 (n) Religious Use

196 (o) Private Assembly

197

198 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

199

200 B. Resource Protection Overlay Zone OZ-RP – Residential – Rural Zone (R-RL)

201 (1) Permitted uses

202 (a) Individual Private Campsite

203 (b) Recreation, Public Open Space

204

205 (2) Special exception uses

206 (a) Accessory Buildings, Structures, and Uses

207 (b) Agriculture

208 (c) Home Occupation, Major

209 (d) Home Occupation, Minor

210 (e) Dwelling, Single-Family

211 (f) Commercial School,

212 (g) Public or Private School,

213 (h) Religious Use,

214 (i) Private Assembly,

215 (j) Public Utility Facility

216

217 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

218 RP

219

220 **16.4.11 Residential – Suburban (R-S)**221 A. Purpose

222 The purpose of the Residential – Suburban R-S Zone is to provide areas adjacent to the
223 developed urban areas for future residential growth consistent with the availability of public
224 utilities. To this end, the following apply:

225 B. Permitted uses

226 The following uses are permitted in the R-S Zone:

- 227 (1) Accessory Dwelling Unit
228 (2) Cluster Residential Development
229 (3) Dwelling, Attached Single-Family
230 (4) Dwelling, Multi-Family (not more than four (4) units per building)
231 (5) Dwelling, Single-Family
232 (6) Dwelling, Two-Family
233 (7) Convalescent Care Facility (may not occupy more than 5,000 square feet of floor
234 area)
235 (8) Nursing Care Facility, Long-term (may not occupy more than 5,000 square feet of
236 floor area)
237 (9) Residential Care Facility (may not occupy more than 5,000 square feet of floor area)
238 (10) Accessory Buildings, Structures, and Uses
239 (11) Home Occupation, Minor
240 (12) Day Care Facility
241 (13) Elderly Day Care Facility
242 (14) Hospital (may not occupy more than 5,000 square feet of floor area)
243 (15) Nursery School (may not occupy more than 5,000 square feet of floor area)
244 (16) Private Assembly (may not occupy more than 5,000 square feet of floor area)
245 (17) Public Facility (may not occupy more than 5,000 square feet of floor area)
246 (18) Public or Private School (may not occupy more than 5,000 square feet of floor area)
247 (19) Religious Use (may not occupy more than 5,000 square feet of floor area)
248 (20) Recreation, Public Open Space
249 (21) Agriculture
250 (22) Commercial School (may not occupy more than 5,000 square feet of floor area)

251

252 C. Special exception uses

253 The following uses are permitted as special exception uses in the R-S Zone:

- 254 (1) Dwelling, Multi-Family (five to twelve (5-12) units per building)
255 (2) Home Occupations, Major
256 (3) Rooming House
257 (4) Public Utility Facility
258 (5) Cemetery
259 (6) Retail Sales, Convenience (excluding the sale of gasoline)

260 (7) Any use listed in Subsection B(12-20) (permitted uses) of this section that occupies
261 more than 5,000 square feet of floor area

262 (8) Mineral Extraction, subject to § 16.5.16

263 (9) Major or Minor Subdivision [SD2]

264

265 D. Standards

266 The following standards must be met unless modified per § 16.8.10.H, Cluster Residential
267 Development:

268 (1) Design and performance standards.

269 The design and performance standards of § 16.5, 16.7 and 16.8 must be met. The
270 Design Handbook provides examples of appropriate design for nonresidential and
271 multiunit residential projects.

272

273 (2) Dimensional standards.

274 (a) Minimum land area per dwelling unit:*

275 [1] Without public sewage disposal: 40,000 square feet.

276 [2] With public sewage disposal: 30,000 square feet unless reduced in accordance
277 with Note A.

278 *As per § 16.3 definition of "minimum land area per dwelling unit," except to
279 exempt properties which are unable to meet the square feet required for a
280 single-family dwelling unit, provided the lot was conforming prior to October
281 25, 2012.

282

283 (b) Minimum lot size:

284 [1] Without public sewage disposal: 40,000 square feet.

285 [2] With public sewage disposal: 30,000 square feet unless reduced in accordance
286 with Note A.

287

288 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

289 (d) Minimum front yard: 40 feet.

290 (e) Maximum building coverage: 20%.

291 (f) Minimum rear and side yards: 15 feet

292 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
293 than 50% of the building height.)

294 (g) Maximum building height: 35 feet

295 (NOTE: Minimum distance between principal buildings on the same lot is the
296 height equivalent to the taller building.)

297 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

298 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
299 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

300 Note A:

301 • The required minimum land area per dwelling unit and/or minimum lot size
302 for residential uses that are served by public sewage disposal and that are
303 located outside of areas subject to shoreland zoning may be less than 30,000

- 304 square feet per lot/unit if the established average density of development in the
305 immediate area of the use as determined below is less than 30,000 square feet.
306 • If the average of the lot sizes and/or land area per dwelling unit of the
307 developed residential lots that are located on the same street and within 500
308 feet of the parcel is less than 30,000 square feet, the required minimum lot size
309 or required minimum land area per dwelling unit is the calculated average lot
310 size or average land area per dwelling unit but not less than 20,000 square feet.
311 • If the required minimum lot size is reduced, the required minimum street
312 frontage for new residential uses served by public sewerage may also be
313 reduced to the average of the lot frontage of existing developed residential lots
314 that are located on the same street and within 500 feet of the parcel but in no
315 case to less than 100 feet.

316

317 (3) Subdivision types and standards. Subject to net residential acreage and net residential
318 density per § 16.3

319 (a) Cluster residential development. In a cluster residential development, the above
320 standards may be modified in accordance with special provisions of § 16.8.10.H,
321 including that there is no minimum lot size, and with the conditions that:

322 [1] Minimum principal building separation as required by the Fire Chief, but not
323 less than 15 feet.

324 (b) Subdivision development [per special exception uses, § 16.4.11.C].

325 In a subdivision development, standards in § 16.4.11.D(1) and (2) apply and
326 include:

327 [1]. Minimum percentage of common open space: 15%.

328

329 (4) Mobile Homes. Mobile Homes must meet the standards of § 16.5.17.

330

331 E. Shoreland Overlay Zone OZ-SL – Residential – Suburban Zone (R-S)

332 (1) Permitted uses

333 (a) Day Care Facility

334 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
335 water bodies, or the upland edge of a wetland

336 [1] Dwelling, Attached Single-Family

337 [2] Dwelling, Multi-Family (not more than four (4) units per building)

338 [3] Dwelling, Single-Family

339 [4] Dwelling, Two-Family

340 (c) Elderly Day Care Facility

341 (d) Recreation, Public Open Space

342

343 (2) Special exception uses

344 (a) Home Occupation, Major

345 (b) Home Occupation, Minor

346 (c) Mineral Extraction subject to § 16.5.16

347 (d) Public Utility Facility

- 348 (e) Commercial School (must not occupy more than 5,000 square feet of floor area)
349 (f) Public or Private School (must not occupy more than 5,000 square feet of floor
350 area)
351 (g) Residential Care Facility (must not occupy more than 5,000 square feet of floor
352 area)
353 (h) Hospital (must not occupy more than 5,000 square feet of floor area)
354 (i) Nursing Care Facility, Long-term (must not occupy more than 5,000 square feet of
355 floor area)
356 (j) Public Facility (must not occupy more than 5,000 square feet of floor area)
357 (k) Religious Use (must not occupy more than 5,000 square feet of floor area)
358 (l) Private Assembly (must not occupy more than 5,000 square feet of floor area)
359
360 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
361
362 F. Resource Protection Overlay Zone OZ-RP – Residential Suburban Zone (R-S)
363 (1) Permitted Uses
364 (a). Recreation, Public Open Space
365
366 (2) Special Exception Uses
367 (b). Accessory Buildings, Structures, and Uses
368 (c). Agriculture
369 (d). Home Occupation, Major
370 (e). Home Occupation, Minor
371 (f). Public Utility Facility
372 (g). Dwelling, Single-Family
373
374 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
375 OZ-RP
376

377 **16.4.12 Residential – Kittery Point Village (R-KPV)**378 **A. Purpose**

379 The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve the
380 established character and development pattern of the Kittery Point neighborhood while
381 assuring that any new development is consistent with this historical development pattern and
382 is environmentally suitable. To this end, the following apply:

384 **B. Permitted uses**

385 The following uses are permitted in the R-KPV Zone:

- 386 (1) Accessory Dwelling Units
- 387 (2) Cluster Residential Development
- 388 (3) Dwelling, Attached Single-Family
- 389 (4) Dwelling, Multi-Family (not more than four (4) units per building)
- 390 (5) Dwelling, Single-Family
- 391 (6) Dwelling, Two-Family
- 392 (7) Accessory Buildings, Structures, and Uses
- 393 (8) Home Occupations, Minor
- 394 (9) Day Care Facility
- 395 (10) Nursery School (must not occupy more than 5,000 square feet of floor area)
- 396 (11) Private Assembly (must not occupy more than 5,000 square feet of floor area)
- 397 (12) Public Facility (must not occupy more than 5,000 square feet of floor area)
- 398 (13) Public or Private School (must not occupy more than 5,000 square feet of floor area)
- 399 (14) Religious Use (must not occupy more than 5,000 square feet of floor area)
- 400 (15) Recreation, Public Open Space
- 401 (16) Agriculture
- 402 (17) Commercial School (must not occupy more than 5,000 square feet of floor area)

404 **C. Special exception uses**

405 The following uses are permitted as special exception uses in the R-KPV Zone:

- 406 (1) Rooming House
- 407 (2) Any use listed in Subsection B.(11) through B.(15) of this section (permitted uses)
408 that occupies more than 5,000 square feet of floor area
- 409 (3) Public Utility Facility
- 410 (4) Cemetery
- 411 (5) Retail Sales, Convenience (excluding sale of gasoline)
- 412 (6) Home Occupation, Major
- 413 (7) The reuse of a designated historic building, in nonresidential use as of the effective
414 date of this provision, as an art studio/gallery, museum, or business and professional
415 office subject to standards for a minor home occupation as set forth in § 16.5.12.
- 416 (8) Major or Minor Subdivision

417

418 D. Standards

419 The following standards must be met unless modified per § 16.8.10.H., Cluster Residential
420 Development:

421 (1) Design and performance standards in §16.5, 16.7 and 16.8.

422 The Design Handbook provides examples of appropriate design for nonresidential and
423 multiunit residential projects.

424

425 (2) Dimensional standards.

426 (a) Minimum land area per dwelling unit: 40,000 square feet.*

427 As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to
428 exempt properties which are unable to meet the square feet required for a single-
429 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

430

(b) Minimum lot size: 40,000 square feet.

431

(c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

432

Note A:

433 • The required minimum street frontage for a new lot may be less than 150 feet if the
434 established pattern of street frontage in the immediate area of the lot as determined
435 below is less than 150 feet per lot.

436

• The required minimum street frontage in this case is the average of the street
437 frontage of existing developed residential lots that are located on the same street
438 and within 500 feet of the parcel, but in no case less than 100 feet.

439

(d) Minimum front yard: 40 feet

440

(e) Maximum building coverage: 20%.

441

(f) Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40 actual feet
442 must have side and rear yards not less than 50% of the building height.)

443

(g) Maximum building height: 35 feet. (NOTE: Minimum distance between principal
444 buildings on the same lot is the height equivalent to the taller building.)

445

(h) Minimum water body setback for functionally water-dependent uses: zero feet.

446

(i) Minimum setback from streams, water bodies and wetlands: in accordance with
447 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

448

Subdivision types and standards

449

450 (3) Subject to net residential acreage and net residential density per § 16.3.

451

(a) Cluster residential development

452

In a cluster residential development, the above standards may be modified in
453 accordance with special provisions of § 16.8.10.H, including that there is no
454 minimum lot size, and with the conditions that:

455

[1] Minimum principal building separation as required by the Fire Chief, but
456 not less than 15 feet.

457

458

(b) Subdivision development [per special exception uses, § 16.4.12.C].

459

In a subdivision development, standards in § 16.4.12.D(1) and (2) apply and
460 include:

461

[1] Minimum percentage of common open space: 15%.

462

463 E. Shoreland Overlay Zone OZ-SL – Residential – Kittery Point Village (R-KPV)464 (1) Permitted uses.465 (a) Agriculture466 (b) Accessory Buildings, Structures, and Uses467 (c) Day Care Facility468 (d) Dwellings if located farther than 100 feet from the normal high-water line of any
469 water bodies, or the upland edge of a wetland470 [1] Dwelling, Attached Single-Family471 [2] Dwelling, Multi-Family (not more than four (4) units per building)472 [3] Dwelling, Single-Family473 [4] Dwelling, Two-Family

474

475 (2) Special exception uses.476 (a). Home Occupation, Major477 (b). Home Occupation, Minor478 (c). Public Utility Facility479 (d). Commercial School (must not occupy more than 5,000 square feet of floor area)480 (e). Public or Private School (must not occupy more than 5,000 square feet of floor
481 area)482 (f). Nursery School (must not occupy more than 5,000 square feet of floor area)483 (g). Public Facility (must not occupy more than 5,000 square feet of floor area)484 (h). Religious Use (must not occupy more than 5,000 square feet of floor area)485 (i). Private Assembly (must not occupy more than 5,000 square feet of floor area)486 See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

487

488 F. Resource Protection Overlay Zone OZ-RP – Residential – Kittery Point Village Zone (R-
489 KPV)490 (1) Permitted Uses491 (a) Recreation, Public Open Space

492

493 (2) Special Exception Uses494 (a) Accessory Buildings, Structures, and Uses495 (b) Agriculture496 (c) Home Occupations, Major497 (d) Home Occupations, Minor498 (e) Public Utility Facility499 (f) Dwelling, Single-Family

500

501 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
502 RP

503 **16.4.13 Residential – Urban (R-U)**504 A. Purpose

505 The purpose of the Residential – Urban R-U Zone is to preserve the physical, aesthetic and
506 social quality of Kittery's urban area and, consistent with this goal, to provide therein for the
507 location of a variety of residential uses in accordance with the standards of this title. To this
508 end, the following apply:

509 B. Permitted uses

510 The following uses are permitted in the R-U Zone:

- 511 (1) Accessory Dwelling Units
- 512 (2) Cluster Residential Development
- 513 (3) Dwelling, Attached Single-Family
- 514 (4) Dwelling, Manufactured Housing
- 515 (5) Dwelling, Multi-Family
- 516 (6) Dwelling, Single-family
- 517 (7) Dwelling, Two-Family
- 518 (8) Convalescent Care Facility
- 519 (9) Nursing Care Facility, Long-term
- 520 (10) Accessory Buildings, Structures, and Uses
- 521 (11) Home Occupations, Minor
- 522 (12) Day Care Facility
- 523 (13) Hospital
- 524 (14) Nursery School
- 525 (15) Private Assembly
- 526 (16) Public Facility
- 527 (17) Public or Private School
- 528 (18) Religious Use
- 529 (19) Recreation, Public Open Space
- 530 (20) Commercial School
- 531 (21) Conference Center

532

533 C. Special exception uses

534 The following uses are permitted as special exception uses in the R-U Zone:

- 535 (1) Rooming House [SD3]
- 536 (2) Business & Professional Offices
- 537 (3) Funeral Home
- 538 (4) Art Studio or Gallery
- 539 (5) Recreation, Public Facility
- 540 (6) Recreation, Commercial Indoor
- 541 (7) Recreation, Commercial Outdoor
- 542 (8) Public Utility Facility

- 543 (9) Inn
544 (10) Home Occupations, Major
545 (11) Age-Restricted Housing
546 (12) Major or Minor Subdivision [SD4]

547

548 D. Standards

549 The following standards must be met unless modified per § 16.8.10.H, Cluster Residential
550 Development:

551

552 (1) The design and performance standards in § 16.5, 16.7 and 16.8.

553 (2) Dimensional standards:

554 (a) Minimum land area per dwelling unit: 20,000 square feet.*

555 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except
556 to exempt properties which are unable to meet the square feet required for a single-
557 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

558 (b) Minimum lot size: 20,000 square feet.

559 (c) Minimum street frontage: 100 feet.

560 (d) Minimum front yard, all buildings: 30 feet.

561 (e) Minimum rear and side yards, all buildings: 15 feet.

562 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
563 than 50% of building height.)

564 (f) Maximum building height: 35 feet.

565 (NOTE: Minimum distance between principal buildings on the same lot is the
566 height equivalent to the taller building.)

567 (g) Maximum building coverage: 20%.

568 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

569 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
570 Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.

571

572 (3) Subdivision types and standards

573 Subject to net residential acreage and net residential density per § 16.3.

574 (a) Cluster residential development

575 In a cluster residential development, the above standards may be modified in
576 accordance with special provisions of § 16.8.10.H, including that there is no
577 minimum lot size, and with the conditions that:

578 [1] Minimum principal building separation as required by the Fire Chief, but not
579 less than 15 feet.

580 (b) Subdivision development [special exception uses, § 16.4.13.C].

581 In a subdivision development, standards in § 16.4.13.D(1) and (2) apply and
582 include:

583 [1] Minimum percentage of common open space: 15%.

584

585 (4) Age-Restricted Housing

586 In the case of Age-Restricted Housing, the above standards may be modified in
587 accordance with the special provisions of § 16.5.15 and with the condition that:

588 (a) Municipal sewerage and water must be provided.

589 (b) A minimum land area of three acres must be provided.

590 (c) The maximum net density may not exceed four dwelling units per net residential
591 acre. In no event may the Planning Board authorize a departure which increases
592 the total number of dwelling units greater than that specified under the applicable
593 zoning ordinance.

594 (d) A single bedroom unit may not be less than 550 square feet and a two-bedroom
595 unit not less than 650 square feet.

596

597 (5) Manufactured Housing

598 Manufactured Housing must meet standards of § 16.5.15

599

600 E. Shoreland Overlay Zone OZ-SL – Residential – Urban Zone (R-U)601 (1) Permitted uses.

602 (a). Accessory Buildings, Structures, and Uses

603 (b). Day Care Facility

604 (c). Dwellings if located farther than 100 feet from the normal high-water line of any
605 water bodies, or the upland edge of a wetland

606 [1]. Dwelling, Attached Single-Family

607 [2]. Dwelling, Manufactured Housing

608 [3]. Dwelling, Multi-Family

609 [4]. Dwelling, Single-family

610 [5]. Dwelling, Two-Family

611 (d). Recreation, Public Open Space

612

613 (2) Special exception uses.

614 (a). Home Occupation, Major

615 (b). Home Occupation, Minor

616 (c). Inn

617 (d). Public Utility Facility

618 (e). Recreation, Commercial Indoor

619 (f). Recreation, Commercial Outdoor

620 (g). Commercial School

621 (h). Public or Private School

622 (i). Nursery School

623 (j). Hospital

624 (k). Nursing Care Facility, Long-term

625 (l). Convalescent Care Facility

626 (m). Public Facility

627 (n).Religious Use

628 (o).Private Assembly

629

630 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

631

632 F. Resource Protection Overlay Zone OZ-RP – Residential – Urban Zone (R-U)

633 (1) Permitted Uses

634 (a).Recreation, Public Open Space

635 (2) Special Exception Uses

636 (a). Accessory Buildings, Structures, and Uses

637 (b).Home Occupation, Major

638 (c).Home Occupation, Minor

639 (d).Public Utility Facility

640 (e). Dwelling, Single-Family

641

642 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
643 RP

644

645 **16.4.14 Residential – Village (R-V)**646 **A. Purpose**

647 The purpose of the Residential – Village R-V Zone is to recognize the special nature of the
 648 Admiralty Village neighborhood as a densely developed residential zone composed primarily
 649 of affordable housing on small lots serviced by sewer and water and to encourage
 650 reinvestment in maintaining and upgrading the neighborhood. Consistent with this goal, the
 651 zone provides for uses that reinforce the residential character and establish building standards
 652 that allow improvements on typical lots to enhance the residential quality of life in the
 653 neighborhood. To this end, the following will apply:

654
655 **B. Permitted uses**

656 The following uses are permitted in the R-V Zone:

- 657 (1) Accessory Dwelling Unit
- 658 (2) Dwelling, Attached Single-Family
- 659 (3) Dwelling, Manufactured Housing
- 660 (4) Dwelling, Single-Family
- 661 (5) Dwelling, Two-Family
- 662 (6) Accessory Buildings, Structures, and Uses
- 663 (7) Home Occupation, Minor
- 664 (8) Day Care Facility (limited to twelve (12) or fewer persons in care, in conformance
 665 with the standards for a Home Occupation, Minor. See § 16.5.12)
- 666 (9) Nursery School (limited to twelve (12) or fewer persons in care, in conformance
 667 with the standards for a Home Occupation, Minor See § 16.5.12)
- 668 (10) Public Facility
- 669 (11) Recreation, Public Facility
- 670 (12) Recreation, Public Open Space

671
672 **C. SD5Special exception uses**

673 The following uses are permitted as special exception uses in the R-V Zone:

- 674 (1) Public Utility Facility
- 675 (2) Home Occupations, Major
- 676 (3) Day Care Facility (for thirteen (13) or more persons in care, in conformance with the
 677 standards for a Home Occupation, Major. See § 16.5.12)
- 678 (4) Nursery School (for thirteen (13) or more persons in care, in conformance with the
 679 standards for a Home Occupation, Major. See § 16.5.12)

680 **D. Standards.**

681 All development and the use of land in the R-V Zone must meet the following standards. In
 682 addition, the design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.
 683 The Design Handbook provides examples of appropriate design for nonresidential and
 684 multiunit residential projects.

685 (1) The following space standards apply:

- 686 (a) Minimum land area per dwelling unit: 4,000 square feet.*

- 687 *As per Chapter 16.3 definition of "minimum land area per dwelling unit,"
 688 except to exempt properties which are unable to meet the square feet required
 689 for a single-family dwelling unit, provided the lot was conforming prior to
 690 October 25, 2012.
- 691 (b) Minimum lot size: 6,000 square feet.
- 692 (c) Minimum street frontage: 50 feet.
- 693 (d) Minimum front yard: 15 feet.
- 694 (e) Minimum rear yard, dwellings/structures: 15 feet.
- 695 (f) Minimum side yard, dwellings/structures: 10 feet.
- 696 (g) Minimum rear and side yards for accessory buildings/structures that are
 697 accessory to a residential use and located at least four feet behind the
 698 predominant rear line of the principal building: three feet.
- 699 (h) (h) Maximum structure coverage: 40%. |BWS6|
- 700 (i) Maximum height of principal dwellings/structures: 35 feet.
- 701 (j) Maximum height of accessory buildings/structures located closer than 10 feet to
 702 a lot line: 15 feet.
- 703 (k) Maximum building coverage: 20%
- 704 (l) Minimum water body setback for functionally water-dependent uses: zero feet
- 705 (m) Minimum setback from streams, water bodies and wetlands: in accordance with
 706 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

707 E. Shoreland Overlay Zone OZ-SL – Residential – Village Zone (R-V)

708 (1) Permitted uses

- 709 (a) Accessory Buildings, Structures, and Uses
- 710 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
 711 water bodies, or the upland edge of a wetland Public Facility
- 712 [1] Dwelling, Attached Single-Family
- 713 [2] Dwelling, Manufactured Housing
- 714 [3] Dwelling, Single-Family
- 715 [4] Dwelling, Two-Family
- 716 (c) Recreation, Public Facility
- 717 (d) Recreation, Public Open Space

718

719 (2) Special exception uses

- 720 (a) Day Care Facility (for thirteen (13) or more persons in care, in conformance with
 721 the standards for a major home occupation see § 16.5.12);
- 722 (b) Nursery School (for thirteen (13) or more persons in care, in conformance with the
 723 standards for a major home occupation (see § 16.5.12);
- 724 (c) Home occupation, Major
- 725 (d) Home Occupation, Minor
- 726 (e) Public Utility Facility

727

728 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

729

- 730 F. Resource Protection Overlay Zone OZ-RP – Residential – Village Zone (R-V)
- 731 (1) Permitted Uses: none
- 732 (2) Special Exception Uses
- 733 (a) Accessory Buildings, Structures, and Uses
- 734 (b) Home Occupations, Major
- 735 (c) Home Occupations, Minor
- 736 (d) Public Utility Facility
- 737 (e) Dwelling, Single-Family
- 738
- 739 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 740 RP
- 741

742 **16.4.15 Residential – Rural Conservation (R-RC)**743 **A. Purpose**

744 The purpose of the Residential – Rural Conservation R-RC Zone is to conserve and
745 protect land areas of the Town which by their location and character require special
746 measures to ensure low-density development. To this end, the following apply:

747

748 **B. Permitted use.**

749 The following uses are permitted in the R-RC Zone:

- 750 (1) Accessory Dwelling Units
- 751 (2) Cluster Residential Development
- 752 (3) Dwelling, Manufactured Housing
- 753 (4) Dwelling, Single-Family
- 754 (5) Accessory Buildings, Structures, and Uses
- 755 (6) Home Occupations, Minor
- 756 (7) Recreation, Public Facility
- 757 (8) Recreation, Public Open Space
- 758 (9) Agriculture
- 759 (10) Timber Harvesting

760

761 **C. Special exception uses**

762 The following uses are permitted as special exception uses in the R-RC Zone:

- 763 (1) Home Occupations, Major
- 764 (2) Day Care Facility
- 765 (3) Private Assembly
- 766 (4) Public Facility
- 767 (5) Public or Private School
- 768 (6) Public Utility Facility
- 769 (7) Religious Use
- 770 (8) Recreation, Commercial Indoor
- 771 (9) Recreation, Commercial Outdoor
- 772 (10) Commercial School
- 773 (11) Cemetery
- 774 (12) Major or Minor Subdivision

775

776 **D. Standards**

777 The following standards must be met unless modified per § 16.8.10H, Cluster Residential
778 Development:

- 779 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.
- 780 (2) The following dimensional standards apply:
 - 781 (a) Minimum land area per dwelling unit: 80,000 square feet.*

782 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except
 783 to exempt properties which are unable to meet the square feet required for a single-
 784 family dwelling unit, provided the lot was conforming prior to October 25, 2012.

785 (b) Minimum lot size: 80,000 square feet.

786 (c) Minimum street frontage: 200 feet.

787 (d) Minimum front yard: 40 feet.

788 (e) Maximum building coverage: 6%.

789 (f) Minimum rear and side yards: 20 feet.

790 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less
 791 than 50% of building height.)

792 (g) Maximum building height: 35 feet.

793 (NOTE: Minimum distance between principal buildings on the same lot is the
 794 height equivalent to the taller building.)

795 (h) Minimum water body setback for functionally water-dependent uses: zero feet.

796 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
 797 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

798

799 (3) Subdivision types and standards.

800 Subject to net residential acreage and net residential density per § 16.2.2.

801 (a) Cluster residential development.

802 In a cluster residential development, the above standards may be modified in
 803 accordance with special provisions of § 16.8.10.H, including that there is no minimum
 804 lot size, and with the conditions that:

805 [1] Minimum principal building separation as required by the Fire Chief, but not
 806 less than 20 feet.

807 (b) Subdivision development [special exception uses, § 16.4.15.C].

808 In a subdivision development, standards in § 16.4.15D(1) and (2) apply and
 809 include:

810 [1] Minimum percentage of common open space: 15%.

811

812 E. Shoreland Overlay Zone – Residential Conservation Zone (R-RC)

813 (1) Permitted uses

814 (a) Accessory Buildings, Structures, and Uses

815 (b) Agriculture

816 (c) Dwellings if located farther than 100 feet from the normal high-water line of any
 817 water bodies, or the upland edge of a wetland

818 [1] Dwelling, Manufactured Housing

819 [2] Dwelling, Single-Family

820 (d) Recreation, Public Facility

821 (e) Recreation, Public Open Space

822 (f) Timber Harvesting

823

824 (2) Special exception uses

- 825 (a) Day Care Facility
826 (b) Home occupation, Major
827 (c) Home Occupation, Minor
828 (d) Recreation, Selected Commercial
829 (e) Public Utility Facility
830 (f) Commercial School
831 (g) Public or Private School
832 (h) Public Facility
833 (i) Religious Use
834 (j) Private Assembly

835

836 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

837

838 F. Resource Protection Overlay Zone OZ-RP – Residential – Rural Conservation Zone (R-
839 RC)

840 (1) Permitted Uses

- 841 (a) Recreation, Public Facility [SD7]
842 (b) Recreation, Public Open Space
843 (c) Timber Harvesting

844

845 (2) Special Exception Uses

- 846 (a) Accessory Buildings, Structures, and Uses
847 (b) Agriculture
848 (c) Home Occupations, Major
849 (d) Home Occupations, Minor
850 (e) Recreation, Commercial Indoor
851 (f) Recreation, Commercial Outdoor (exclusive of golf courses)
852 (g) Public Utility Facility
853 (h) Dwelling, Single-Family

854

855 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
856 RP

857 **16.4.16 Conservation (CON)**

858 A. Purpose

859 The purposes of the Conservation Zone are to preserve and protect natural environmental
860 areas, conservation lands, park and other areas, including but not limited to the Rachel
861 Carson Wildlife Preserve, Town Farm Forest, state and local parklands, and land with
862 conservation easements that prohibit development in perpetuity; further the maintenance of
863 safe and healthful conditions; prevent and control potential water pollution sources; protect
864 spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore
865 cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

866 B. Permitted uses867 The following uses are permitted in the CON Zone:

- 868 (1) Accessory Buildings, Structures, and Uses
- 869 (2) Open Space, Reserved
- 870 (3) Recreation, Public Facility
- 871 (4) Recreation, Public Open Space
- 872 (5) Existing Land Conservation Uses

873

874 C. Special exception uses875 The following uses are permitted as special exception uses in the CON Zone:

- 876 (1) Public Facility

877

878 D. Standards.879 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.880 (2) Dimensional standards:881 (a) Minimum land area per dwelling unit: not applicable.882 (b) Minimum lot size: none.883 (c) Minimum street frontage: none.884 (d) Minimum front yard: 40 feet.885 (e) Maximum building coverage: 6%.886 (f) Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing
887 conditions a building is higher than 40 actual feet, it must have side and rear
888 yards not less than 50% of building height.)889 (g) Maximum building height: 35 feet. (NOTE: Minimum distance between
890 principal buildings on the same lot is the height equivalent to the taller
891 building.)892 (h) Minimum water body setback for functionally water-dependent uses: zero feet.893 (i) Minimum setback from streams, water bodies and wetlands: in accordance with
894 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

895

896 E. Shoreland Overlay Zone OZ-SL – Conservation (CON)897 (1) Permitted uses.898 (a) Open Space, Reserved899 (b) Recreation, Public Facility900 (c) Recreation, Public Open Space901 (d) Accessory Buildings, Structures, and Uses902 (e) Existing Land Conservation Uses

903

904 (2) Special exception uses.905 (a) Public facility

906

907 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

908

909 F. Resource Protection Overlay Zone OZ-RP – Conservation (CON)

910 (1) Permitted Uses.

911 (a) Accessory Buildings, Structures, and Uses

912 (b) Existing Land Conservation Uses

913 (c) Recreation, Public Facility

914 (d) Recreation, Public Open Space

915

916 (2) Special Exception Uses

917 (a) Public Facility

918

919 (3) See 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

920 RP

921 **16.4.17 Business – Local Zone (B-L)**

922 A. Purpose

923 The purpose of the Business – Local B-L Zone is to provide local sales, services and business
924 space within the Town.

925

926 B. Permitted uses

927 The following uses are permitted in the B-L Zone:

928 (1) Accessory Dwelling Unit

929 (2) Dwelling, Attached Single-Family

930 (3) Dwelling, Manufactured Housing

931 (4) Dwelling, Multi-Family

932 (5) Dwelling, Single-Family

933 (6) Dwellings Two-Family

934 (7) Convalescent Care Facility

935 (8) Nursing Care Facility, Long-term

936 (9) Residential Care Facility

937 (10) Accessory Buildings, Structures, and Uses

938 (11) Home Occupation, Major

939 (12) Home Occupation, Minor

940 (13) Day Care Facility

941 (14) Hospital

942 (15) Nursery School

943 (16) Private Assembly

944 (17) Public Facility

945 (18) Public or Private School

- 946 [\(19\) Religious Use](#)
- 947 [\(20\) Recreation, Public Open Space](#)
- 948 [\(21\) Aquaculture](#)
- 949 [\(22\) Commercial Fisheries/Maritime Activities \(provided only incidental cleaning and](#)
950 [cooking of seafood occur at the site\) |SD8|](#)
- 951 [\(23\) Commercial School](#)
- 952 [\(24\) Art Studio or Gallery](#)
- 953 [\(25\) Business & Professional Offices](#)
- 954 [\(26\) Business Service](#)
- 955 [\(27\) Conference Center](#)
- 956 [\(28\) Personal Service](#)
- 957 [\(29\) Restaurant](#)
- 958 [\(30\) Retail Sales \(excluding those of which the principal activity entails outdoor sales](#)
959 [and/or storage and excluding those specifically mentioned under Subsection C of this](#)
960 [section\)](#)
- 961 [\(31\) Retail Sales, Building Materials & Garden Supply \(excluding those of which the](#)
962 [principal activity entails outdoor sales and/or storage\)](#)
- 963 [\(32\) Retail Sales, Convenience](#)
- 964 [\(33\) Specialty Food and/or Beverage Facility](#)
- 965 [\(34\) Mass Transit Station](#)
- 966 [\(35\) Parking Area](#)

967

968 [C. Special exception uses](#)969 [The following uses are permitted as special exception uses in the B-L Zone:](#)970 [\(1\) Motel](#)971 [\(2\) Hotel](#)972 [\(3\) Inn](#)973 [\(4\) Rooming House](#)974 [\(5\) Funeral Home](#)975 [\(6\) Gasoline Service Station](#)976 [\(7\) Public Assembly Area](#)977 [\(8\) Theater](#)978 [\(9\) Public Utility Facility](#)979 [\(10\) Mechanical Service](#)980 [\(11\) Residential Dwelling Units, as part of a mixed-use building |SD9|](#)

981

982 [D. Standards.](#)983 [All development and the use of land in the B-L Zone must meet the following standards.](#)984 [Kittery's Design Handbook illustrates how these standards can be met. In addition, the design](#)985 [and performance standards of Chapters 16.5, 16.7 and 16.8 must be met.](#)986 [\(1\) Parking. One row of parking spaces and a related access drive may be located between](#)987 [the front property line and the front wall of the building extending the full width of the](#)

988 lot. All other parking must be located to the side and/or rear of the building. All new or
989 revised parking must be visually screened through the use of landscaping, earthen berms
990 and/or fencing from adjacent public streets or residential properties. (See the Design
991 Handbook for appropriate examples.)

992

993 (2) Building design standards. Kittery's characteristic buildings reflect its historic seacoast
994 past. The primary architectural styles are New England Colonial (such as Cape Cod and
995 saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible
996 with Kittery's characteristic styles in form, scale, material and color. In general, buildings
997 should be oriented with the front of the building facing the street on which the building is
998 located. The front or street facade must be designed as the front of the building. The front
999 elevation must contain one or more of the following elements: 1) a "front door," although
1000 other provisions for access to the building may be provided; 2) windows; or 3) display
1001 cases. (See Design Handbook for examples of acceptable materials and designs.) Strict
1002 imitation is not required. Design techniques can be used to maintain compatibility with
1003 characteristic styles and still leave enough flexibility for architectural variety. To achieve
1004 this purpose, the following design standards apply to new and modified existing building
1005 projects:

1006 (a) Exterior building materials and details. Building materials and details strongly
1007 define a project's architectural style and overall character. (See Design Handbook
1008 for examples of acceptable materials, building scale and designs.) "One-sided"
1009 schemes are prohibited; similar materials and details must be used on all sides of a
1010 building to achieve continuity and completeness of design. Predominant exterior
1011 building materials must be of good quality and characteristic of Kittery, such as
1012 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or
1013 simulated stone, glass and vinyl, or metal clapboard.

1014 (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless
1015 demonstrated to the Planning Board's satisfaction that this is not practicable.
1016 Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed
1017 roofs and roof facades (such as "stuck on" mansards) are not acceptable as
1018 prominent roof forms except as provided above. Roof colors must be muted. (See
1019 Design Handbook for examples.) The roof design must screen or camouflage
1020 rooftop protrusions to minimize the visual impact of air-conditioning units, air-
1021 handler units, exhaust vents, transformer boxes, and the like. (See Design
1022 Handbook for examples of appropriate treatments.)

1023 (c) Loading docks and overhead doors. Loading docks and overhead doors must be
1024 located on the side or rear of the building and screened from view from adjacent
1025 properties in residential use.

1026

1027 (3) Landscaping standards. To achieve attractive and environmentally sound site design
1028 and appropriate screening of parking areas, in addition to the landscaping standards
1029 contained in Chapters 16.7 and 16.8 the following landscaping requirements apply to
1030 new and modified existing developments:

1031 (a) Landscape planter strip. A vegetated landscape planter strip must be provided a
1032 minimum of 15 feet in depth adjacent to the right-of-way of all public roads. The
1033 Planning Board may reduce the required depth of the landscape planter strip if a
1034 sidewalk is provided in front of the parcel and the area between the front property
1035 line and the front wall of the building will be designed and used as a pedestrian

- 1036 space. The landscape planter strip must include the following landscape elements:
1037 (b) Ground cover. The entire landscape planter must be vegetated except for approved
1038 driveways, walkways, bikeways and screened utility equipment.
- 1039 (c) Street-side trees. A minimum of one tree must be planted for each 25 feet of street
1040 frontage. The trees may be spaced along the frontage or grouped or clustered to
1041 enhance the visual quality of the site. (See Design Handbook for examples.) The
1042 trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet
1043 high at the time of planting. The species must be selected from the list of approved
1044 street trees in the Design Handbook. Existing large healthy trees must be
1045 preserved if practical and will count toward this requirement.
- 1046 (d) Special situations.
- 1047 [1]. Expansions of less than 1,000 square feet to existing uses are exempt from the
1048 landscaping standard of this subsection.
- 1049 [2]. Depth of landscape planter strip. In instances where the required minimum
1050 depth of the landscape planter strip is legally utilized in accordance with
1051 previous permits or approvals, for parking, display, storage, building or
1052 necessary vehicle circulation, the depth may be narrowed by the Planning
1053 Board to the minimum extent necessary to achieve the objective of the
1054 proposed project, provided that shrubs and perennials are planted along the
1055 street frontage to soften the appearance of the development from the public
1056 street.
- 1057 [3]. Additions and changes in use. For additions to existing buildings and changes
1058 of residential structures to a nonresidential use, one street-side tree (see list of
1059 street trees in Design Handbook) is required to be planted for every 1,000
1060 square feet of additional gross floor area added or converted to nonresidential
1061 use. In instances where parking, display area, storage, building or necessary
1062 vehicle circulation exists at the time of enactment of this section, the required
1063 trees may be clustered and/or relocated away from the road as is necessary to
1064 be practicable. The preservation of existing large trees is encouraged;
1065 therefore, the Planning Board may permit the preservation of existing healthy,
1066 large, mature trees within the landscape planter strip or other developed areas
1067 of the site to be substituted for the planting of new trees.
- 1068 (e). Outdoor service and storage areas. Service and storage areas must be located to
1069 the side or rear of the building. Facilities for waste storage such as dumpsters must
1070 be located within an enclosure and be visually buffered by fencing, landscaping
1071 and/or other treatments. (See Design Handbook for examples of appropriate
1072 buffering.)
- 1073
- 1074 (4) Traffic and circulation standards. Sidewalks and roadways must be provided within
1075 the site to internally join abutting properties that are determined by the Planning
1076 Board to be compatible. In addition, safe pedestrian route(s) must be provided to
1077 allow pedestrians to move within the site and between the principal customer entrance
1078 and the front lot line where a sidewalk exists or will be provided or where the
1079 Planning Board determines that such a route is needed for adequate pedestrian safety
1080 and movement. (See Design Handbook for appropriate examples.)
- 1081
- 1082 (5) Open space standards. Open space must be provided as a percentage of the total area
1083 of the lot, including freshwater wetlands, water bodies, streams and setbacks. Fifteen

1084 percent of each lot must be designated as open space. Required open space must be
1085 shown on the plan with a note dedicating it as "open space." The open space must be
1086 located to create an attractive environment on the site, minimize environmental
1087 impacts, protect significant natural features or resources on the site and maintain
1088 wildlife habitat. Individual large, healthy trees and areas with mature tree cover
1089 should be included in the open space. Where possible, the open space must be located
1090 to allow the creation of continuous open space networks in conjunction with existing
1091 or potential open space on adjacent properties. The required amount of designated
1092 open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

1093

1094 (6) The following space standards apply:

1095 (a) Minimum land area per dwelling unit when all floors are residential: 20,000
1096 square feet if served by on-site sewage disposal; 8,000 square feet if served by the
1097 public sewerage system.

1098 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1099 except where the side and/or rear yards abut a residential district or use; in which
1100 case a minimum of 15 feet or 50% of the building height is required.)

1101 (b). Minimum land area per dwelling unit when the entire first floor is used for
1102 nonresidential uses: 20,000 square feet if served by on-site sewage disposal; 4,000
1103 square feet if served by the public sewerage system.

1104 (c). Minimum lot size: none.

1105 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1106 except where the side and/or rear yards abut a residential district or use; in which
1107 case a minimum of 15 feet or 50% of the building height is required.)

1108 (d). Minimum street frontage: none.

1109 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1110 except where the side and/or rear yards abut a residential district or use; in which
1111 case a minimum of 15 feet or 50% of the building height is required.)

1112 (e). Minimum front yard: 15 feet.

1113 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1114 except where the side and/or rear yards abut a residential district or use; in which
1115 case a minimum of 15 feet or 50% of the building height is required.)

1116 (f). Maximum front setback of the principal building: 60 feet.

1117 (g). Minimum rear and side yards: 10 feet.

1118 (NOTE: Except as otherwise required by the buffer provisions of this title, and
1119 except where the side and/or rear yards abut a residential district or use; in which
1120 case a minimum of 15 feet or 50% of the building height is required.)

1121 (h). Maximum building height: 40 feet.

1122 (NOTE: Except that space standards for single- and two-family residential uses are
1123 the same as for those of the Urban Residential District.)

1124 (i). Maximum building and outdoor stored material coverage: none, except that side,
1125 rear and front yards must be maintained

1126 (j). Minimum water body setback for functionally water-dependent uses: zero feet.

1127 (k). Minimum setback from streams, water bodies and wetlands: in accordance with
1128 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1129

- 1130 (7) Gasoline Sales
- 1131 (a). Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
- 1132 not be located within 1,000 feet of any private residence; and (c) not be located
- 1133 within 150 feet of any existing structure. [SD10]
- 1134
- 1135 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)
- 1136 (1) Permitted uses.
- 1137 (a) Accessory Buildings, Structures, and Uses
- 1138 (b) Dwellings if located farther than 100 feet from the normal high-water line of any
- 1139 water bodies, or the upland edge of a wetland
- 1140 [1] Dwelling, Attached Single-Family
- 1141 [2] Dwelling, Manufactured Housing
- 1142 [3] Dwelling, Multi-Family
- 1143 [4] Dwelling, Single-Family
- 1144 [5] Dwellings Two-Family
- 1145 (c) Recreation, Public Open Space
- 1146
- 1147 (2) Special exception uses.
- 1148 (a). Art Studio or Gallery
- 1149 (b). Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 1150 principal activity entails outdoor sales and/or storage)
- 1151 (c). Business Services
- 1152 (d). Business & Professional Offices
- 1153 (e). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 1154 cooking of seafood occur at the site)
- 1155 (f). Parking Area
- 1156 (g). Conference Center
- 1157 (h). Retail Sales, Convenience
- 1158 (i). Home Occupation, Major
- 1159 (j). Home Occupation, Minor
- 1160 (k). Mass Transit Station
- 1161 (l). Motel
- 1162 (m). Hotel
- 1163 (n). Inn
- 1164 (o). Rooming House
- 1165 (p). Personal Services
- 1166 (q). Public Assembly Area
- 1167 (r). Theater
- 1168 (s). Public Utility Facility
- 1169 (t). Restaurant
- 1170 (u). Retail Sales, but (excluding those of which the principal activity entails outdoor
- 1171 sales and/or storage)

- 1172 (v). Commercial School
- 1173 (w). Public or Private School
- 1174 (x). Nursery School
- 1175 (y). Day Care Facility
- 1176 (z). Elder Care Facility
- 1177 (aa). Hospital
- 1178 (bb). Nursing Care Facility, Long-term
- 1179 (cc). Convalescent Care Facility
- 1180 (dd). Public Facility
- 1181 (ee). Religious Use
- 1182 (ff). Private Assembly
- 1183 (gg). Specialty Food and/or Beverage Facility
- 1184
- 1185 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1186
- 1187 G. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L).
- 1188 (1) Permitted Uses.
- 1189 (a) Recreation, Public Open Space
- 1190
- 1191 (2) Special Exception Uses.
- 1192 (a) Accessory Uses & Buildings
- 1193 (b) Aquaculture
- 1194 (c) Home Occupations, Major
- 1195 (d) Home Occupations, Minor
- 1196 (e) Public Utility Facilities,
- 1197 (f) Dwelling, Single-Family
- 1198
- 1199 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone RP-
- 1200 SL
- 1201

1202 **16.4.18 Business – Local 1 (B-L1)**1203 Purpose1204 A. Purpose

1205 The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart growth/urban
1206 design pattern that will serve as a focal point for the provision of local sales, urban
1207 residences, services and business space. The goal of this section is to create an attractive,
1208 functional and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and
1209 residential uses. This type of development reflects a traditional New England pattern of
1210 building, where commercial uses are located on the first floor and housing on the upper
1211 floors.

1212

1213 B. Permitted uses

1214 The following uses are permitted in the B-L1 Zone:

- 1215 (1) Accessory Dwelling Unit
- 1216 (2) Dwelling, Attached Single-Family
- 1217 (3) Dwelling, Manufactured Housing
- 1218 (4) Dwelling, Multi-Family
- 1219 (5) Dwelling, Single-Family
- 1220 (6) Dwelling, Two-Family
- 1221 (7) Convalescent Care Facility
- 1222 (8) Nursing Care Facility, Long-term
- 1223 (9) Residential Care Facility
- 1224 (10) Accessory Buildings, Structures, and Uses
- 1225 (11) Home Occupation, Major
- 1226 (12) Home Occupation, Minor
- 1227 (13) Inn
- 1228 (14) Day Care Facility
- 1229 (15) Hospital
- 1230 (16) Nursery School
- 1231 (17) Private Assembly
- 1232 (18) Public Facility
- 1233 (19) Public or Private School
- 1234 (20) Religious Use
- 1235 (21) Recreation, Public Open Space
- 1236 (22) Commercial School
- 1237 (23) Art Studio or Gallery
- 1238 (24) Business & Professional Offices
- 1239 (25) Business Services
- 1240 (26) Conference Center
- 1241 (27) Personal Services
- 1242 (28) Restaurant

- 1243 (29) Retail Sales (excluding those of which the principal activity entails outdoor sales
 1244 and/or storage and excluding those specifically mentioned under Subsection C of this
 1245 section)
- 1246 (30) Retail Sales, Building Materials & Garden Supply (excluding those of which the
 1247 principal activity entails outdoor sales and/or storage)
- 1248 (31) Retail Sales, Convenience
- 1249 (32) Specialty Food and/or Beverage Facility
- 1250 (33) Mass Transit Station
- 1251 (34) Parking Area SD11

1253 C. Special exception uses

1254 The following uses are permitted as special exception uses in the B-L1 Zone:

- 1255 (1) Motel
- 1256 (2) Hotel
- 1257 (3) Rooming House
- 1258 (4) Funeral Home
- 1259 (5) Gasoline Service Station
- 1260 (6) Public Assembly Area
- 1261 (7) Theater
- 1262 (8) Public Utility Facility
- 1263 (9) Farmers Market
- 1264 (10) Mechanical service

1266 D. Standards

1267 All development and the use of land in the B-L1 Zone must meet the following standards.
 1268 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design
 1269 and performance standards of § 16.5, 16.7 and 16.8 must be met.

- 1270
- 1271 (1) The following space standards apply
- 1272 (a) Minimum land area per dwelling unit:
- 1273 [1] When all floors are residential: 8,000 square feet
- 1274 [2] When the entire first floor is in nonresidential use: 3,500 square feet.
- 1275 (b) Minimum parking spaces per dwelling unit: 1.5.
- 1276 (c) Minimum lot size: 20,000 square feet.
- 1277 (d) Minimum street frontage per building: 50 feet.
- 1278 (e) Maximum front yard: 30 feet.
- 1279 (NOTE: This area must be designed to promote a pedestrian public space, which
 1280 includes, but is not limited to, landscaping, sidewalks and sitting areas. Parking
 1281 and outdoor storage are prohibited anywhere in the front yard of the structure,
 1282 except for seasonal sales items.)
- 1283 (f) Minimum rear and side yards: 10 feet.
- 1284 (NOTE: Except as otherwise required by the buffer provisions of this title, and

1285 except where the side and/or rear yards abut a residential zone or use; in which
1286 case a minimum of 15 feet or 50% of the building height, whichever is greater, is
1287 required.)

1288 (g) Maximum building height: 40 feet.

1289 (h) Maximum building and outdoor stored material coverage: 50%.

1290 (i) Minimum area dedicated to landscaped area: 15%.

1291 (j) Hours of operation must be noted on the final site plan and are determined by the
1292 Planning Board on a case-by-case basis. All lighting other than designated
1293 security lighting must be extinguished outside of noted hours of operation.

1294 (k) Minimum water body setback for functionally water-dependent uses: zero feet.

1295 (l) Minimum setback from streams, water bodies and wetlands: in accordance with
1296 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1297 (m) Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b)
1298 not be located within 1,000 feet of any private residence; and (c) not be located
1299 within 150 feet of any existing structure. [SD12]

1300

1301 (2) Parking.

1302 (a) Parking must be on the side or back yard;

1303 (b) Shared access must be provided where feasible; and

1304 (c) New or revised parking must be visually screened through the use of landscaping,
1305 earthen berms and/or fencing from adjacent public streets or residential properties.
1306 (See the Design Handbook for appropriate examples.)

1307

1308 (3) Building design standards

1309 Kittery's characteristic buildings reflect its historic seacoast past. The primary
1310 architectural styles are New England Colonial (such as Cape Cod and saltbox),
1311 Georgian, Federal and Classical Revival. New buildings must be compatible with
1312 Kittery's characteristic styles in form, scale, material and color. In general, buildings
1313 should be oriented to the street with the front of the building facing the street.

1314 Architectural design and structure location must reinforce the human scale and
1315 pedestrian nature of the neighborhood by using orientation and building massing,
1316 exterior building materials, and roofing as set forth below. The front or street facade
1317 must be designed as the front of the building. The front elevation must contain one or
1318 more of the following elements: 1) a "front door," although other provisions for
1319 access to the building may be provided; 2) windows; or 3) display cases. (See Design
1320 Handbook for examples of acceptable materials and designs.) Main entries should be
1321 clearly visible from the street and provide adequate cover from the weather. Strict
1322 imitation is not required. Design techniques can be used to maintain compatibility
1323 with characteristic styles and still leave enough flexibility for architectural variety. To
1324 achieve this purpose, the following design standards apply to new and modified
1325 existing building projects:

1326 (a) Exterior building materials and details. Building materials and details strongly
1327 define a project's architectural style and overall character. (See Design Handbook
1328 for examples of acceptable materials, building scale, and designs.) "One-sided"
1329 schemes are prohibited; similar materials and details must be used on all sides of a
1330 building to achieve continuity and completeness of design. Predominant exterior
1331 building materials must be of good quality and characteristic of Kittery, such as

- 1332 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or
1333 simulated stone, glass and vinyl, or metal clapboard.
- 1334 (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless
1335 demonstrated to the Planning Board's satisfaction that this is not practicable.
1336 Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs
1337 and roof facades (such as "stuck on" mansards) are not acceptable as prominent
1338 roof forms except as provided above. Roof colors must be muted. (See Design
1339 Handbook for examples.) The roof design must screen or camouflage rooftop
1340 protrusions to minimize the visual impact of air-conditioning units, air handler
1341 units, exhaust vents, transformer boxes and the like. (See Design Handbook for
1342 examples of appropriate treatments.)
- 1343 (c) Loading docks and overhead doors. Loading docks and overhead doors must be
1344 located on the side or rear of the building and must be screened from view from
1345 adjacent properties in residential use.
- 1346
- 1347 (4) Landscaping/site improvements.
- 1348 To achieve attractive and environmentally sound site design and appropriate screening of
1349 parking areas, in addition to the landscaping standards contained in § 16.7 and § 16.8, the
1350 following landscaping requirements apply to new and modified existing developments:
1351
- 1352 (a) Fifteen percent of site area must be landscaped;
- 1353 (b) Outdoor spaces must be created to reinforce commercial activities and pedestrian-
1354 friendly access. Outdoor spaces are encouraged throughout the site with special
1355 attention along the sidewalk and street. Architectural features such as decorative
1356 pavers, planters and benches are encouraged in the creation of these spaces;
- 1357 (c) The space between the roadway and any buildings must be attractively landscaped
1358 using trees, flowers, shrubs, fencing or stone walls to reinforce the site's unique
1359 character and building design;
- 1360 (d) A buffer between commercial and residential zones must be established and be
1361 landscaped with a visually pleasing mixed planting type;
- 1362 (e) Solid fencing, berms and/or stone walls must be used to prevent headlights from
1363 shining on abutting residential property. Incorporating flowering vines and other
1364 plantings on fences and blank exterior walls is encouraged;
- 1365 (f) Provide street trees in a pattern reflecting the existing streetscape. For new
1366 buildings, a minimum of one street tree must be planted for each 25 feet of street
1367 frontage. The trees may be spaced along the frontage or grouped or clustered to
1368 enhance the visual quality of the site. (See Design Handbook for examples.) The
1369 trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet
1370 high at the time of planting. The species must be selected from the list of approved
1371 street trees in the Design Handbook. Existing large healthy trees must be
1372 preserved if practical and will count toward this requirement.
- 1373 (g) For additions to existing buildings and changes of residential structures to a
1374 nonresidential use, one street-side tree (see list of street trees in Design
1375 Handbook) is required to be planted for every 1,000 square feet of additional gross
1376 floor area added or converted to nonresidential use. In instances where parking,
1377 display area, storage, building or necessary vehicle circulation exists at the time of
1378 enactment of this section, the required trees may be clustered and/or relocated

1379 away from the road as is necessary to be practicable. The preservation of existing
1380 large trees is encouraged; therefore, the Planning Board may permit the
1381 preservation of existing healthy, large, mature trees within developed areas of the
1382 site to be substituted for the planting of new trees;

1383 (h) Service and storage areas must be located to the rear of the building and be
1384 shielded using plantings and/or fencing. Facilities for waste storage such as
1385 dumpsters must be located within an enclosure and be visually buffered by
1386 fencing, landscaping and/or other treatments (see Design Handbook for examples
1387 of appropriate buffering);

1388 (i) No storage may be in front of buildings except seasonal sales items;

1389 (j) Lighting and landscape plans must be provided and approved as a part of final
1390 plan; and

1391 (k) Lighting along the street must be of a pedestrian scale using an architectural
1392 fixture appropriate to the neighborhood.

1393

1394 (5) Traffic and circulation standards.

1395 Sidewalks and roadways must be provided within the site to internally join abutting
1396 properties that are determined by the Planning Board to be compatible. In addition, safe
1397 pedestrian route(s) must be provided to allow pedestrians to move within the site and
1398 between the principal customer entrance and the front lot line where a sidewalk exists or
1399 will be provided or where the Planning Board determines that such a route is needed for
1400 adequate pedestrian safety and movement. (See Design Handbook for appropriate
1401 examples.)

1402

1403 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)

1404 (1) Permitted uses

1405 (a) Accessory Uses & Building

1406 (b) Aquaculture

1407 (c) Recreation, Public Open Space

1408

1409 (2) Special exception uses

1410 (a) Art Studio or Gallery

1411 (b) Business & Professional Offices

1412 (c) Business Services

1413 (d) Retail Sales, Building Materials & Garden Supply (excluding those of which the
1414 principal activity entails outdoor sales and/or storage)

1415 (e) Conference Center

1416 (f) Retail Sales, Convenience

1417 (g) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
1418 cooking of seafood occur at the site)

1419 (h) Parking Area

1420 (i) Dwelling, Manufactured Housing

1421 (j) Dwelling, Single-Family

1422 (k) Dwelling, Two-Family

1423 (l) Farmers market

1424 (m) Funeral Home

1425 (n) Home Occupation, Major

- 1426 [\(o\) Home Occupation, Minor](#)
1427 [\(p\) Inn](#)
1428 [\(q\) Mass Transit Station](#)
1429 [\(r\) Motel](#)
1430 [\(s\) Hotel](#)
1431 [\(t\) Inn](#)
1432 [\(u\) Rooming House](#)
1433 [\(v\) Personal Service](#)
1434 [\(w\) Public Assembly Area](#)
1435 [\(x\) Theater](#)
1436 [\(y\) Public Utility Facility](#)
1437 [\(z\) Restaurant](#)
1438 [\(aa\) Retail Sales \(excluding those of which the principal activity entails outdoor](#)
1439 [sales and/or storage\)](#)
1440 [\(bb\) Specialty Food and/or Beverage Facility](#)
1441
1442 [\(3\) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL](#)
1443
1444 [F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone \(B-L1\)](#)
1445 [\(1\) Permitted Uses](#)
1446 [\(a\) Recreation, Public Open Space](#)
1447
1448 [\(2\) Special Exception Uses](#)
1449 [\(a\) Accessory Uses & Buildings](#)
1450 [\(b\) Home Occupations, Major](#)
1451 [\(c\) Home Occupations, Minor](#)
1452 [\(d\) Public Utility Facility](#)
1453 [\(e\) Dwelling, Single-Family, including modular homes](#)
1454
1455 [\(3\) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-](#)
1456 [RP](#)
1457

1458 **16.4.19. Commercial 1, Route 1 Commercial Zone (C-1)**1459 **A. Purpose**

1460 (1) The C-1 (Route 1 Commercial) Zone proposes to add a range of uses and building types,
1461 including residential, to a vehicle-dependent predominately retail-oriented shopping area
1462 with proximity to several small neighborhoods. The presence of significant existing
1463 infrastructure and the opportunity to redevelop under-utilized properties for a diversity of
1464 housing types, restaurants, services and shops with increased pedestrian access will allow
1465 the Town to advance Comprehensive Plan housing and economic development goals and
1466 meet the needs of residents into the future.

1467

1468 To reflect the differing character of various parts of the commercial areas, it is divided
1469 into three zones that are shown on the Zoning Map:

1470 C-1 Route 1 Commercial Zone

1471 C-2 Route 236 Commercial Zone

1472 C-3 Bypass/Old Post Road Commercial Zone

1473

1474 Where the standards or requirements for the zones vary, the provisions for the zone in
1475 which the parcel is located apply.

1476

1477 **B. Permitted uses**

1478 The following uses are permitted in the C-1 Zone:

1479 (1) Accessory Dwelling Unit

1480 (2) Convalescent Care Facility

1481 (3) Dwelling, two-family

1482 (4) Nursing Care Facility, Long-term

1483 (5) Accessory Buildings, Structures, and Uses

1484 (6) Home Occupation, Major

1485 (7) Home Occupation, Minor

1486 (8) Hotel

1487 (9) Inn

1488 (10) Motel

1489 (11) Rooming House

1490 (12) Day Care Facility

1491 (13) Hospital

1492 (14) Nursery School

1493 (15) Private Assembly

1494 (16) Public Facility

1495 (17) Public or Private School

1496 (18) Public Utility Facility

1497 (19) Religious Use

- 1498 [\(20\) Recreation, Commercial Indoor](#)
- 1499 [\(21\) Recreation, Commercial Outdoor](#)
- 1500 [\(22\) Recreation, Public Open Space](#)
- 1501 [\(23\) Recreation, Public Facility](#)
- 1502 [\(24\) Commercial School](#)
- 1503 [\(25\) Veterinary Hospital](#)
- 1504 [\(26\) Art Studio or Gallery](#)
- 1505 [\(27\) Business & Professional Offices](#)
- 1506 [\(28\) Business Services](#)
- 1507 [\(29\) Conference Center](#)
- 1508 [\(30\) Personal Services](#)
- 1509 [\(31\) Repair Services](#)
- 1510 [\(32\) Restaurant](#)
- 1511 [\(33\) Retail Sales](#)
- 1512 [\(34\) Retail Sales, Building Materials & Garden Supply](#)
- 1513 [\(35\) Retail Sales, Convenience](#)
- 1514 [\(36\) Specialty Food and/or Beverage Facility](#)
- 1515 [\(37\) Mass Transit Station](#)
- 1516 [\(38\) Parking Area](#)
- 1517 [\(39\) Wholesale Businesses](#)

1518

1519 [C. Special exception uses](#)1520 [The following uses are permitted as special exception uses in the C-1 Zone:](#)

- 1521 [\(1\) Aquaculture](#)
- 1522 [\(2\) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and](#)
- 1523 [16.8. Buildings and structures, other than multi-family dwelling units as part of a](#)
- 1524 [mixed-use building in the C-1 Zone, west of Route 1, which are taller as allowed in](#)
- 1525 [§ 16.4.19.E\(2\)e higher than 40 actual feet from the lowest point of grade to the](#)
- 1526 [highest point of the building or structure must have side, rear and front yards of](#)
- 1527 [sufficient depth to adequately protect the health, safety and welfare of abutting](#)
- 1528 [properties and which may not be less than current standards or 50% of actual height,](#)
- 1529 [whichever is greater;](#)^[SD13]
- 1530 [\(3\) Cottage Cluster](#)
- 1531 [\(4\) Dwelling, attached single-family](#)
- 1532 [\(5\) Dwelling, multi-family](#)
- 1533 [\(6\) Dwelling units as part of a mixed-use building](#)
- 1534 [\(7\) Funeral Home](#)
- 1535 [\(8\) Gasoline Service Station](#)
- 1536 [\(9\) Industry, Light](#)
- 1537 [\(10\) Mechanical Services](#)
- 1538 [\(11\) Mini Storage not located within 2,000 feet from an existing mini storage](#)
- 1539 [facility located in the same zoning district](#)
- 1540 [\(12\) Public Assembly Area](#)

- 1541 (13) Theater
- 1542 (14) Repair Garage SD14
- 1543 (15) Research & Development
- 1544 (16) Transportation Terminal
- 1545 (17) Warehousing & Storage
- 1546 (18) Marijuana Business, except a Marijuana Cultivation Facility

1547

1548 D. Undefined Uses in C-1 and C-3 Zones

1549 (1) Undefined uses will be considered by the Planning Board based on the following
 1550 criteria:

- 1551 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
- 1552 and
- 1553 (b). If the use meets special exception criteria found in § 16.4.19.E.

1554

1555 (2) In addition, the undefined use must meet one or both of the following criteria:

- 1556 (a). If the proposed use has substantially similar impacts as a listed use.
- 1557 (b). If the proposed use is compatible with existing uses within the zoning district for
 1558 which it is proposed.

1559

1560 E. Standards.

1561 (1) C Zone standards. All development and the use of land in the C Zone must meet the
 1562 following standards. Kittery's Design Handbook illustrates how these standards can be
 1563 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
 1564 be met unless noted otherwise below.

1565

1566 (2) The following space standards apply in the C-1 Zones:

1567

1568 (a) Minimum lot size or density:

<u>C-1 Zones</u>	
<u>Cottage Cluster;</u> <u>Dwelling, attached single-family;</u> <u>Dwelling, multi-family;</u> <u>Dwelling, two-family;</u> <u>Dwelling units as part of a mixed-use</u> <u>building</u>	<u>16 units per acre unless 25%</u> <u>of units are affordable</u> <u>housing units as defined by</u> <u>this code, in which case 20</u> <u>units per acres allowed*</u>
<u>All other uses</u>	<u>40,000 Sq Ft</u>

1569 *NOTE: These uses are exempt from net residential acreage calculations but are
 1570 subject to minimum land area per dwelling unit requirement as described in §
 1571 16.5.18.D Exemptions to net residential acreage calculations.

1572

1573 (b). Minimum street frontage:

<u>C-1 Zone</u>	
<u>All uses</u>	<u>No minimum*</u>

1574 *NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically
 1575 modified by this section (16.4.19). Street frontage must provide sufficient vehicular
 1576 and pedestrian access for the uses proposed while meeting public health and safety
 1577 requirements (e.g. Fire Department, Department of Public Works). The applicant must
 1578 demonstrate to the municipal permitting authority, that the street frontage and lot
 1579 design meet these requirements to the extent practicable.

1580
 1581 (c). Maximum front setback:

<u>C-1 Zone</u>	
<u>All uses</u>	<u>15 Ft*</u>

1582 * NOTE: The Planning Board may, at its discretion, allow a greater setback when
 1583 public amenities such as benches, pocket parks, outdoor dining or seating areas are
 1584 proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those
 1585 lots which also have frontage on Route 1 Bypass, are required to have at least a 15-
 1586 foot setback on Old Post Road.

1587
 1588 (d). Minimum rear and side setbacks:

<u>C-1 Zone</u>	
<u>All Uses</u>	<u>10 Ft*</u>

1589 *NOTE: Except where side and/or rear setback of proposed new uses about a single-
 1590 family use and/or any properties located on the east side of Route 1 from the
 1591 southernmost extent of the C-1 zone north to properties abutting Ox Point Drive in
 1592 which case a minimum of 40 feet is required. See 16.4.19.E(4)e for buffer
 1593 requirements.

1594
 1595 (e). Maximum building height:

<u>C-1 Zone</u>	
<u>Dwelling, multi-family;</u> <u>Dwelling units as part of a</u> <u>mixed-use building</u>	<u>50 feet on the west side of Route 1,</u> <u>not including solar apparatus* and</u> <u>40 feet on the east side of Route 1,</u> <u>not including solar apparatus*.</u>
<u>All other uses</u>	<u>40 Ft</u>

1596 *NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or
 1597 electrical apparatus off the ground, are acceptable provided that such apparatus is
 1598 screened from view and the screening is designed as an integral part of the building to
 1599 aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar
 1600 array installations are also acceptable.

1601
 1602 (f). Impervious Surface:

1603 [1].For lots in the C-1 and C-3 zones which are currently developed and for which

- 1604 new multi-family, attached single-family or two-family dwellings, cottage
1605 clusters, or dwelling units as part of mixed-use building are proposed, either
1606 with or without existing or new commercial uses on the same lot, the
1607 maximum impervious surface, including but not limited to driveways,
1608 buildings, sidewalks and parking areas:
- 1609 [a]. Is 70%; or
- 1610 [b]. The Planning Board may at its discretion, allow greater than 70% if proof
1611 that all stormwater will be managed on-site, utilizing LID (Low Impact
1612 Development) and BMP (Best Management Practice) systems based on
1613 MaineDEP’s Maine Stormwater Best Management Practices Manual,
1614 Volumes I-III as amended from time to time. The stormwater report and
1615 plan demonstrating that this requirement is met must be included with the
1616 application at the time of submission.
- 1617
- 1618 [2].For lots in the C-3 zone which are currently vacant (no existing structure) and
1619 for which new multi-family, attached single-family, or two-family dwellings,
1620 cottage clusters, or dwelling units as part of mixes-use building are proposed,
1621 the maximum impervious surface, including driveways, buildings, sidewalks
1622 and parking areas:
- 1623 [a]. Is 60%; or
- 1624 [b]. The Planning Board may, at its discretion, allow greater than 60% if
1625 proof that all stormwater will be managed on-site utilizing LID (Low
1626 Impact Development) and BMP (Best Management Practice) systems
1627 based on Maine DEP’s Maine Stormwater Best Management Practices
1628 Manual, Volumes 1-III as amended from time to time. The stormwater
1629 report and plan demonstrating that this requirement is met must be
1630 included with the application at the time of submission.
- 1631
- 1632 [3] For lots in the C-1 or C-3 zones which are currently developed and for which
1633 redevelopment is proposed with new non-residential structures, the maximum
1634 impervious surface, including but not limited to driveways, buildings,
1635 sidewalks and parking areas:
- 1636 [a]. Is 70%; and all stormwater must be managed on-site, utilizing LID (Low
1637 Impact Development) and BMP (Best Management Practice) systems
1638 based on Maine DEP’s Maine Stormwater Best Management Practices
1639 Manual, Volumes 1-III as amended from time to time. The stormwater
1640 report and plan demonstrating that this requirement is met must be
1641 included with the application at the time of submission.
- 1642
- 1643 [4] For all uses in the C-2 Zone, building and outdoor material coverage must
1644 not exceed 40%.
- 1645
- 1646 (g).Minimum water body setback for functionally water-dependent uses: zero feet.
1647 (h).Minimum setback from streams, water bodies and wetlands: in accordance with
1648 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 1649 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
1650 residence; and ii) not located within 150 feet of an existing structure.

- 1651 (j). Repair Garages must not be located within 150 feet of a private dwelling or
1652 existing structure.
- 1653 (k). Affordable housing requirements:
- 1654 [1]. All requirements in 16.5.4 Affordable Housing must be met.
- 1655 [2]. Density incentives outlined above in (2)(a) may be applied to projects that
1656 create affordable housing units, as defined by this code. No proportional
1657 payment-in-lieu is required if the affordable dwelling unit requirements for the
1658 density incentives are met.
- 1659 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
1660 the street-facing first floor.
- 1661 (m). Underground utilities are required. The Planning Board may allow an
1662 alternative but it is incumbent upon the applicant to demonstrate why such a
1663 modification request should be granted.
- 1664 (n). Cottage cluster requirements:
- 1665 [1]. Cottage cluster dwelling units must either face the required common open
1666 space or the street. The required open space must be held in common for use
1667 by all the cottage cluster residents and must be immediately accessible to each
1668 dwelling unit, via either the front or the back of each unit.
- 1669 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
1670 Spacing between units must comply with the requirements of the Fire
1671 Department and/or the State Fire Marshal's office.
- 1672 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
1673
- 1674 (3) C-1 Zone standards. All development and the use of land except for new multifamily,
1675 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
1676 part of a mixed-use building within the C-1 Zone must meet the following standards:
1677
- 1678 (a). Parking.
- 1679 [1]. All new or revised parking must be visually screened by landscaping, earthen
1680 berms and/or fencing from adjacent public streets or residential properties.
1681 (See the Design Handbook for appropriate examples.)
- 1682 [2]. Each parking space is to contain a rectangular area at least 19 feet long and
1683 nine feet wide. Lines demarcating parking spaces may be drawn at various
1684 angles in relation to curbs or aisles, so long as the parking spaces so created
1685 contain within them the rectangular area required by this section. This is
1686 exclusive of drives or aisles giving access thereto, accessible from streets or
1687 aisles leading to streets, and usable for the storage or parking of passenger
1688 vehicles. Parking spaces or access thereto must be constructed as to be usable
1689 year-round.
- 1690
- 1691 (b). Building design standards.
- 1692 Kittery's characteristic buildings reflect its historic seacoast past. The primary
1693 architectural styles are New England Colonial (such as Cape Cod and saltbox),
1694 Georgian, Federal and Classical Revival. New buildings must be compatible with
1695 Kittery's characteristic styles in form, scale, material and color. In general, buildings
1696 should be oriented to the street with the front of the building facing the street. The

1697 front or street facade must be designed as the front of the building. The front elevation
1698 must contain one or more of the following elements: 1) a "front door," although other
1699 provisions for access to the building may be provided; 2) windows; or 3) display
1700 cases. (See Design Handbook for examples of acceptable materials and designs.)
1701 Strict imitation is not required. Design techniques can be used to maintain
1702 compatibility with characteristic styles and still leave enough flexibility for
1703 architectural variety. To achieve this purpose, the following design standards apply to
1704 new and modified existing building projects:

1705 [1] Exterior building materials and details. Building materials and details strongly
1706 define a project's architectural style and overall character. (See Design
1707 Handbook for examples of acceptable materials, building scale, and designs.)
1708 "One-sided" schemes are prohibited; similar materials and details must be
1709 used on all sides of a building to achieve continuity and completeness of
1710 design. Predominant exterior building materials must be of good quality and
1711 characteristic of Kittery, such as horizontal wood board siding, vertical wood
1712 boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal
1713 clapboard.

1714 [2] Roofs. A building's prominent roofs must be pitched a minimum of 4:12
1715 unless demonstrated to the Planning Board's satisfaction that this is not
1716 practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat
1717 roofs, shed roofs and roof facades (such as "stuck on" mansards) are not
1718 acceptable as prominent roof forms except as provided above. The roof design
1719 must screen or camouflage rooftop protrusions to minimize the visual impact
1720 of air-conditioning units, air handler units, exhaust vents, transformer boxes,
1721 and the like. (See Design Handbook for examples of appropriate treatments.)

1722 [3] Loading docks and overhead doors. Loading docks and overhead doors must
1723 be located on the side or rear of the building and screened from view from
1724 adjacent properties in residential use.

1725

1726 (c). Landscaping site improvements

1727 To achieve attractive and environmentally sound site design and appropriate screening
1728 of parking areas, in addition to the landscaping standards contained in Chapter 16.8
1729 the following landscaping requirements apply to new and modified existing
1730 developments:

1731 [1]. Landscape planter strip. A vegetated landscape planter strip must be provided
1732 a minimum of 30 feet in depth adjacent to the right-of-way of all public roads
1733 and include the following landscape elements:

1734 [2]. Ground cover. The entire landscape planter strip must be vegetated except for
1735 approved driveways, walkways, bikeways and screened utility equipment.

1736 [3]. Street-side trees. A minimum of one street tree must be planted for each 25
1737 feet of street frontage. The trees may be spaced along the frontage or grouped
1738 or clustered to enhance the visual quality of the site. (See Design Handbook
1739 for examples.) The trees must be a minimum two-and-one-half-inch caliper
1740 and be at least 12 feet high at the time of planting. The species should be
1741 selected from the list of recommended street trees in the Design Handbook.
1742 Existing large healthy trees must be preserved if practical and will count
1743 toward this requirement.

1744 [4]. Planter strip. Shrubs and flowering perennials must be planted at a minimum

1745 of 10 plants per 40 linear feet of street frontage unless existing woodlands are
1746 being retained or such planting is inconsistent with the retention of rural
1747 landscape features. The plant material should be selected from the list of
1748 recommended materials in the Design Handbook. The plants must be placed
1749 within the planter strip to enhance the visual character of the site and augment
1750 natural features and vegetation. (See Design Handbook for examples of
1751 appropriate treatments.)

1752 [5].Special situations.

1753 [a]. Expansions of less than 2,000 square feet to existing uses are exempt
1754 from the landscaping standard of this subsection.

1755 [b]. Depth of landscape planter strip. In instances where the required
1756 minimum depth of the landscape planter strip is legally utilized, in
1757 accordance with previous permits or approvals, for parking, display, storage,
1758 building or necessary vehicle circulation, the depth may be narrowed by the
1759 Planning Board to the minimum extent necessary to achieve the objective of
1760 the proposed project, provided the required shrubs and perennials are
1761 planted along the street frontage to soften the appearance of the
1762 development from the public street. If providing the required landscape
1763 planter strip together with other required landscaping and required vegetated
1764 areas in and around wetlands would cause the project to exceed the required
1765 open space standards, the depth of the landscape planter strip and the front
1766 yard may be reduced by the Planning Board so the open space standards are
1767 not exceeded, but in no case to less than 20 feet for this reason.

1768 [c]. Additions and changes in use. For additions to existing buildings and
1769 changes of residential structures to a nonresidential use, one street-side tree
1770 (see list of recommended street trees in Design Handbook) is required to be
1771 planted for every 1,000 square feet of additional gross floor area added or
1772 converted to nonresidential use. In instances where parking, display area,
1773 storage, building or necessary vehicle circulation exists at the time of
1774 enactment of this section, the required trees may be clustered and/or
1775 relocated away from the road as is necessary to be practicable. The
1776 preservation of existing large trees is encouraged; therefore, the Planning
1777 Board may permit the preservation of existing healthy, large, mature trees
1778 within the landscape planter strip or other developed areas of the site to be
1779 substituted for the planting of new trees.

1780 [d]. Residences. Residential additions to existing single- and two-family
1781 dwelling and proposed single- and duplex-family dwellings are exempt
1782 from the landscaping standards of this subsection.

1783

1784 [6].Outdoor service and storage areas. Service and storage areas must be located
1785 to the side or rear of the building. Facilities for waste storage such as
1786 dumpsters must be located within an enclosure and be visually buffered by
1787 fencing, landscaping and/or other treatments. (See Design Handbook for
1788 examples of appropriate buffering.)

1789

1790 (d).Traffic and circulation standards

1791 [1].Sidewalks and roadways must be provided within the site to internally join

1792 abutting properties that are determined by the Planning Board to be
 1793 compatible. In addition, safe pedestrian route(s) must be provided to allow
 1794 pedestrians to move within the site and between the principal customer
 1795 entrance and the front lot line where a sidewalk exists or will be provided or
 1796 where the Planning Board determines that such a route is needed for adequate
 1797 pedestrian safety and movement. (See Design Handbook for appropriate
 1798 examples.)

1799

1800 (e). Open space standards

1801 [1]. Open space must be provided as a percentage of the total area of the lot,
 1802 including freshwater wetlands, water bodies, streams and setbacks. Twenty-
 1803 five percent of each lot must be designated as open space. Required open
 1804 space must be shown on the plan with a note dedicating it as "open space."
 1805 The open space must be located to create an attractive environment on the site,
 1806 minimize environmental impacts, protect significant natural features or
 1807 resources on the site, and maintain wildlife habitat. Individual large, healthy
 1808 trees and areas with mature tree cover should be included in the open space.
 1809 Where possible, the open space must be located to allow the creation of
 1810 continuous open space networks in conjunction with existing or potential open
 1811 space on adjacent properties. The required amount of designated open space is
 1812 reduced to 15% of each lot that is less than 100,000 square feet in size.

1813 [2]. Minimum land area per unit for elder-care facilities that are connected to the
 1814 public sewerage system:

1815 [a]. Dwelling unit with two or more bedrooms: 3,000 square feet.

1816 [b]. Dwelling unit with less than two bedrooms: 2,000 square feet.

1817 [c]. Residential care unit: 1,500 square feet.

1818 [d]. Minimum land area per bed for nursing care and convalescent care
 1819 facilities that are connected to the public sewerage system: 1,200 square
 1820 feet.

1821

1822 (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family
 1823 dwellings, two- family dwellings where more than one two-family dwelling is
 1824 proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use
 1825 building:

1826

1827 (a). Design Standards.

1828 See Kittery's Design Handbook for further information on how these standards can
 1829 be met.

1830 [1]. Sidewalks must be installed within the right-of-way to meet minimum
 1831 requirements as specified in 16.5.27, subject to review and approval by the
 1832 Department of Public Works and MaineDOT if required.

1833 [2]. Connectivity between new housing development and adjacent existing or new
 1834 commercial areas is required. This connectivity must, at minimum, include
 1835 sidewalks or walkways. In the C-1 zone, connectivity may also include
 1836 vehicular access coupled with sidewalks or walkways between residential and
 1837 commercial areas. Connectivity must be pedestrian- friendly with
 1838 appropriately scaled improvements such as eight-foot-wide sidewalks and

- 1839 human-scaled lighting.
- 1840 [3]. On-street parking is encouraged on new or existing private roads off Route 1,
- 1841 and may be considered as a part of a joint use parking plan when such on-
- 1842 street parking is proposed as part of a development or redevelopment plan.
- 1843 [4]. All service areas for dumpsters, compressors, generators and similar items
- 1844 must be screened by a fence at least six feet tall, constructed of a material
- 1845 similar to surrounding buildings, and must surround the service area except for
- 1846 the necessary ingress/egress.
- 1847 [5]. Parking must be located behind multifamily dwellings and mixed-use
- 1848 buildings with residential dwelling units when viewed from the street. The
- 1849 Planning Board may allow parking to the side or front of such residential or
- 1850 mixed-use buildings at its discretion, but it is incumbent upon the applicant to
- 1851 demonstrate why rear parking is not feasible.
- 1852 [6]. Lighting plans, including lighting fixture designs and photometric plans must
- 1853 be included at the time of application submission. All fixtures must be cut-off
- 1854 to prevent light trespass and meet all requirements of § 16.7.11.H.
- 1855 [7]. A single new two-family dwelling proposed for a lot, the addition of another
- 1856 dwelling unit to an existing single-family residence to create a two-family
- 1857 dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-
- 1858 family residence is exempt from these design standards.

1859

1860

(b). Open Space Standards.

1861

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- [1]. Open space must be provided as a percentage of the total area of the lot, and
- may include wetlands, waterbodies, streams, and setbacks. Fifteen percent
- (15%) of each lot must be designated as open space.

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- [2]. For multifamily dwellings, mixed-use buildings with residential dwelling units
- and attached single-family dwellings, in cases where the property does not
- meet the 15% requirement due to existing development, and where
- redevelopment will remain at the same or comprise a lower percentage of the
- lot, the Planning Board may, at its discretion, allow a smaller percentage of
- open space. In granting this concession, the Board may require more intensive
- landscape plantings.

1871

1872

(c). Parking Standards.

1873

1874

The following minimum off-street parking requirements must be provided and

maintained in case of new construction, alterations, and changes of use:

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- [1]. Parking requirements must 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 16.7.11.F,
- minimum parking requirements for the uses below are modified as specified:

1882

[a]. Dwelling units: 1 parking space per dwelling unit.

1883

1884

1885

[b]. For multifamily dwellings, if more than ten parking spaces are required,

up to 20% of the parking may be designated for compact cars. See 16.7.11.F

Off-Street Parking Standards.

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[2]. 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;

[3]. 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.

[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]. Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;

[c]. Joint use parking areas must be located within 1,500 feet of the uses 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 must be demonstrated to the municipal permitting authority's satisfaction, including any proposed improvements, such as crosswalks or shuttle service that may be offered and its requisite loading/unloading areas;

[e]. Such joint parking areas must not be located in residential zones of the Town.

[4]. In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.

[5]. Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.

(d). Landscaping and Screening.

[1]. For new multi-family, attached single-family, or dwelling units as part of a mixed-use building or any new residential use that will create more than three dwelling units on a site, the following standards apply:

[a]. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

[b]. A minimum of one street tree must be planted for each 25 feet of street frontage. Trees may be planted in groups or spaced along the frontage.

- 1932 However, trees must be planted to ensure survival, using silva cells,
 1933 bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch
 1934 caliper and 12 feet high at the time of planting. Existing large healthy
 1935 trees must be preserved if practical and will count towards this
 1936 requirement. Trees proposed within the right-of-way must remain under
 1937 20 feet tall at maturity.
- 1938 [c]. Surface parking lots designed for five or more cars that will service
 1939 multifamily or mixed-use buildings with dwelling units and which abut a
 1940 street, an existing single- family use, or a residential zone, must provide
 1941 screening in one of the following ways:
- 1942 [i]. One tree per 25 feet of street frontage backed by a fence constructed
 1943 of a material similar to surrounding buildings which must screen the
 1944 parking area from the street except for necessary vehicular and
 1945 pedestrian access. To ensure survival, trees must be planted using
 1946 silva cells, bioretention cells or tree wells. Trees must be at least 2.5-
 1947 inch caliper and 12 feet high at the time of planting. Existing large
 1948 healthy trees must be preserved if practical and will count towards this
 1949 requirement. Trees proposed within the right-of-way must remain
 1950 under 20 feet tall at maturity.
- 1951 [ii]. A combination of trees and shrubs including at least 50% evergreen
 1952 species, all at least six feet high at time of planting, in a planting bed
 1953 at least eight feet wide. Plantings must be sufficient, as determined by
 1954 the Planning Board, to screen the parking area from the street except
 1955 for necessary vehicular and pedestrian access. Planting beds may be
 1956 mulched but no dyed-mulching material may be used.
- 1957 [d]. A minimum of 10% of any surface parking area consisting of 10 or more
 1958 spaces must be landscaped with trees and vegetated islands. This
 1959 requirement is in addition to the aforementioned screening and street tree
 1960 requirements.
- 1961 [e]. Native trees are preferred and must be drought and salt tolerant when used
 1962 along streets. A diversity of tree species (three to five species per every 12
 1963 trees) is required to provide greater resiliency to threats from introduced
 1964 insect pests and diseases.
- 1965 [f]. Any required plantings that do not survive must be replaced within one
 1966 year. This requirement does not expire and runs with the land.
- 1967 [g]. If 25% of the proposed development will be affordable dwelling units, the
 1968 Planning Board may, at its discretion, modify surface parking lot
 1969 landscaping and screening requirements under [c] and [d] above.
- 1970
- 1971 (e). Buffers.
- 1972 [1]. Buffers are required between new residential uses and existing nonresidential
 1973 uses and must be at least 10 feet wide. A buffer plan must be prepared in
 1974 conjunction with the landscape plan as described in [d] [1] above and consist
 1975 of:
- 1976 [a]. A fence at least six feet high, constructed of material similar to
 1977 surrounding buildings, with plantings of trees at least six feet tall at time
 1978 of planting and shrubs on the new residential side of the fence.

- 1979 [b]. Ground cover plantings such as perennials or ornamental grasses must be
 1980 used where appropriate.
- 1981 [c]. Plantings must be provided with irrigation to enhance survival unless
 1982 they are part of a bioretention cell, rain garden or tree well.
- 1983 [d]. Any required plantings that do not survive must be replaced within one
 1984 year. This requirement does not expire and runs with the land.
- 1985 [e]. If 25% of the proposed development will be affordable housing
 1986 dwelling units, the Planning Board may, at its discretion, modify buffer
 1987 requirements under [a] and [c].
- 1988
- 1989 [2]. Buffers are required between new residential uses and existing single-family
 1990 uses and must be at least 10 feet wide. A buffer plan must be prepared in
 1991 conjunction with the landscape plan as described in [d] [1] above and consist
 1992 of:
- 1993 [a]. A fence at least six feet high, constructed of material similar to
 1994 surrounding buildings, with plantings of trees and shrubs at least six feet
 1995 tall on the new residential side of the fence; or
- 1996 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%
 1997 evergreen species. Such plantings must ensure adequate buffering and
 1998 screening is achieved as determined by the Planning Board.
- 1999 [c]. Ground cover plantings, such as perennials or ornamental grasses must be
 2000 used where appropriate.
- 2001 [d]. Plantings must be provided with irrigation to enhance survival unless
 2002 they are part of a bioretention cell, rain garden or tree well.
- 2003 [e]. Any required plantings that do not survive must be replaced within one
 2004 year. This requirement does not expire and runs with the land.
- 2005 [f]. If 25% of the proposed development will be affordable housing dwelling
 2006 units, the Planning Board may, at its discretion, modify buffer
 2007 requirements under [a], [b] and [c].
- 2008

F. Shoreland Overlay Zone OZ-SL – Commercial – 1 Zone (C-1)

- 2009 (1) Permitted uses
- 2010 (a) Accessory Buildings, Structures, and Uses
- 2011 (b) Home Occupation, Major
- 2012 (c) Home Occupation, Minor
- 2013 (d) Recreation, Public Facility
- 2014 (e) Recreation, Public Open Space
- 2015 (f) Recreation, Selected Commercial
- 2016 (g) Public Utility Facility
- 2017 (h) Commercial School
- 2018 (i) Public or Private School
- 2019 (j) Nursery School
- 2020 (k) Hospital
- 2021 (l) Nursing Care Facility, Long-term
- 2022

- 2023 (m) Convalescent Care Facility
- 2024 (n) Public Facility
- 2025 (o) Religious Use
- 2026 (p) Private Assembly
- 2027
- 2028 (2) Special exception uses
- 2029 (a) Aquaculture
- 2030 (b) Art Studio or Gallery
- 2031 (c) Retail Sales, Building Materials & Garden Supply;
- 2032 (d) Business & Professional Offices
- 2033 (e) Business Services
- 2034 (f) Parking Area
- 2035 (g) Conference Center
- 2036 (h) Day Care Facility
- 2037 (i) Retail Sales
- 2038 (j) Retail Sales, Convenience
- 2039 (k) Mass Transit Station
- 2040 (l) Mini Storage
- 2041 (m) Motel
- 2042 (n) Hotel
- 2043 (o) Rooming House
- 2044 (p) Inn
- 2045 (q) Personal Services
- 2046 (r) Repair Services
- 2047 (s) Public Assembly Area
- 2048 (t) Theater
- 2049 (u) Research & Development
- 2050 (v) Restaurant
- 2051 (w) Retail Sales
- 2052 (x) Wholesale Businesses
- 2053 (y) Specialty Food and/or Beverage Facility
- 2054 (z) Transportation Terminal
- 2055 (aa) Veterinary Hospital
- 2056 (bb) Warehousing & Storage
- 2057
- 2058 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2059
- 2060 G. Resource Protection Overlay Zone OZ-RP – Commercial – 1 Zone (C-1).
- 2061 (1) Permitted uses.
- 2062 (a) Recreation, Public Open Space
- 2063

- 2064 (2) Special exception uses.
- 2065 (a) Accessory Uses & Buildings
- 2066 (b) Aquaculture
- 2067 (c) Home Occupations, Major
- 2068 (d) Home Occupations, Minor
- 2069 (e) Public Utility Facilities
- 2070 (f) Research & Development
- 2071
- 2072 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 2073 RP
- 2074

2075 **16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**2076 **A. Purpose**

2077 (1) The purpose of the C-2 (Route 236 Commercial) Zone is to provide services, industry
 2078 and business space within the Town in a location capable of conveniently serving
 2079 community-wide and/or regional trade areas and oriented primarily to vehicular access.

2080 To reflect the differing character of various parts of the commercial areas, it is divided
 2081 into three zones that are shown on the Zoning Map:

2082 C-1 Route 1 Commercial Zone

2083 C-2 Route 236 Commercial Zone

2084 C-3 Bypass/Old Post Road Commercial Zone

2085 Where the standards or requirements for the zones vary, the provisions for the zone in
 2086 which the parcel is located apply.

2087 **B. Permitted uses**

2088 The following uses are permitted in the C-2 Zone:

2089 (1) Accessory Dwelling Unit

2090 (2) Convalescent Care Facility

2091 (3) Nursing Care Facility, Long-term

2092 (4) Accessory Buildings, Structures, and Uses

2093 (5) Home Occupation, Major

2094 (6) Home Occupation, Minor

2095 (7) Hotel

2096 (8) Inn

2097 (9) Motel

2098 (10) Rooming House

2099 (11) Day Care Facility

2100 (12) Hospital

2101 (13) Nursery School

2102 (14) Private Assembly

2103 (15) Public Facility

2104 (16) Public or Private School

2105 (17) Public Utility Facility

2106 (18) Religious Use

2107 (19) Recreation, Commercial Indoor

2108 (20) Recreation, Commercial Outdoor

2109 (21) Recreation, Public Open Space

2110 (22) Recreation, Public Facility

2111 (23) Aquaculture

2112 (24) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
 2113 cooking of seafood occur at the site) |SD15|

2114 (25) Commercial School

- 2115 [\(26\) Veterinary Hospital](#)
- 2116 [\(27\) Art Studio or Gallery](#)
- 2117 [\(28\) Business & Professional Offices](#)
- 2118 [\(29\) Business Service](#)
- 2119 [\(30\) Conference Center](#)
- 2120 [\(31\) Personal Service](#)
- 2121 [\(32\) Repair Service](#)
- 2122 [\(33\) Restaurant](#)
- 2123 [\(34\) Retail Sales](#)
- 2124 [\(35\) Retail Sales, Building Materials & Garden Supply](#)
- 2125 [\(36\) Retail Sales, Convenience](#)
- 2126 [\(37\) Specialty Food and/or Beverage Facility](#)
- 2127 [\(38\) Boatyard](#)
- 2128 [\(39\) Mass Transit Station](#)
- 2129 [\(40\) Mechanical Services](#)
- 2130 [\(41\) New Motor Vehicle Sales](#)
- 2131 [\(42\) Parking Area](#)
- 2132 [\(43\) Wholesale Business](#)

2133

2134 C. Special Exceptions2135 The following land uses are permitted as special exception uses in the C-2 Zone:

- 2136 [\(1\) Adult Entertainment Establishment](#)
- 2137 [\(2\) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and](#)
- 2138 [16.8. Buildings and structures higher than 40 actual feet from the lowest point of](#)
- 2139 [grade to the highest point of the building or structure must have side, rear and front](#)
- 2140 [yards of sufficient depth to adequately protect the health, safety and welfare of](#)
- 2141 [abutting properties, and which may not be less than current standards or 50% of actual](#)
- 2142 [height, whichever is greater;](#)^[SD16]
- 2143 [\(3\) Commercial Greenhouse](#)
- 2144 [\(4\) Construction Services](#)
- 2145 [\(5\) Funeral Home](#)
- 2146 [\(6\) Gasoline Service Station](#)
- 2147 [\(7\) Industry, Light](#)^[SD17]
- 2148 [\(8\) Mini Storage](#)
- 2149 [\(9\) Repair Garage](#)^[SD18]
- 2150 [\(10\) Public Assembly Area](#)
- 2151 [\(11\) Theater](#)
- 2152 [\(12\) Research & Development](#)
- 2153 [\(13\) Shops in Pursuit of Trade](#)
- 2154 [\(14\) Transportation Terminal](#)^[SD19]
- 2155 [\(15\) Used Car Lot](#)
- 2156 [\(16\) Warehousing & Storage](#)

2157 (17) Marijuana Business

2158

2159 D. Standards

2160 (1) C Zone standards. All development and the use of land in the C Zone must meet the
 2161 following standards. Kittery's Design Handbook illustrates how these standards can be
 2162 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must
 2163 be met unless noted otherwise below.

2164

2165 (2) The following space standards apply in the C-2 Zones:

2166 (a) Minimum lot size or density:

<u>C-2 Zone</u>	
<u>All uses:</u>	<u>40,000 Sq Ft</u>

2167

2168 (b).Minimum street frontage:

<u>C-2 Zone</u>	
<u>All uses:</u>	<u>150 Ft</u>

2169

2170 (c). Maximum front setback:

<u>C-2 Zone</u>	
<u>All uses:</u>	<u>50 Ft</u>

2171

2172 (d).Minimum rear and side setbacks:

<u>C-2 Zone</u>	
<u>All Uses</u>	<u>30 Ft**</u>

2173

2174 **NOTE: Except as may be required by the buffer provisions of
 2175 this title, and where the side and/or rear yards of the proposed
 2176 nonresidential use abut a residential zone or use; in which case
 2177 a minimum of 40 feet is required.

2177

2178 (e). Maximum building height:

<u>C-2 Zone</u>	
<u>(f). All uses:</u>	<u>(g).40 Ft</u>

2179

2180 (f). Impervious Surface:

2181 [1] For all uses in the C-2 Zone, building and outdoor material coverage must not
 2182 exceed 40%.

2183 (g).Minimum water body setback for functionally water-dependent uses: zero feet.

- 2184 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
2185 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 2186 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
2187 residence; and ii) not located within 150 feet of an existing structure.
- 2188 (j). Repair Garages must not be located within 150 feet of a private dwelling or
2189 existing structure.
- 2190 (k). Affordable housing requirements:
- 2191 [1]. All requirements in 16.5.4 Affordable Housing must be met.
- 2192 [2]. Density incentives outlined above in (2) (a) may be applied to projects that
2193 create affordable housing units, as defined by this code. No proportional
2194 payment-in-lieu is required if the affordable dwelling unit requirements for the
2195 density incentives are met.
- 2196
- 2197 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
2198 the street-facing first floor.
- 2199 (m). Underground utilities are required. The Planning Board may allow an
2200 alternative but it is incumbent upon the applicant to demonstrate why such a
2201 modification request should be granted.
- 2202 (n). Cottage cluster requirements:
- 2203 [1]. Cottage cluster dwelling units must either face the required common open
2204 space or the street. The required open space must be held in common for use
2205 by all the cottage cluster residents and must be immediately accessible to each
2206 dwelling unit, via either the front or the back of each unit.
- 2207 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
2208 Spacing between units must comply with the requirements of the Fire
2209 Department and/or the State Fire Marshal's office.
- 2210 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
2211
- 2212 (3) C-2 Zone standards.
- 2213 (a). Parking
- 2214 [1]. All new or revised parking must be visually screened through the use of
2215 landscaping, earthen berms and/or fencing from adjacent public streets or
2216 residential properties. (See the Design Handbook for appropriate examples.)
- 2217 [2]. Each parking space is to contain a rectangular area at least 19 feet long and
2218 nine feet wide. Lines demarcating parking spaces may be drawn at various
2219 angles in relation to curbs or aisles, so long as the parking spaces so created
2220 contain within them the rectangular area required by this section. This is
2221 exclusive of drives or aisles giving access thereto, accessible from streets or
2222 aisles leading to streets, and usable for the storage or parking of passenger
2223 vehicles. Parking spaces or access thereto must be constructed as to be usable
2224 year-round.
- 2225
- 2226 (b). Building design standards
- 2227 [1]. New buildings should meet the general design principles set forth in the
2228 Design Handbook. In general, buildings should be oriented to the street with
2229 the front of the building facing the street. The front or street facade must be

- 2230 designed as the front of the building. The front elevation must contain one or
2231 more of the following elements:
- 2232 [a]. A "front door," although other provisions for access to the building may
2233 be provided;
- 2234 [b]. Windows; or
- 2235 [c]. Display cases.
- 2236
- 2237 [2]. A building's prominent roofs must be pitched a minimum of 4:12 unless
2238 demonstrated to the Planning Board's satisfaction that this is not practicable.
2239 Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed
2240 roofs and roof facades (such as "stuck on" mansards) are not acceptable as
2241 prominent roof forms except as provided above. (See Design Handbook for
2242 examples of acceptable designs.)
- 2243 (c). Landscaping site improvements. To achieve attractive and environmentally sound
2244 site design and appropriate screening of parking areas, in addition to the
2245 landscaping standards contained in Chapter 16.8 the following landscaping
2246 requirements apply to new and modified existing developments:
- 2247 [1]. Landscape planter strip. A vegetated landscape planter strip must be provided
2248 a minimum of 20 feet in depth adjacent to the right-of-way of all public roads
2249 and include the following landscape elements:
- 2250 [a]. Ground cover. The entire landscape planter strip must be vegetated
2251 except for approved driveways, walkways, bikeways and screened utility
2252 equipment.
- 2253 [b]. Street-side trees. A minimum of one street tree must be planted for each
2254 50 feet of street frontage. The trees may be spaced along the frontage or
2255 grouped or clustered to enhance the visual quality of the site. (See Design
2256 Handbook for examples.) The trees must be a minimum two-and-one-
2257 half-inch caliper and be at least 12 feet high at the time of planting. The
2258 species should be selected from the list of recommended street trees in the
2259 Design Handbook. Existing large healthy trees must be preserved if
2260 practical and will count toward this requirement.
- 2261
- 2262 (d). Special situations
- 2263 [1]. Expansions of less than 2,000 square feet to existing uses are exempt from the
2264 landscaping standard of this subsection.
- 2265 [2]. Depth of landscape planter strip. In instances where the required minimum
2266 depth of the landscape planter strip is legally utilized, in accordance with
2267 previous permits or approvals for parking, display, storage, building or
2268 necessary vehicle circulation, the depth may be narrowed by the Planning
2269 Board to the minimum extent necessary to achieve the objective of the
2270 proposed project, provided that the required shrubs and perennials are planted
2271 along the street frontage to soften the appearance of the development from the
2272 public street.
- 2273 [3]. Additions and changes in use. For additions to existing buildings and changes
2274 of residential structures to a nonresidential use, one street-side tree (see list of
2275 recommended street trees in Design Handbook) is required to be planted for
2276 every 1,000 square feet of additional gross floor area added or converted to

2277 nonresidential use. In instances where parking, display area, storage, building
 2278 or necessary vehicle circulation exists at the time of enactment of this section,
 2279 the required trees may be clustered and/or relocated away from the road as is
 2280 necessary to be practicable. The preservation of existing large trees is
 2281 encouraged; therefore, the Planning Board may permit the preservation of
 2282 existing healthy, large, mature trees within the landscape planter strip or other
 2283 developed areas of the site to be substituted for the planting of new trees.

2284 [4].Residences. Residential additions to existing single- and two-family dwellings
 2285 and proposed single and duplex family dwellings are exempt from the
 2286 landscaping standards of this subsection.

2287

2288 (e).Outdoor service and storage areas. No areas for the storage of raw materials,
 2289 equipment or finished products other than small areas for the display of samples
 2290 of products available for sale or rent may be located between the front property
 2291 line and the front facade of the building. Display areas may not be located within
 2292 the required landscape planter strip. Facilities for waste storage such as dumpsters
 2293 must be located within an enclosure and be visually buffered by fencing,
 2294 landscaping and/or other treatments. (See Design Handbook for examples of
 2295 appropriate buffering.)

2296

2297 (f). Traffic and circulation standards

2298 [1]. Vehicular and pedestrian circulation must meet the general provisions of the
 2299 Design Handbook.

2300

2301 E. Shoreland Overlay Zone OZ-SL – Commercial – 2 Zone (C-2)

2302 (1) Permitted uses

2303 (a) Accessory Buildings, Structures, and Uses

2304 (b) Home Occupation, Major

2305 (c) Home Occupation, Minor

2306 (d) Aquaculture

2307 (e) Recreation, Public Facility

2308 (f) Recreation, Public Open Space

2309 (g) Recreation, Selected Commercial

2310 (h) Public Utility Facility

2311 (i) Commercial School

2312 (j) Public or Private School

2313 (k) Nursery School

2314 (l) Hospital

2315 (m)Nursing Care Facility, Long-term

2316 (n) Convalescent Care Facility

2317 (o) Public Facility

2318 (p) Religious Institution

2319 (q) Private Assembly

2320

- 2321 (2) Special exception uses
- 2322 (a) Adult Entertainment Establishment, not located within 1,000 feet of an existing
- 2323 private residence, school or place of worship
- 2324 (b) Art Studio or Gallery
- 2325 (c) Boatyard
- 2326 (d) Business & Professional Offices
- 2327 (e) Business Services
- 2328 (f) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 2329 cooking of seafood occur at the site)
- 2330 (g) Parking Area
- 2331 (h) Conference Center
- 2332 (i) Construction Services
- 2333 (j) Day Care Facility
- 2334 (k) Retail Sales, Convenience
- 2335 (l) Retail Sales
- 2336 (m) Mass Transit Station
- 2337 (n) Mini Storage
- 2338 (o) Motel
- 2339 (p) Hotel
- 2340 (q) Rooming House
- 2341 (r) Inn
- 2342 (s) Personal Service
- 2343 (t) Public Assembly Area
- 2344 (u) Theater
- 2345 (v) Research & Development
- 2346 (w) Restaurant
- 2347 (x) Wholesale Business
- 2348 (y) Repair Services
- 2349 (z) Shops in Pursuit of Trade
- 2350 (aa) Specialty Food and/or Beverage Facility
- 2351 (bb) Transportation Terminal
- 2352 (cc) Veterinary Hospital
- 2353 (dd) Warehousing & Storage

2354

2355 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

2356

2357 F. Resource Protection Overlay Zone OZ-RP – Commercial – 2 Zone (C-2).2358 (1) Permitted Uses.2359 (a) Recreation, Public Open Space

2360

2361 (2) Special Exception Uses.

2362 (a) Accessory Uses & Buildings

2363 (b) Aquaculture

2364 (c) Public Utility Facility

2365

2366 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-

2367 RP

2368

2369 **16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**2370 **A. Purpose.**

2371 (1) The C-3 (Bypass/Old Post Road Commercial) Zone proposed to introduce a mix of
 2372 housing, businesses and services to an area that serves as one of the gateways to and
 2373 through Kittery. Existing infrastructure, proximity to residential neighborhoods, and
 2374 direct access to I-95 give this zone opportunities for housing and commercial uses, as
 2375 well as advancing pedestrian access, serving residents and the region.

2376

2377 To reflect the differing character of various parts of the commercial areas, it is divided
 2378 into three zones that are shown on the Zoning Map:

2379 C-1 Route 1 Commercial Zone2380 C-2 Route 236 Commercial Zone2381 C-3 Bypass/Old Post Road Commercial Zone

2382

2383 Where the standards or requirements for the zones vary, the provisions for the zone in
 2384 which the parcel is located apply.

2385 **B. Permitted uses**2386 **The following uses are permitted in the C-3 Zone:**2387 (1) Accessory Dwelling Unit2388 (2) Convalescent Care Facility2389 (3) Dwelling, two-family2390 (4) Nursing Care Facility, Long-term2391 (5) Residential Care Facility2392 (6) Accessory Buildings, Structures, and Uses2393 (7) Home Occupation, Major2394 (8) Home Occupation, Minor2395 (9) Hotel2396 (10) Inn2397 (11) Motel2398 (12) Rooming House2399 (13) Day Care Facility2400 (14) Hospital2401 (15) Nursery School2402 (16) Private Assembly2403 (17) Public Facility2404 (18) Public or Private School2405 (19) Public Utility Facility2406 (20) Religious Use2407 (21) Recreation, Commercial Indoor2408 (22) Recreation, Commercial Outdoor2409 (23) Recreation, Public Open Space

- 2410 [\(24\) Recreation, Public Facility](#)
- 2411 [\(25\) Aquaculture](#)
- 2412 [\(26\) Commercial Fisheries/Maritime Activities \(provided only incidental cleaning and](#)
- 2413 [cooking of seafood occur at the site\)](#)
- 2414 [\(27\) Commercial School](#)
- 2415 [\(28\) Veterinary Hospital](#)
- 2416 [\(29\) Art Studio or Gallery](#)
- 2417 [\(30\) Business & Professional Offices](#)
- 2418 [\(31\) Business Services](#)
- 2419 [\(32\) Conference Center](#)
- 2420 [\(33\) Personal Services](#)
- 2421 [\(34\) Repair Service](#)
- 2422 [\(35\) Restaurant](#)
- 2423 [\(36\) Retail Sales](#)
- 2424 [\(37\) Retail Sales, Building Materials & Garden Supply](#)
- 2425 [\(38\) Retail Sales, Convenience](#)
- 2426 [\(39\) Specialty Food and/or Beverage Facility](#)
- 2427 [\(40\) Boatyard](#)
- 2428 [\(41\) Mass Transit Station](#)
- 2429 [\(42\) Mechanical Services](#)
- 2430 [\(43\) Parking Area](#)
- 2431 [\(44\) Wholesale Business](#)

2432

2433 [C. Special exception uses](#)2434 [The following uses are permitted by special exception uses in the C-3 Zone:](#)

- 2435 [\(1\) Buildings and structures over 40 feet that conform to the provisions of § 16.7 and](#)
- 2436 [16.8. Buildings and structures, other than multi-family dwellings and dwelling units](#)
- 2437 [as part of a mixed-use building in the C-3 Zone, west of Route 1, which are taller as](#)
- 2438 [allowed in § 16.4.21.B\(41\) higher than 40 actual feet from the lowest point of grade](#)
- 2439 [to the highest point of the building or structure must have side, rear and front yards of](#)
- 2440 [sufficient depth to adequately protect the health, safety and welfare of abutting](#)
- 2441 [properties, and which may not be less than current standards or 50% of actual height,](#)
- 2442 [whichever is greater; \[SD20\]](#)
- 2443 [\(2\) Commercial Greenhouses](#)
- 2444 [\(3\) Construction Services](#)
- 2445 [\(4\) Cottage Cluster](#)
- 2446 [\(5\) Dwelling, attached single-family](#)
- 2447 [\(6\) Dwelling, multi-family](#)
- 2448 [\(7\) Dwellings as part of a mixed-use building](#)
- 2449 [\(8\) Funeral Home](#)
- 2450 [\(9\) Gasoline Service Station](#)
- 2451 [\(10\) Industry, Light](#)

- 2452 (11) Mini Storage not located within 2,000 feet from an existing mini storage facility
- 2453 located in the same zoning district
- 2454 (12) Public Assembly Area
- 2455 (13) Theater
- 2456 (14) Repair Garage
- 2457 (15) Research & Development
- 2458 (16) Shops in Pursuit of Trade
- 2459 (17) Transportation Terminal (excluding truck stops)
- 2460 (18) Warehousing & Storage
- 2461 (19) Marijuana Business

2463 D. Undefined Uses in C-1 and C-3 Zones

- 2464 (1) Undefined uses will be considered by the Planning Board based on the following
- 2465 criteria:
- 2466 (a). If the use is consistent with the Comprehensive Plan and zoning district purposed;
- 2467 and
- 2468 (b). If the use meets special exception criteria found in § 16.4.21.C.
- 2469
- 2470 (2) In addition, the undefined use must meet one or both of the following criteria:
- 2471 (a). If the proposed use has substantially similar impacts as a listed use.
- 2472 (b). If the proposed use is compatible with existing uses within the zoning district for
- 2473 which it is proposed.

2474 E. Standards.

2475 (1) C Zone standards. All development and the use of land in the C Zone must meet the

2476 following standards. Kittery's Design Handbook illustrates how these standards can be

2477 met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must

2478 be met unless noted otherwise below.

2480 (2) The following space standards apply in the C-3 Zone:

2481 (a) Minimum lot size or density:

<u>C-1 and C-3 Zones</u>	
<u>Cottage Cluster;</u> <u>Dwelling, attached single-family;</u> <u>Dwelling, multi-family;</u> <u>Dwelling, two-family;</u> <u>Dwelling units as part of a</u> <u>mixed-use building</u>	<u>16 units per acre unless</u> <u>25% of units are</u> <u>affordable housing units</u> <u>as defined by this code,</u> <u>in which case 20 units</u> <u>per acres allowed*</u>
<u>All other uses</u>	<u>40,000 Sq Ft</u>

2482 *NOTE: These uses are exempt from net residential acreage

2483 calculations but are subject to minimum land area per dwelling

2484 unit requirement as described in § 16.5.18.D Exemptions to net

2485 residential acreage calculations.

2486
2487

(b). Minimum street frontage:

<u>C-1 and C-3 Zones</u>	
<u>All uses</u>	<u>No minimum*</u>

2488
2489
2490
2491
2492
2493
2494
2495
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2497

*NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically modified by this section (16.4.21). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

(c). Maximum front setback:

<u>C-1 and C-3 Zones</u>	
<u>All uses</u>	<u>15 Ft*</u>

2498
2499
2500
2501
2502
2503
2504
2505

* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

(d). Minimum rear and side setbacks:

<u>C-3 Zone</u>	
<u>All Uses</u>	<u>10 Ft***</u>

2506
2507
2508
2509
2510

***NOTE: Except where side and/or rear setbacks of proposed new uses about a single-family use in which case a minimum of 15 feet is required.

(e). Maximum building height:

<u>C-3 Zone</u>	
<u>Dwelling, multi-family; Dwelling units as part of a mixed-use building</u>	<u>40 Ft*</u>
<u>All other uses</u>	<u>40 Ft</u>

2511
2512
2513

*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening

2514 is designed as an integral part of the building to aid both aesthetics
2515 and noise attenuation. Flat roofs proposed for the purpose of solar
2516 array installations are also acceptable.

2517

2518 **NOTE: For properties in the C- 3 Zone with frontage on Old Post
2519 Road, including those lots which also have frontage on Route 1
2520 Bypass, the setback on Old Post Road must be 15 feet or greater as
2521 provided by section(c)above and building heights must not exceed 25
2522 feet for the first 15 feet beyond the minimum 15-foot setback.

2523

2524 (f). Impervious Surface:

2525 [1].For lots in the C-1 and C-3 zones which are currently developed and for which
2526 new multi-family, attached single-family or two-family dwellings, cottage
2527 clusters, or dwelling units as part of mixed-use building are proposed, either
2528 with or without existing or new commercial uses on the same lot, the
2529 maximum impervious surface, including but not limited to driveways,
2530 buildings, sidewalks and parking areas:

2531 [a]. Is 70%; or

2532 [b]. The Planning Board may at its discretion, allow greater than 70% if
2533 proof that all stormwater will be managed on-site, utilizing LID
2534 (Low Impact Development) and BMP (Best Management Practice)
2535 systems based on MaineDEP’s Maine Stormwater Best Management
2536 Practices Manual, Volumes I-III as amended from time to time. The
2537 stormwater report and plan demonstrating that this requirement is
2538 met must be included with the application at the time of submission.

2539

2540 [2].For lots in the C-3 zone which are currently vacant (no existing structure) and
2541 for which new multi-family, attached single-family, or two-family dwellings,
2542 cottage clusters, or dwelling units as part of mixes-use building are proposed,
2543 the maximum impervious surface, including driveways, buildings, sidewalks
2544 and parking areas:

2545 [a]. Is 60%; or

2546 [b]. The Planning Board may, at its discretion, allow greater than 60% if
2547 proof that all stormwater will be managed on-site utilizing LID (Low
2548 Impact Development) and BMP (Best Management Practice) systems
2549 based on Maine DEP’s Maine Stormwater Best Management Practices
2550 Manual, Volumes 1-III as amended from time to time. The stormwater
2551 report and plan demonstrating that this requirement is met must be
2552 included with the application at the time of submission.

2553

2554 [3] For lots in the C-1 or C-3 zones which are currently developed and for which
2555 redevelopment is proposed with new non-residential structures, the maximum
2556 impervious surface, including but not limited to driveways, buildings,
2557 sidewalks and parking areas:

2558 [a]. Is 70%; and all stormwater must be managed on-site, utilizing LID
2559 (Low Impact Development) and BMP (Best Management Practice)
2560 systems based on Maine DEP’s Maine Stormwater Best Management

- 2561 Practices Manual, Volumes 1-III as amended from time to time. The
2562 stormwater report and plan demonstrating that this requirement is met
2563 must be included with the application at the time of submission.
2564
- 2565 [4] For all uses in the C-2 Zone, building and outdoor material coverage must not
2566 exceed 40%.
2567
- 2568 (g). Minimum water body setback for functionally water-dependent uses: zero feet.
2569
- 2570 (h). Minimum setback from streams, water bodies and wetlands: in accordance with
2571 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
2572
- 2573 (i). Gasoline Sales i) not located within 1,000 feet of an existing station or private
2574 residence; and ii) not located within 150 feet of an existing structure.
2575
- 2576 (j). Repair Garages must not be located within 150 feet of a private dwelling or
2577 existing structure.
2578
- 2579 (k). Affordable housing requirements:
2580 [1]. All requirements in 16.5.4 Affordable Housing must be met.
2581 [2]. Density incentives outlined above in (2).(a) may be applied to projects that
2582 create affordable housing units, as defined by this code. No proportional
2583 payment-in-lieu is required if the affordable dwelling unit requirements for the
2584 density incentives are met.
2585
- 2586 (l). Mixed-use buildings must have non-residential uses comprising at least 50% of
2587 the street-facing first floor.
2588
- 2589 (m). Underground utilities are required. The Planning Board may allow an
2590 alternative but it is incumbent upon the applicant to demonstrate why such a
2591 modification request should be granted.
2592
- 2593 (n). Cottage cluster requirements:
2594 [1]. Cottage cluster dwelling units must either face the required common open
2595 space or the street. The required open space must be held in common for use
2596 by all the cottage cluster residents and must be immediately accessible to each
2597 dwelling unit, via either the front or the back of each unit.
2598 [2]. Each cottage cluster dwelling unit must be no greater than 1,200 square feet.
2599 Spacing between units must comply with the requirements of the Fire
2600 Department and/or the State Fire Marshal's office.
2601 [3]. Shared parking areas must be connected to each dwelling unit via a sidewalk
2602
- 2603 (3) C-3 Zone standards. All development and the use of land except for new multifamily,
2604 attached single-family or two-family dwellings, cottage clusters, or dwelling units as
2605 part of a mixed-use building within the C-3 Zone must meet the following standards:

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(a). Parking.

- [1]. 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.)
- [2]. 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

- [1]. 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:
- [2]. 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.
- [3]. 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.)
- [4]. 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.

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(c). Landscaping site improvements

[1]. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 the following landscaping requirements apply to new and modified existing developments:

[2]. 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:

[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 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.

[3]. 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.

[4]. Outdoor service and storage areas. Service and storage areas must be located

2701 to the side or rear of the building. Facilities for waste storage such as
2702 dumpsters must be located within an enclosure and be visually buffered by
2703 fencing, landscaping and/or other treatments. (See Design Handbook for
2704 examples of appropriate buffering.)

2705

2706 (d).Traffic and circulation standards

2707 [1].Sidewalks and roadways must be provided within the site to internally join
2708 abutting properties that are determined by the Planning Board to be
2709 compatible. In addition, safe pedestrian route(s) must be provided to allow
2710 pedestrians to move within the site and between the principal customer
2711 entrance and the front lot line where a sidewalk exists or will be provided or
2712 where the Planning Board determines that such a route is needed for adequate
2713 pedestrian safety and movement. (See Design Handbook for appropriate
2714 examples.)

2715

2716 (e).Open space standards

2717 [1].Open space must be provided as a percentage of the total area of the lot,
2718 including freshwater wetlands, water bodies, streams and setbacks. Twenty
2719 percent of each lot must be designated as open space. Required open space
2720 must be shown on the plan with a note dedicating it as "open space." The open
2721 space must be located to create an attractive environment on the site, minimize
2722 environmental impacts, protect significant natural features or resources on the
2723 site, and maintain wildlife habitat. Individual large, healthy trees and areas
2724 with mature tree cover should be included in the open space. Where possible,
2725 the open space must be located to allow the creation of continuous open space
2726 networks in conjunction with existing or potential open space on adjacent
2727 properties. The required amount of designated open space is reduced to 10%
2728 of each lot that is less than 40,000 square feet in size.

2729

2730 (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family
2731 dwellings, two- family dwellings where more than one two-family dwelling is
2732 proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use
2733 building:

2734 (a). Design Standards.

2735 See Kittery's Design Handbook for further information on how these standards can be
2736 met.

2737 [1].Sidewalks must be installed within the right-of-way to meet minimum
2738 requirements as specified in 16.5.27, subject to review and approval by the
2739 Department of Public Works and MaineDOT if required.

2740 [2].Connectivity between new housing development and adjacent existing or new
2741 commercial areas is required. This connectivity must, at minimum, include
2742 sidewalks or walkways. In the C-1 zone, connectivity may also include
2743 vehicular access coupled with sidewalks or walkways between residential and
2744 commercial areas. Connectivity must be pedestrian- friendly with
2745 appropriately scaled improvements such as eight-foot wide sidewalks and
2746 human-scaled lighting.

2747 [3].On-street parking is encouraged on new or existing private roads off Route 1,

- 2748 and may be considered as a part of a joint use parking plan when such on-
2749 street parking is proposed as part of a development or redevelopment plan.
- 2750 [4]. All service areas for dumpsters, compressors, generators and similar items
2751 must be screened by a fence at least six feet tall, constructed of a material
2752 similar to surrounding buildings, and must surround the service area except for
2753 the necessary ingress/egress.
- 2754 [5]. Parking must be located behind multifamily dwellings and mixed-use
2755 buildings with residential dwelling units when viewed from the street. The
2756 Planning Board may allow parking to the side or front of such residential or
2757 mixed-use buildings at its discretion, but it is incumbent upon the applicant to
2758 demonstrate why rear parking is not feasible.
- 2759 [6]. Lighting plans, including lighting fixture designs and photometric plans must
2760 be included at the time of application submission. All fixtures must be cut-off
2761 to prevent light trespass and meet all requirements of 16.7.11.H.
- 2762 [7]. A single new two-family dwelling proposed for a lot, the addition of another
2763 dwelling unit to an existing single-family residence to create a two-family
2764 dwelling and the addition of an ADU (Accessory Dwelling Unit) to a single-
2765 family residence is exempt from these design standards.

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(b). Open Space Standards.

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- [1]. Open space must be provided as a percentage of the total area of the lot, and
may include wetlands, waterbodies, streams, and setbacks. Fifteen percent
(15%) of each lot must be designated as open space.

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- [2]. For multifamily dwellings, mixed-use buildings with residential dwelling units
and attached single-family dwellings, in cases where the property does not
meet the 15% requirement due to existing development, and where
redevelopment will remain at the same or comprise a lower percentage of the
lot, the Planning Board may, at its discretion, allow a smaller percentage of
open space. In granting this concession, the Board may require more intensive
landscape plantings.

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(c). Parking Standards.

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The following minimum off-street parking requirements must be provided and
maintained in case of new construction, alterations, and changes of use:

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- [1]. Parking requirements must 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:

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- [a]. Dwelling units: 1 parking space per dwelling unit.
- [b]. For multifamily dwellings, if more than ten parking spaces are required,
up to 20% of the parking may be designated for compact cars. See
16.7.11.F Off-Street Parking Standards.

- [2]. Off-site parking. Required off-street parking may be satisfied at off-site

2795 locations, provided such parking is on other property owned by the applicant
2796 or is under the terms of a contractual agreement that will ensure such parking
2797 remains available for the uses served. Applicant must present evidence of a
2798 parking location and a contractual agreement;

2799

2800 [3].Joint-use parking. Required off-street parking may also be satisfied by the
2801 joint use of parking space by two or more uses if the applicant can show that
2802 parking demand is nonconflicting and will reasonably provide adequate
2803 parking for the multiple uses without parking overflowing into undesignated
2804 areas. Nonconflicting periods may consist of daytime as opposed to evening
2805 hours of operation or weekday as opposed to weekends or seasonal variation
2806 in parking demand.

2807 [a]. Such joint parking areas must be held under ownership of the applicant
2808 or under terms of a contractual agreement that ensures such parking
2809 remains available to all users of the shared parking spaces;

2810 [b]. Determination of parking adequacy will be based on a most frequent
2811 basis, not a "worst case" scenario;

2812 [c]. Joint use parking areas must be located within 1,500 feet of the uses
2813 served, but do not need to be located on the same lot as the uses served;

2814 [d]. Ease and safety of pedestrian access to shared parking by the users
2815 served must be demonstrated to the municipal permitting authority's
2816 satisfaction, including any proposed improvements, such as crosswalks
2817 or shuttle service that may be offered and its requisite loading/unloading
2818 areas;

2819 [e]. Such joint parking areas must not be located in residential zones of the
2820 Town.

2821

2822 [4].In making determinations on off-site or joint-use parking under a development
2823 plan review, the municipal permitting authority with jurisdiction to review and
2824 approve will make a final determination of the joint-use and/or off-site spaces
2825 that constitute an acceptable combination of spaces to meet the required
2826 parking demand.

2827

2828 [5].Electric car charging stations are allowed in parking lots but must not interfere
2829 with pedestrian movement on sidewalks.

2830

2831 (d).Landscaping and Screening.

2832 [1].For new multi-family, attached single-family, or dwelling units as part of a
2833 mixed-use building or any new residential use that will create more than three
2834 dwelling units on a site, the following standards apply:

2835 [a]. A landscape plan prepared by a registered landscape architect is a
2836 submission requirement. However, a landscape plan done by other
2837 design professionals may be allowed at the Planning Board's discretion.

2838

2839 [b]. A minimum of one street tree must be planted for each 25 feet of street
2840 frontage. Trees may be planted in groups or spaced along the frontage.

2841 However, trees must be planted to ensure survival, using silva cells,
2842 bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch
2843 caliper and 12 feet high at the time of planting. Existing large healthy
2844 trees must be preserved if practical and will count towards this
2845 requirement. Trees proposed within the right-of-way must remain under
2846 20 feet tall at maturity.

2847

2848 [c]. Surface parking lots designed for five or more cars that will service
2849 multifamily or mixed-use buildings with dwelling units and which abut a
2850 street, an existing single- family use, or a residential zone, must provide
2851 screening in one of the following ways:

2852 [i]. One tree per 25 feet of street frontage backed by a fence constructed
2853 of a material similar to surrounding buildings which must screen the
2854 parking area from the street except for necessary vehicular and
2855 pedestrian access. To ensure survival, trees must be planted using
2856 silva cells, bioretention cells or tree wells. Trees must be at least 2.5-
2857 inch caliper and 12 feet high at the time of planting. Existing large
2858 healthy trees must be preserved if practical and will count towards
2859 this requirement. Trees proposed within the right-of-way must
2860 remain under 20 feet tall at maturity.

2861 [ii]. A combination of trees and shrubs including at least 50% evergreen
2862 species, all at least six feet high at time of planting, in a planting bed
2863 at least eight feet wide. Plantings must be sufficient, as determined
2864 by the Planning Board, to screen the parking area from the street
2865 except for necessary vehicular and pedestrian access. Planting beds
2866 may be mulched but no dyed-mulching material may be used.

2867

2868 [d]. A minimum of 10% of any surface parking area consisting of 10 or more
2869 spaces must be landscaped with trees and vegetated islands. This
2870 requirement is in addition to the aforementioned screening and street tree
2871 requirements.

2872

2873 [e]. Native trees are preferred and must be drought and salt tolerant when
2874 used along streets. A diversity of tree species (three to five species per
2875 every 12 trees) is required to provide greater resiliency to threats from
2876 introduced insect pests and diseases.

2877

2878 [f]. Any required plantings that do not survive must be replaced within one
2879 year. This requirement does not expire and runs with the land.

2880

2881 [g]. If 25% of the proposed development will be affordable dwelling units,
2882 the Planning Board may, at its discretion, modify surface parking lot
2883 landscaping and screening requirements under [c] and [d].

2884

2885 (e). Buffers.

2886 [1]. Buffers are required between new residential uses and existing nonresidential
2887 uses and must be at least 10 feet wide. A buffer plan must be prepared in

- 2888 conjunction with the landscape plan as described in [d] [1] [a] above and
 2889 consist of:
- 2890 [a]. A fence at least six feet high, constructed of material similar to
 2891 surrounding buildings, with plantings of trees at least six feet tall at time
 2892 of planting and shrubs on the new residential side of the fence.
- 2893 [b]. Ground cover plantings such as perennials or ornamental grasses must be
 2894 used where appropriate.
- 2895 [c]. Plantings must be provided with irrigation to enhance survival unless
 2896 they are part of a bioretention cell, rain garden or tree well.
- 2897 [d]. Any required plantings that do not survive must be replaced within one
 2898 year. This requirement does not expire and runs with the land.
- 2899 [e]. If 25% of the proposed development will be affordable housing dwelling
 2900 units, the Planning Board may, at its discretion, modify buffer
 2901 requirements under [a] and [b].

2902

- 2903 [2]. Buffers are required between new residential uses and existing single-family
 2904 uses and must be at least 10 feet wide. A buffer plan must be prepared in
 2905 conjunction with the landscape plan as described in [d] [1] [a] above and
 2906 consist of:

- 2907 [a]. A fence at least six feet high, constructed of material similar to
 2908 surrounding buildings, with plantings of trees and shrubs at least six feet
 2909 tall on the new residential side of the fence; or
- 2910 [b]. Plantings of trees at least six feet tall and shrubs, including at least 50%
 2911 evergreen species. Such plantings must ensure adequate buffering and
 2912 screening is achieved as determined by the Planning Board.
- 2913 [c]. Ground cover plantings, such as perennials or ornamental grasses must
 2914 be used where appropriate.
- 2915 [d]. Plantings must be provided with irrigation to enhance survival unless
 2916 they are part of a bioretention cell, rain garden or tree well.
- 2917 [e]. Any required plantings that do not survive must be replaced within one
 2918 year. This requirement does not expire and runs with the land.
- 2919 [f]. If 25% of the proposed development will be affordable housing dwelling
 2920 units, the Planning Board may, at its discretion, modify buffer
 2921 requirements under [a], [b] and [c].

2922

2923 F. Shoreland Overlay Zone OZ-SL – Commercial – 3 Zone (C-3)

2924 (1) Permitted uses

2925 (a) Accessory Buildings, Structures, and Uses

2926 (b) Home Occupation, Major

2927 (c) Home Occupation, Minor

2928 (d) Aquaculture

2929 (e) Recreation, Public Facility

2930 (f) Recreation, Public Open Space

2931 (g) Recreation, Selected Commercial

- 2932 [\(h\) Public Utility Facility](#)
- 2933 [\(i\) Commercial School](#)
- 2934 [\(j\) Public or Private School](#)
- 2935 [\(k\) Nursery School](#)
- 2936 [\(l\) Hospital](#)
- 2937 [\(m\) Elder Care Facility](#)
- 2938 [\(n\) Nursing Care Facility, Long-term](#)
- 2939 [\(o\) Convalescent Care Facility](#)
- 2940 [\(p\) Public Facility](#)
- 2941 [\(q\) Religious Use](#)
- 2942 [\(r\) Private Assembly](#)
- 2943
- 2944 [\(2\) Special exception uses](#)
- 2945 [\(a\) Adult Entertainment Establishment, not located within 1,000 feet of an existing](#)
- 2946 [private residence, school or place of worship](#)
- 2947 [\(b\) Art Studio or Gallery](#)
- 2948 [\(c\) Boatyard](#)
- 2949 [\(d\) Business & Professional Offices](#)
- 2950 [\(e\) Business Services](#)
- 2951 [\(f\) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and](#)
- 2952 [cooking of seafood occur at the site](#)
- 2953 [\(g\) Parking Area](#)
- 2954 [\(h\) Conference Center](#)
- 2955 [\(i\) Construction Services](#)
- 2956 [\(j\) Day Care Facility](#)
- 2957 [\(k\) Funeral Home](#)
- 2958 [\(l\) Retail Sales, Convenience](#)
- 2959 [\(m\) Mass Transit Station](#)
- 2960 [\(n\) Motel](#)
- 2961 [\(o\) Hotel](#)
- 2962 [\(p\) Rooming House](#)
- 2963 [\(q\) Inn](#)
- 2964 [\(r\) Mini Storage](#)
- 2965 [\(s\) Personal Service](#)
- 2966 [\(t\) Public Assembly Area](#)
- 2967 [\(u\) Theater](#)
- 2968 [\(v\) Research & Development](#)
- 2969 [\(w\) Restaurant](#)
- 2970 [\(x\) Retail Sales](#)
- 2971 [\(y\) Wholesale Business](#)
- 2972 [\(z\) Shops in Pursuit of Trade](#)
- 2973 [\(aa\) Transportation Terminal \(excluding truck stops\)](#)

- 2974 (bb) Veterinary Hospital
- 2975 (cc) Warehousing & Storage
- 2976
- 2977 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2978
- 2979 G. Resource Protection Overlay Zone OZ-RP – Commercial – 3 Zone (C-3)
- 2980 (1) Permitted Uses
- 2981 (a) Recreation, Public Open Space
- 2982
- 2983 (2) Special Exception Uses
- 2984 (a) Accessory Uses & Buildings
- 2985 (b) Aquaculture
- 2986 (c) Home Occupations, Major
- 2987 (d) Home Occupations, Minor
- 2988 (e) Public Utility Facility
- 2989
- 2990 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 2991 RP
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2993 **16.4.22 Industrial (IND)**2994 **A. Purpose**

2995 The purpose of the Industrial IND Zone is to provide areas within the Town for
2996 manufacturing, processing, treatment and research, to which end all the performance
2997 standards set forth in this title apply.

2998

2999 **B. Permitted uses**

3000 The following uses are permitted in the IND Zone:

3001 (1) Accessory Buildings, Structures, and Uses

3002 (2) Home Occupation, Major

3003 (3) Home Occupation, Minor

3004 (4) Research & Development

3005 (5) Industry, Heavy

3006

3007 **C. Special exception uses**

3008 The following uses are permitted as special exception uses in the IND Zone:

3009 (1) Public Facility

3010 (2) Public Utility Facility

3011

3012 **D. Standards**

3013 (1) The design and performance standards of § 16.5, 16.7 and 16.8 must be met.

3014 (2) The following space standards apply:

3015

3016 (a) Minimum area of lot: none.

3017 (b) Minimum street frontage: none.

3018 (c) Minimum front yard: none.

3019 (d) Minimum rear and side yards: 30 feet.

3020 (NOTE: Except as may be required by the buffer provisions of this title, and
3021 except where the side and/or rear yards abut a residential zone or use; in which
3022 case a minimum of 50 feet or 50% of the building or outdoor stored material
3023 height, whichever is greater, is required.)

3024 (e) Maximum building height: none.

3025 (f) Maximum building coverage: none.

3026 (g) Minimum setback from water body and wetland water-dependent uses: zero feet.

3027 (h) Minimum setback from streams, water bodies and wetlands: in accordance with
3028 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3029

3030 **E. Shoreland Overlay Zone OZ-SL – Industrial Zone (IND)**3031 **(1) Permitted uses**

3032 (a) Accessory Use & Building

3033 (b) Home Occupation, Major

3034 (c) Home Occupation, Minor

3035 (d) Research & Development

3036

3037 (2) Special exception uses

3038 (a) Industry, Heavy

3039 (b) Public Facility

3040 (c) Public Utility Facility

3041

3042 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

3043

3044 F. Resource Protection Overlay Zone OZ-RP – Industrial Zone (IND)

3045 (1) Permitted Uses

3046 (a) Research & Development

3047

3048 (2) Special Exception Uses

3049 (a) Accessory Uses & Buildings

3050 (b) Home Occupations, Major

3051 (c) Home Occupations, Minor

3052 (d) Public Facility

3053 (e) Public Utility Facility

3054

3055 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
3056 RP

3057 NOTE: It is recognized that federal ownership of this zone at the time of enactment of
3058 the ordinance codified in this title precludes enforcement of any local regulations.

3059

3060 **16.4.23 Mixed-Use (MU)**3061 **A. Purpose**

3062 To provide opportunities for a mix of office, service, and limited residential and retail uses, to
3063 alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize
3064 traffic congestion. A mix of uses on a site is desired and, in some cases, required; a
3065 continuation of strip development is not encouraged in this zone. The Mixed-Use Zone is
3066 intended to accommodate growth.

3067 The purpose of large lot sizes, open space standards, and frontage requirements is to limit the
3068 number of access points along U.S. Route 1, to encourage the development of service roads
3069 which may serve several developments, and to create development that will retain the
3070 predominant rural character of the zone. Other objectives are to encourage an orderly and
3071 safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced
3072 by landscaping, open space, and restrictions on the locations of parking. These development
3073 goals are supported by the principles and objectives identified in the Town's Design
3074 Handbook, Kittery Maine.

3075 **B. Permitted uses**3076 (1) Accessory Dwelling Units3077 (2) Dwelling, Single-Family (limited to lots of record as of April 1, 2004)^[SD21]3078 (3) Dwelling, Multi-Family (limited to the upper floors of mixed-use building that is
3079 served by public sewerage)3080 (4) Convalescent Care Facility3081 (5) Nursing Care Facility, Long-term3082 (6) Residential Care Facility3083 (7) Accessory Buildings, Structures, and Uses3084 (8) Home Occupations, Major3085 (9) Home Occupations, Minor3086 (10) Inn3087 (11) Day Care Facility3088 (12) Hospital3089 (13) Private Assembly (which is not used for residential or overnight occupancy)3090 (14) Public Facility3091 (15) Public or Private School (which is not used for residential or overnight occupancy)3092 (16) Recreation, Commercial Indoor3093 (17) Recreation, Commercial Outdoor3094 (18) Recreation, Public Open Space3095 (19) Agriculture3096 (20) Commercial School (which is not used for residential or overnight occupancy)3097 (21) Timber Harvesting3098 (22) Veterinary Hospital3099 (23) Art Studio or Gallery3100 (24) Business & Professional Offices3101 (25) Funeral Home

- 3102 [\(26\) Personal Services](#)
- 3103 [\(27\) Repair Service](#)
- 3104 [\(28\) Research & Development](#)
- 3105 [\(29\) Restaurant](#)
- 3106 [\(30\) Retail Sales \(a single use not to exceed 50,000 square feet in gross floor area\)](#) [SD22]
- 3107 [\(31\) Retail Sales, Building Materials & Garden Supply](#)
- 3108 [\(32\) Retail Sales, Convenience](#)
- 3109 [\(33\) Specialty Food and/or Beverage Facility](#)
- 3110 [\(34\) Theater](#)
- 3111 [\(35\) Boat Yard](#)
- 3112 [\(36\) Mass Transit Station](#)
- 3113 [\(37\) Industry, light \(less than or equal to 20,000 square feet in gross floor area\)](#) [SD23]
- 3114 [\(38\) Parking Area](#)
- 3115
- 3116 [C. Special exception uses](#)
- 3117 [\(1\) Aged-Restricted Housing](#)
- 3118 [\(2\) Campground](#)
- 3119 [\(3\) Recreational Vehicle Park](#)
- 3120 [\(4\) Construction Services](#)
- 3121 [\(5\) Commercial Kennel](#)
- 3122 [\(6\) Commercial Greenhouses](#)
- 3123 [\(7\) Theater, Drive-in](#)
- 3124 [\(8\) Gas Service Station](#)
- 3125 [\(9\) Industry, Light \(greater than 20,000 square feet in gross floor area\)](#)
- 3126 [\(10\) Mechanical Services](#)
- 3127 [\(11\) Motel](#)
- 3128 [\(12\) Hotel](#)
- 3129 [\(13\) New Motor Vehicle Sales](#)
- 3130 [\(14\) Public Utility Facilities](#)
- 3131 [\(15\) Repair Garage](#)
- 3132 [\(16\) Retail Sales \(a single use greater than 50,000 square feet in gross floor area and less](#)
- 3133 [than 150,000 square feet in gross floor area\)](#)
- 3134 [\(17\) Shop in Pursuit of Trade](#)
- 3135 [\(18\) Transportation Terminal](#)
- 3136 [\(19\) Warehousing & Storage](#)
- 3137 [\(20\) Wholesale Business](#)
- 3138
- 3139 [D. Standards](#)
- 3140 [\(1\) All development and the use of land in the MU Zone must meet the following](#)
- 3141 [standards. Kittery's Design Handbook illustrates how these standards can be met. In](#)
- 3142 [addition, the design and performance standards of § 16.5, 16.7 and § 16.8 must be](#)

3143 met.

3144

3145 (2) Minimum dimensional standards. The following apply:

3146 (a) Minimum lot size:

3147 [1].Lots with frontage on Route 1: 200,000 square feet.

3148 [2].Lots without frontage on Route 1: 80,000 square feet.

3149

3150 (b).Minimum street frontage on road with access along U.S. Route 1, Haley Road,
3151 Lewis Road, or Cutts Road: 250 feet.

3152 [1].Other streets or approved ways: 150 feet.

3153

3154 (c).Minimum front yard: 30 feet.

3155 (d).Minimum rear and side yards: 30 feet.

3156 (e).Maximum building height: 40 feet.

3157 (f). Maximum height above grade of building-mounted signs: 40 feet.

3158 (g).Minimum setback from water body and wetland water dependent uses: zero feet.

3159 (h).Minimum setback from streams, water bodies and wetlands: in accordance with
3160 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3161 (i). Minimum land area per unit for eldercare facilities that are connected to the public
3162 sewerage system:

3163 [1].Dwelling unit with two or more bedrooms: 5,000 square feet.

3164 [2].Dwelling unit with less than two bedrooms: 4,000 square feet.

3165 [3].Residential care unit: 2,500 square feet.

3166

3167 (j). Minimum land area per bed for nursing care and convalescent care facilities that
3168 are connected to the public sewerage system: 2,000 square feet.

3169 (k).Buffer to I-95 right-of-way: 40 feet.

3170 (l). Buffer to neighboring lot with an existing residence within 100 feet of the lot line:
3171 40 feet.

3172 (m). Vegetated buffer to be maintained between the MU and R-RL Zones: 40 feet.

3173 NOTE 1: For single-family dwellings, one dwelling unit is allowed for each
3174 200,000 square feet of land area. A lot of record having a land area of more than
3175 200,000 square feet that was improved with a single-family dwelling as of April 1,
3176 2004, may be divided into two lots with a single-family dwelling on each lot
3177 provided that each of the lots contains at least 40,000 square feet of land area and
3178 meets the other dimensional standards of the zone. § 16.4.10.D(1) and (2) as set
3179 forth in the Residential - Rural Zone apply and no further subdivision is allowed.

3180 NOTE 2: For dwelling units that are part of a mixed-use building and are
3181 connected to the public sewerage system, one dwelling unit is allowed for each
3182 10,000 square feet of buildable land area. Within the Resource Protection and
3183 Shoreland Overlay Zones, one dwelling unit is allowed for each 40,000 square
3184 feet of land area within these zones. If the parking for the residential units is
3185 encompassed within the building, the minimum required buildable land area per
3186 dwelling unit is reduced to 7,500 square feet, except in the Resource Protection

3187 and Shoreland Overlay Zones where the area per dwelling unit remains 40,000
3188 square feet.

3189 NOTE 3: For aged-restricted dwelling units that are connected to the public
3190 sewerage system, one dwelling unit is allowed for each 15,000 square feet of
3191 buildable land area. Within the Resource Protection and Shoreland Overlay Zones,
3192 one dwelling unit is allowed for each 40,000 square feet of land within these
3193 zones. If the parking for the aged-restricted units is encompassed within the
3194 building, the minimum required buildable land area per dwelling unit is reduced to
3195 10,000 square feet, except in the Resource Protection and Shoreland Overlay
3196 Zones where the area per dwelling unit remains 40,000 square feet.

3197

3198 (3) Retail use limitation

3199 Retail use, including parking areas and other supporting unvegetated areas for retail
3200 use, is limited to not more than 30% of the developable area of any lot or portion of a
3201 lot within the Mixed-Use Zone.

3202

3203 (4) Mixed-use requirement

3204 The Mixed-Use Zone is intended for the creation of an area in the Town that has a
3205 mix of uses and in which no single type of use predominates. To this end, larger scale
3206 projects must incorporate a mix of principal uses into the development. Any new
3207 development that creates more than 20,000 square feet of gross floor area must
3208 include at least two principal uses as set forth in the list of permitted uses and special
3209 exceptions. To fulfill this requirement, the smaller use or combination of smaller uses
3210 must contain at least 10% of the gross floor area. The combination of retail uses that
3211 are permitted uses and one larger retail use allowed as a special exception does not
3212 fulfill this requirement. This provision does not apply to the development of a single
3213 lot of record as of April 1, 2004, that has a lot area of less than 200,000 square feet.

3214

3215 (5) Location and screening of parking areas

3216 All new parking areas must be located at the side of, and/or to the rear of, principal
3217 buildings. Where unique circumstances exist and it is demonstrated to the Planning
3218 Board that prohibition of parking in front of the principal building is not practicable,
3219 with the Board's approval, 10 or fewer parking spaces may be located closer to the
3220 front lot line than a principal building. All new or altered parking must be visually
3221 screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive
3222 landscaping, earthen berms, and/or fencing (see Design Handbook for examples of
3223 acceptable screening).

3224

3225 (6) Building design standards

3226 Kittery's characteristic buildings reflect its historic seacoast past. The primary
3227 architectural styles are New England Colonial (such as Cape Cod and saltbox),
3228 Georgian, Federal, and Classical Revival. New buildings should be compatible with
3229 Kittery's characteristic styles in form, scale, material, and color. In general, buildings
3230 should be oriented to the street with the front of the building facing the street. The
3231 front or street facade must be designed as the front of the building. The front elevation
3232 must contain one or more of the following elements: (1) a front door although other
3233 provisions for access to the building may be provided, (2) windows, or (3) display

3234 cases (see Design Handbook for examples of acceptable materials and designs).
3235 Though strict imitation is not required, design techniques can be used to maintain
3236 compatibility with characteristic styles and still leave enough flexibility for
3237 architectural variety. To achieve this purpose, the following design standards apply to
3238 new and remodeled building projects:

3239 (a) Exterior building materials and details. Building materials and details strongly
3240 define a project's architectural style and overall character (see Design Handbook
3241 for examples of acceptable materials, building scale, and designs). "One-sided"
3242 schemes are prohibited; similar materials and details must be used on all sides of a
3243 building to achieve continuity and completeness of design.

3244 [1].Predominant exterior building materials. Predominant exterior building
3245 materials must be of good quality and characteristic of Kittery, such as
3246 horizontal wood board siding, vertical wood boards, wood shakes, brick, stone
3247 or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet
3248 metal, standard concrete block, tilt-up concrete panels, plywood or particle
3249 board are prohibited as the primary materials.

3250 [2].Blank walls. A wall may not extend for a length of more than 50 linear feet
3251 without an architectural feature such as a dormer, pilaster, cornice, corner,
3252 window, porch, or visually compatible door to break up the large mass of a
3253 featureless wall (see Design Handbook for examples of the appropriate
3254 treatment of walls). As an exception, walls with a clapboard facade may
3255 extend for a length of up to 100 feet without such an architectural feature.

3256 [3].Light industrial and boatyard uses. Such uses must comply with the above
3257 standards only along the front face and extending back 100 feet along the side
3258 walls.

3259

3260 (b).Roofs. Roofs must meet the following standards:

3261 [1].Form. A building's prominent roofs must be pitched a minimum of 4:12 unless
3262 demonstrated to the Planning Board's satisfaction that this is not practicable.
3263 Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed
3264 roofs, and roof facades (such as "stuck on" mansards) are not acceptable as
3265 primary roof forms.

3266 [2].Color. Roof colors must be muted (see Design Handbook for examples).

3267 [3].Rooftop mechanical and electrical equipment. Rooftops must be free of
3268 clutter. The roof design must screen or camouflage rooftop protrusions to
3269 minimize the visual impact of air conditioning units, air handler units, exhaust
3270 vents, transformer boxes, and the like (see Design Handbook for examples of
3271 appropriate treatments). Interior-mounted equipment is encouraged. Whenever
3272 possible, utility equipment areas must be placed in an obscure location and
3273 screened from view.

3274 [4].Loading docks and overhead doors. Loading docks and overhead doors must
3275 be located on the side or rear of the building and be screened from view from
3276 public streets.

3277

3278 (7) Landscaping standards

3279 To achieve attractive and environmentally sound site design, and appropriate screening of
3280 parking areas, in addition to the landscaping standards contained in § 16.7 and 16.8,

3281 the following landscaping requirements apply to new and modified existing
3282 developments:

3283

3284 (a) Landscape planter strip. A vegetated landscape planter strip 30 feet in depth (as
3285 measured from the edge of the property line) must be provided along the length of
3286 all developed portions of a parcel that are adjacent to a street right-of-way. The
3287 planter strip must include the following landscape elements:

3288 [1].Ground cover. The entire landscape planter strip must be vegetated except for
3289 approved driveways, walkways, bikeways, and screened utility equipment.

3290 [2].Streetside trees. A minimum of one street tree must be planted for each 25 feet
3291 of street frontage. The trees may be spaced along the frontage or grouped or
3292 clustered to enhance the visual quality of the site (see Design Handbook for
3293 examples). The trees must be a minimum 2.5-inch caliper, and be at least 12
3294 feet high at the time of planting. The species should be selected from the list of
3295 approved street trees in the Design Handbook. Existing large healthy trees
3296 must be preserved if practical and will count toward this requirement.

3297 [3].Planter strip. Shrubs and flowering perennials must be planted at a minimum
3298 of 10 plants per 40 linear feet of street frontage unless existing woodlands are
3299 being retained or such planting is inconsistent with the retention of rural
3300 landscape features. The plant material should be selected from the list of
3301 approved materials in the Design Handbook. The plants must be placed within
3302 the planter strip to enhance the visual character of the site and augment natural
3303 features and vegetation (see Design Handbook for examples of appropriate
3304 treatments).

3305 [4].Special situations.

3306 [a]. Expansions of less than 500 square feet to existing uses are exempt from
3307 the landscaping standard of this subsection.

3308 [b]. Depth of landscape planter strip. In instances where the required average
3309 depth of the landscape planter strip is legally utilized, in accordance with
3310 previous permits or approval, for parking, display, storage, building, or
3311 necessary vehicle circulation, the depth may be narrowed by the Planning
3312 Board to the minimum extent necessary to achieve the objective of the
3313 proposed project, provided that the required shrubs and perennials are
3314 planted along the street frontage to soften the appearance of the
3315 development from the public street. If providing the required landscape
3316 planter strip along with other required landscaping and required vegetated
3317 areas in and around wetlands would cause the project to exceed the
3318 required open space standards, the depth of the landscape planter strip and
3319 the front yard may be reduced by the Planning Board so that the open
3320 space standards are not exceeded, but in no case to less than 20 feet for
3321 this reason.

3322 [c]. Additions and changes in use. For additions to existing buildings and
3323 changes of residential structures to a nonresidential use, one streetside tree
3324 (see list of recommended street trees in Design Handbook) is required for
3325 every 500 square feet of additional gross floor area added or converted to
3326 nonresidential use. In instances where parking, display area, storage,
3327 building or necessary vehicle circulation exists at the time of enactment of
3328 this section, the required trees may be clustered and/or relocated away

3329 from the road as is necessary to be practicable. The preservation of
3330 existing large trees is encouraged; therefore, the Planning Board may
3331 permit the preservation of existing healthy, large, mature trees within the
3332 landscape planter strip or other developed areas of the site to be
3333 substituted for the planting of new trees.

3334 [d]. Residences. Residential additions to existing single- and two-family
3335 dwelling and proposed single- and duplex-family dwellings are exempt
3336 from the landscaping standards of this subsection.

3337

3338 (b). Buffer area. Where buffering is required, it must provide a year-round visual
3339 screen to minimize adverse impacts and screen new development (see Design
3340 Guidelines for examples of appropriate buffers for various situations), and may
3341 consist of fencing, evergreens, retention of existing vegetation, berms, rocks,
3342 boulders, mounds or combinations thereof. Within three growing seasons, the
3343 buffer must provide a year-round screen at least eight feet in height or such lower
3344 height as determined by the Planning Board to be appropriate for the situation.
3345 Buffer areas must be maintained and kept free of all outdoor storage, debris, and
3346 rubbish. The width of the buffer area may be reduced by the Planning Board if the
3347 function of the buffer is still fulfilled.

3348

3349 (c). Rural landscape features. Rural landscape features such as stonewalls, berms, and
3350 other agricultural structures, and tree lines or fields must be retained to the
3351 maximum extent practicable.

3352

3353 (d). Lighting. Outdoor lighting must provide the minimum illumination needed for the
3354 safe use of the site while enhancing the nighttime visual character of the site.
3355 Lighting must conform to the standards for outdoor lighting in § 16.7.11.H.

3356

3357 (e). Outdoor service and storage areas. Service and storage areas must be located to
3358 the side or rear of the building. Facilities for waste storage such as dumpsters must
3359 be located within an enclosure and be visually buffered by fencing, landscaping,
3360 and/or other treatments (see Design Handbook for examples of appropriate
3361 buffering).

3362

3363 (8) Traffic and circulation standards

3364 Sidewalks and roadways must be provided within the site to internally join abutting
3365 properties that are determined by the Planning Board to be compatible. In addition,
3366 safe pedestrian route(s) must be provided to allow pedestrians to move within the site
3367 and between the principal customer entrance and the front lot line where a sidewalk
3368 exists or will be provided or where the Planning Board determines that such a route is
3369 needed for adequate pedestrian safety and movement.

3370

3371 (9) Open space standards

3372 Open space must be provided as a percentage of the total area of the lot, including
3373 freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent of each
3374 lot must be designated as open space. Required open space must be shown on the plan
3375 with a note dedicating it as "open space."

3376 (a) An objective of the open space standard is to encourage the integration of open
3377 space throughout the entire development and with the open space on adjoining
3378 properties in order to alter the pattern of commercial activity along Route 1. To
3379 this end, a minimum of 25% of the required open space must be located in the
3380 front 50% of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest
3381 to the public street used to enter the lot. The Planning Board may modify this
3382 requirement when it is demonstrated to the Board's satisfaction that the objective
3383 is met to the greatest practicable extent.

3384 (b) The open space must be located to create an attractive environment on the site,
3385 minimize environmental impacts, protect significant natural features or resources
3386 on the site, and maintain wildlife habitat. Where possible, the open space must be
3387 located to allow the creation of continuous open space networks in conjunction
3388 with existing or potential open space on adjacent properties.

3389 (c) Special situations.

3390 [1].Cases where integrating open space would require exceeding the open space
3391 standards. In cases where the topography, wetlands, and existing development
3392 on the lot dictates that more than 75% of the required open space be located
3393 outside the front portion of the lot, a percentage of the open space normally
3394 required in the front portion of the lot may be shifted to the rear portion of the
3395 lot in order to achieve the required amount of vegetated open space and not
3396 reduce the allowable developable area on the lot, provided minimum
3397 landscaping standards are satisfied.

3398 [2].Small lots. The required amount of designated open space is reduced to 20%
3399 of each lot that is less than 100,000 square feet in size.

3400

3401 (10) Conditions for approving special exception uses in the Mixed-Use Zone.

3402 (a) All special exception uses in the Mixed-Use Zone must be visually harmonious
3403 with the neighborhood and natural landscape by the use of adequate screening
3404 and/or architectural design as follows:

3405 [1].Screening. Must be screened and buffered through landscaping, fencing,
3406 planted berms, existing vegetation, and separations of spaces to shield
3407 neighbors from any adverse external effects of the facility and to integrate the
3408 facility into the landscape. Plantings must be of sufficient maturity to achieve
3409 the desired screening effect within three years.

3410 [2].Architectural compatibility. Must be in architectural harmony with the area in
3411 which it is located to the maximum extent practicable through the appropriate
3412 use of facade materials, roof style, scale, bulk, and architectural style and
3413 details.

3414 [3].Location. Facilities located above ground must be sited so as to eliminate
3415 adverse impacts associated with the facility to the maximum extent practicable
3416 while still fulfilling the basic purpose of the facility.

3417

3418 (b).Retail Sales, a single retail use greater than 50,000 square feet in gross floor area
3419 and less than 150,000 square feet in gross floor area:

3420 [1].Timing. No more than one retail use with a gross floor area greater than
3421 50,000 square feet and less than 150,000 square feet may be approved in any
3422 three-year period.

3423 [2].Size. A single retail use with a gross floor area greater than 150,000 square
3424 feet is not permitted.

3425

3426 (c). Gasoline Service Stations.

3427 [1].Visual screening. A year-round buffer area must be provided between the
3428 gasoline service station and neighboring uses in accordance with the
3429 landscaping standards of the mixed-use zone regulations.

3430 [2].Separation distance. A gasoline service station may not be located within
3431 2,000 feet of another service station.

3432 [3].Minimum distance, pump to existing structures. A fuel pump may not be
3433 located closer than 150 feet to an existing occupied structure located off the
3434 site of the gasoline service station.

3435

3436 (d). Theater, Drive-in.

3437 [1].To protect the tranquility and quality of life of existing residential uses in the
3438 vicinity of the proposed drive-in theater, the hours of operation must be
3439 limited to the degree necessary and/or adequate visual and sound buffers must
3440 be established.

3441

3442 (e). Campground/Recreational Vehicle Park.

3443 [1].The standards in § 16.5.17 must be satisfied.

3444 [2].Occupation of any site by single user for a period exceeding 96 hours is
3445 prohibited.

3446 [3].Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

3447

3448 (f). Motel or Hotel.

3449 [1].Multiple-story structures are encouraged.

3450 [2].Wherever practicable, building orientation should not be parallel to U.S. Route
3451 1, but must take maximum advantage of the depth of the mixed-use zone.

3452 [3].More than three separate motels and/or hotels may not be permitted in the
3453 mixed-use zone.

3454

3455 (g).Public Utility Facility.

3456 [1].Public health and safety. Must not endanger the public health or safety.

3457 [2].Protect property values. Must not unreasonably reduce the value of abutting
3458 property without just compensation.

3459 [3].Prevent nuisances. Must prevent the emission of nuisances, such as but not
3460 limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and
3461 electrical interference, beyond the boundaries of the site to the maximum
3462 extent practicable.

3463

3464 (h).Age-Restricted Housing.[BWS24]

3465 [1].Location suitability. The location of the site must allow it to be developed so
3466 that the residents of the project will be able to function as part of the

3467 community and have pedestrian access to services and facilities within the
 3468 area.

3469 [2].Mixed use. If an aged-restricted housing component is proposed as part of the
 3470 project, it must be an essential element of the mixed-use project and be
 3471 designed to be an integrated part of the overall development.

3472

3473 (i). Commercial Greenhouses

3474 [1].The greenhouses and any related outdoor storage or service areas or structures
 3475 must be visually buffered from Route 1 and adjacent properties.

3476 [2].If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the
 3477 internal lighting may not be visible from adjacent properties including public
 3478 streets.

3479 [3].The noise resulting from the operation of the facility as measured at the
 3480 property line must be comparable with other uses in the MU Zone during the
 3481 period between 9:00 p.m. and 6:00 a.m.

3482 [4].The greenhouses and related storage and service areas may not be located
 3483 within 200 feet of any legally existing residential use, inn, motel or hotel,
 3484 hospital, or nursing home/convalescent center on another lot.

3485

3486 (j). Industry, light (greater than 20,000 square feet in gross floor area), Transportation
 3487 Terminal, Warehousing & Storage, or Wholesale Business.

3488 [1].The building and any related outdoor storage or service areas or structures
 3489 must be visually buffered from Route 1 and adjacent properties by other uses
 3490 allowed in the zone and/or by a landscaped buffer strip.

3491 [2].If the area between this use and Route 1 is not developed for another permitted
 3492 use or special exception, it must be maintained as a naturally vegetated buffer
 3493 in addition to the provision of a landscape planter strip.

3494 [3].The noise resulting from the operation of the facility as measured at the
 3495 property line must be comparable with other uses in the MU Zone during the
 3496 period between 9:00 p.m. and 6:00 a.m.

3497 [4].The use and related storage and service areas may not be located within 200
 3498 feet for any legally existing residential use, inn, motel or hotel, hospital, or
 3499 nursing home/convalescent center on another lot.

3500

3501 E. Shoreland Overlay Zone OZ-SL – Mixed-Use Zone (MU)

3502 (1) Permitted uses

3503 (a) Agriculture

3504 (b) Art Studio or Gallery

3505 (c) Dwellings, limited to the following:

3506 [1] Dwellings on lots of record as of April 1, 2004 if located farther than 100 feet
 3507 from the normal high-water line of any water bodies, or the upland edge of a
 3508 wetland.

3509 [2] Dwelling units on the upper floors of a mixed-use building is served by public
 3510 sewerage if located farther than 100 feet from the normal high-water line of
 3511 any water bodies, or the upland edge of a wetland.

- 3512 [\(d\) Religious Use](#)
- 3513 [\(e\) Home Occupation, Major](#)
- 3514 [\(f\) Home Occupation, Minor](#)
- 3515 [\(g\) Private Assembly \(which is not used for residential or overnight occupancy\)](#)
- 3516 [\(h\) Public Facility](#)
- 3517 [\(i\) Recreation, Public Open Space](#)
- 3518 [\(j\) Research & Development](#)
- 3519 [\(k\) Timber Harvesting](#)
- 3520
- 3521 [\(2\) Special exception uses](#)
- 3522 [\(a\) Accessory Buildings, Structures, and Uses](#)
- 3523 [\(b\) Boatyard](#)
- 3524 [\(c\) Business & Professional Offices](#)
- 3525 [\(d\) Commercial Kennel](#)
- 3526 [\(e\) Parking Area](#)
- 3527 [\(f\) Construction Services](#)
- 3528 [\(g\) Convalescent Care Facility](#)
- 3529 [\(h\) Nursing Care Facility, long-term](#)
- 3530 [\(i\) Day Care Facility](#)
- 3531 [\(j\) Residential Care Facility](#)
- 3532 [\(k\) Funeral Home](#)
- 3533 [\(l\) Retail Sales, Convenience](#)
- 3534 [\(m\) Retail Sales \(a single use not to exceed 50,000 square feet in gross floor area\)](#)
- 3535 [\(n\) Hospital](#)
- 3536 [\(o\) Inn](#)
- 3537 [\(p\) Commercial School \(which is not used for residential or overnight occupancy\)](#)
- 3538 [\(q\) Public or Private School \(which is not used for residential or overnight](#)
- 3539 [occupancy\)](#)
- 3540 [\(r\) Mass Transit Station](#)
- 3541 [\(s\) Motel](#)
- 3542 [\(t\) Hotel](#)
- 3543 [\(u\) Personal Services](#)
- 3544 [\(v\) Public Utility Facility](#)
- 3545 [\(w\) Repair Services](#)
- 3546 [\(x\) Research & Development](#)
- 3547 [\(y\) Restaurant](#)
- 3548 [\(z\) Recreation, Selected Commercial](#)
- 3549 [\(aa\) Shop in Pursuit of Trade](#)
- 3550 [\(bb\) Specialty Food and/or Beverage Facility](#)
- 3551 [\(cc\) Theater](#)
- 3552 [\(dd\) Transportation Terminal](#)
- 3553 [\(ee\) Veterinary Hospital](#)
- 3554 [\(ff\) Warehousing & Storage](#)
- 3555 [\(gg\) Wholesale Business](#)
- 3556
- 3557 [\(3\) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL](#)
- 3558

- 3559 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use Zone (MU).
- 3560 (1) Permitted Uses
- 3561 (a) Recreation, Public Open Space
- 3562 (b) Timber Harvesting
- 3563
- 3564 (2) Special Exception Uses
- 3565 (a) Accessory Uses & Buildings
- 3566 (b) Agriculture
- 3567 (c) Home Occupations, Major
- 3568 (d) Home Occupations, Minor
- 3569 (e) Public Utility Facility
- 3570 (f) Dwelling, Single-Family (on lots of record as of April 1, 2004)
- 3571
- 3572 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 3573 RP
- 3574

3575 **16.4.24 Mixed-Use – Badger Island (MU-BI)**3576 **A. Purpose**

3577 The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide opportunities for
3578 a wide variety of uses, including marine-related activities, offices, restaurants, shops,
3579 residences and services, to take advantage of a unique island setting located within walking
3580 distance to both downtown Portsmouth and downtown Kittery, in which water and sewer
3581 services are available to support development.

3582 This zone is further intended to develop standards appropriate for existing small lot sizes and
3583 street frontages to encourage investment in buildings that will contribute to the revitalization
3584 of the greater Kittery Foreside area while balancing business and residential interests to keep
3585 property values up and maintain an urban residential quality of life in the zone.

3586 **B. Permitted uses.**

3587 The following uses are permitted in the MU-BI Zone:

- 3588 (1) Accessory Dwelling Units
- 3589 (2) Dwellings, Attached Single-Family
- 3590 (3) Dwellings, Manufactured Housing
- 3591 (4) Dwelling, Multi-Family
- 3592 (5) Dwellings, Single-Family
- 3593 (6) Accessory Buildings, Structures, and Uses
- 3594 (7) Home Occupations, Major
- 3595 (8) Home Occupations, Minor
- 3596 (9) Inn
- 3597 (10) Day Care Facility
- 3598 (11) Private Assembly
- 3599 (12) Public Facility
- 3600 (13) Public or Private School
- 3601 (14) Religious Use
- 3602 (15) Recreation, Public Open Space
- 3603 (16) Aquaculture
- 3604 (17) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3605 cooking of seafood occur at the site)
- 3606 (18) Commercial School
- 3607 (19) Art Studio or Gallery
- 3608 (20) Business & Professional Offices
- 3609 (21) Conference Center
- 3610 (22) Personal Service
- 3611 (23) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3612 excluding restaurants where ordering and/or pickup of food may take place from a
3613 motorized vehicle)
- 3614 (24) Retail Sales (excluding those with any outdoor sales and/or storage)
- 3615 (25) Specialty Food and/or Beverage Facility
- 3616 (26) Boat Yard

3617 (27) Marina

3618 (28) Mass Transit Station

3619 (29) Mechanical Services

3620

3621 C. Special exception uses.

3622 The following uses are permitted as special exception uses in the MU-BI Zone:

3623 (1) Recreation, Commercial Indoor

3624 (2) Recreation, Commercial Outdoor

3625 (3) Public Assembly Area

3626 (4) Theater

3627 (5) Public Utility Facility

3628

3629 D. Standards

3630 (1) The following space standards apply

3631 (a) Minimum land area per dwelling unit: 3,000 square feet.

3632 [1].For each of the first two dwelling units and thereafter: 6,000 square feet.

3633

3634 (b).Minimum lot size: 6,000 square feet.

3635 (c).Minimum street frontage: 50 feet.

3636 (d).Minimum front yard: five feet.

3637 (e).Minimum rear and side yards: 10 feet.

3638 (f). Maximum building height: 40 feet.

3639 (g).Minimum setback from:

3640 [1].Water body and wetland water-dependent uses: zero feet.

3641 [2].All other uses (including buildings and parking): 75 feet unless modified,
3642 according to the terms of Subsection E of this section.

3643

3644 (h).Minimum open space on the site: 40%. (NOTE: The Planning Board may reduce
3645 the required open space to 30% where it is clearly demonstrated that no
3646 practicable alternative exists to accommodate a water-dependent use.)

3647

3648 (2) The design and performance standards of § 16.5, 16.7 and 16.8 must be met, except
3649 where specifically altered in this subsection.

3650

3651 (3) Appropriate waterfront activity incentives

3652 To encourage objectives of the Comprehensive Plan to: 1) provide public access to
3653 the waterfront; 2) retain and expand commercial water-dependent uses; and 3) take
3654 extraordinary steps to preserve the environmental quality of the shoreline and tidal
3655 waters, the required setback from water bodies and wetlands may be reduced to 25
3656 feet where the Planning Board finds a development plan significantly contributes to
3657 accomplishment of the above objectives by satisfactorily achieving one or more of the
3658 following:

3659 (a) Public access
3660 Grants an easement to the Town, or other acceptable party, providing public access
3661 to the waterfront at no charge to the general public via a developed accessible
3662 pedestrian route with appropriate signage or includes an outdoor deck or patio for
3663 customer seating at a restaurant open to the general public; or

3664
3665 (b) Retain/expand commercial water-dependent uses
3666 Provides for inclusion of commercial water-dependent use(s) on the property for
3667 the duration of the portion of the project that encroaches closer than the normal
3668 minimum setback from water bodies and wetlands. Provision of fewer than six
3669 boat slips for leisure/recreational boating do not constitute a commercial water-
3670 dependent use for the purposes of this section; or

3671
3672 (c) Preserve the environmental quality of coastal resources. Protect existing wildlife
3673 habitat, conserve shore cover and ensure the quality of stormwater runoff by
3674 satisfying all of the following standards:
3675 [1] Retain and protect existing significant wildlife habitat that provides food,
3676 cover and/or nesting for migratory song birds and wading birds;
3677 [2] In order to conserve shore cover, contiguous areas of shrubberies of varying
3678 height, such as dwarf species of barberry, serviceberry, holly, crabapple,
3679 dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as
3680 erosion-resistant ground cover plantings must be retained and planted, and
3681 existing trees retained, wherever practicable in the setback;
3682 [3] Implementation of a stormwater management plan endorsed by the York
3683 County Soil and Water Conservation District (SCS), or the Town's
3684 engineering peer review consultant, that treats stormwater with appropriate
3685 BMPs and removes pollutants in accordance with the most-current edition of
3686 the Maine Department of Environmental Protection BMP Manual, Stormwater
3687 Management for Maine. Pollutants sought to be removed include suspended
3688 solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the
3689 first flush of runoff may include detention, infiltration, filtering and trapping
3690 of pollutants.

3691
3692 (4) Special parking standards
3693 (a) Revised off-street parking standards
3694 Off-street parking must be provided in accordance with § 16.7.11.F unless
3695 modified below for the following uses:
3696 [1].Dwellings: 1 1/2 parking space for each dwelling unit;
3697 [2].Retail stores: one parking space for each 400 square feet of gross floor area;
3698 [3].Drive-in restaurants, snack bars and fast-food outlets, but excluding
3699 restaurants where ordering and/or pickup of food may take place from a
3700 motorized vehicle: one parking space for every three seats, but in no case less
3701 than four spaces;
3702 [4].Conference centers: one parking space for every 60 square feet in the largest
3703 assembly or meeting room.

3704

3705 (b) Joint-use parking

3706 Required off-street parking may be satisfied by the joint use of parking spaces by
3707 two or more uses if the applicant can show that parking demand is nonconflicting
3708 and will reasonably provide adequate parking for multiple uses without parking
3709 overflowing into undesignated areas. Nonconflicting periods may consist of
3710 daytime as opposed to evening hours of operation or weekday as opposed to
3711 weekend hours of operation or seasonal variation in parking demand. In making
3712 this determination under development plan review, the Planning Board must
3713 consider the following factors:

3714 [1].Such joint parking areas must be held under ownership or under terms of a
3715 contractual agreement that ensures such parking remains available to all users
3716 of the shared parking spaces;

3717 [2].Analysis is based on a most frequent basis not a "worst case" scenario;

3718 [3].Joint-use parking areas must be located within reasonable distance to the uses
3719 served, but do not need to be located on the same parcel as the uses served;

3720 [4].Ease and safety of pedestrian access to shared parking by the users served,
3721 including any improvements or shuttle service necessary; and

3722 [5].Such joint parking areas may not be located in residential zoning districts.

3723

3724 (c). Off-site parking

3725 Reuired off-street parking for employee use may be satisfied at off-site locations
3726 located within 1,000 feet measured along lines of public access from the lot to be
3727 served, provided such parking area is on other property owned by the applicant or
3728 under terms of a contractual agreement that will ensure such parking remains
3729 available to the use served.

3730

3731 (d).Employee parking

3732 Required off-street parking for employee use may be satisfied at off-site locations
3733 greater than 1,000 feet from the lot served upon a finding by the Planning Board
3734 that such parking is practicable and will reasonably prevent overflow parking
3735 from occurring on Badgers Island in undesignated locations. In making this
3736 determination under development review, the Planning Board must consider the
3737 following factors:

3738 [1].Such parking must be located within a reasonable distance to the users.

3739 [2].Such parking area must be on other property of the applicant or under terms of
3740 a contractual agreement that will ensure such parking remains available to the
3741 use served.

3742 [3].Safe and convenient means of transporting users to and from the off-site
3743 parking must be demonstrated by the applicant.

3744 [4].Such off-site parking area must not be located in residential zones of the
3745 Town. Off-site parking for use by employees may deviate from the
3746 dimensional standards contained in § 16.7.11.F, Table 2, Parking Space
3747 Design, if the applicant can demonstrate that the proposal practicably
3748 accommodates the number of parking spaces proposed.

3749

3750 (e). Parking demand management (PDM) strategies

- 3751 [1]. Parking demand strategies are measures geared toward affecting the demand
3752 side of the parking equation rather than the supply side. They attempt to
3753 change people's behavior away from traveling to work as a single occupant in
3754 an automobile to be parked near the work site. To be successful, they must
3755 rely on incentives or disincentives to make these shifts in behavior attractive to
3756 the traveler.
- 3757 [2]. A portion of required off-street parking may be satisfied by an owner
3758 incorporating PDM strategies to effectively reduce demand for parking stalls
3759 as determined by the Planning Board. In making this determination the
3760 Planning Board, under development plan review, must consider the following
3761 factors:
- 3762 [a]. The written commitment of the employer to maintain and enforce parking
3763 policies to reduce demand for parking stalls;
- 3764 [b]. The likelihood that specific incentives and policies adopted by the
3765 applicant will reduce parking demand on a regular basis throughout the
3766 year;
- 3767 [c]. Written commitments by employees to participate in PDM strategies; and
3768 [d]. The results of any studies demonstrating the effectiveness of strategies
3769 adopted by the applicant to reduce parking demand.
- 3770
- 3771 (f). PDM strategies include, but are not limited to, the following:
- 3772 [1]. Increase the number of persons per parked vehicle. Potential incentives:
- 3773 [a]. Preferential parking locations for car pools and van pools;
3774 [b]. Guaranteed ride home programs/taxi subsidies;
3775 [c]. Employer provision of vans for van pools; and
3776 [d]. Financial incentives to participants in car pools and van pools.
- 3777
- 3778 [2]. Increase the number of persons using an alternative mode of travel to the
3779 automobile, such as walking, bicycling, motorcycle, moped, bus and shuttle
3780 service. Potential incentives:
- 3781 [a]. Preferential parking locations for alternative modes of travel;
3782 [b]. Provision of changing rooms, lockers and showers;
3783 [c]. Early work release for employees using alternative modes of travel;
3784 [d]. Financial subsidies toward the purchase of alternative modes of travel to
3785 be used for commuting;
3786 [e]. Guaranteed ride home programs in inclement weather;
3787 [f]. Preferential work station locations; and
3788 [g]. Free use of a business vehicle for errands, lunch and off-site
3789 appointments.
- 3790 [3]. Influencing the time of, or need to, travel to work. Potential incentives:
- 3791 [a]. Reward employees who telecommute from their home or other remote
3792 location;
- 3793 [b]. Offer an optional four-day, forty-hour workweek as an alternative to a
3794 five-day workweek;
3795 [c]. Allow nonoverlapping early and late work shifts; and

3796 [d]. Flextime.

3797

3798 E. Shoreland Overlay Zone OZ-SL Mixed-Use – Badger’s Island Zone (MU-BI)

3799 (1) Permitted uses

3800 (a) Aquaculture

3801 (b) Dwellings if located 75 feet or farther from the normal high-water line of any
3802 water bodies, or the upland edge of a wetland.

3803 [1] Dwellings, Attached Single-Family

3804 [2] Dwellings, Manufactured Housing

3805 [3] Dwelling, Multi-Family

3806 [4] Dwellings, Single-Family

3807 (c) Recreation, Public Open Space

3808 (d) Research & Development

3809 (e) Mass Transit Station

3810

3811 (2) Special exception uses

3812 (a) Accessory Buildings, Structures, and Uses

3813 (b) Art Studio or Gallery

3814 (c) Boatyard

3815 (d) Business & Professional Offices

3816 (e) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3817 cooking of seafood occur at the site)

3818 (f) Recreation, Commercial Indoor

3819 (g) Recreation, Commercial Outdoor

3820 (h) Day Care Facility

3821 (i) Retail Sales (excluding those with any outdoor sales and/or storage)

3822 (j) Home occupation, Major

3823 (k) Home Occupation, Minor

3824 (l) Inn

3825 (m) Marina

3826 (n) Personal Services

3827 (o) Business Services

3828 (p) Public Assembly Area

3829 (q) Public Utility Facility

3830 (r) Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3831 excluding restaurants where ordering and/or pickup of food may take place from a
3832 motorized vehicle)

3833 (s) Commercial School

3834 (t) Public or Private School

3835 (u) Public Facility

3836 (v) Religious Use

3837 (w) Private Assembly

3838 (x) Specialty Food and/or Beverage Facility

3839 (y) Theater

3840

3841 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

3842

3843 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use – Badger’s Island Zone (MU-BI)

3844 (1) Permitted Uses

3845 (a) Aquaculture

3846 (b) Recreation, Public Open Space

3847

3848 (2) Special Exception Uses

3849 (a) Accessory Uses & Buildings

3850 (b) Home Occupations, Major

3851 (c) Home Occupations, Minor

3852 (d) Public Utility Facility

3853 (e) Dwelling, Single-Family

3854

3855 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
3856 RP

3857

3858 **16.4.25 Mixed-Use – Kittery Foreside (MU-KF)**3859 **A. Purpose**

3860 The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide business,
3861 service and community functions within the Mixed-Use – Kittery Foreside Zone and to
3862 provide a mix of housing opportunities in the historic urbanized center of the community and
3863 to allow for use patterns which recognize the densely built-up character of the zone and the
3864 limitations for providing off-street parking. Design standards are used to facilitate the
3865 revitalization of downtown Kittery Foreside as a neighborhood center, while promoting
3866 economic development of service businesses and walk-in shopping as well as respecting the
3867 zone's historic and residential character.

3868

3869 **B. Permitted uses**

3870 The following uses are permitted in the MU-KF Zone:

- 3871 (1) Accessory Dwelling Units
3872 (2) Dwelling, Attached Single-Family
3873 (3) Dwellings, Single-family
3874 (4) Dwellings, Two-Family
3875 (5) Dwellings, Multi-Family (up to 12 units per lot) |SD25|
3876 (6) Convalescent Care Facility
3877 (7) Nursing Care Facility, Long-term
3878 (8) Residential Care Facility
3879 (9) Accessory Buildings, Structures, and Uses
3880 (10) Home Occupation, Major
3881 (11) Home Occupation, Minor
3882 (12) Inn
3883 (13) Hospital
3884 (14) Nursery School
3885 (15) Private Assembly
3886 (16) Public Facility
3887 (17) Public or Private School
3888 (18) Religious Use
3889 (19) Recreation, Public Open Space
3890 (20) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
3891 cooking of seafood occur at the site
3892 (21) Commercial School
3893 (22) Art Studio or Gallery
3894 (23) Business & Professional Offices
3895 (24) Business Service
3896 (25) Personal Service
3897 (26) Public Assembly Area
3898 (27) Restaurant

- 3899 (28) Retail Sales (excluding those where the principal activity entails outdoor sales and/or
3900 storage) |SD26|
- 3901 (29) Specialty Food and/or Beverage Facility
- 3902 (30) Theater |SD27|
- 3903 (31) Marinas
- 3904 (32) Mass Transit Station
- 3905 (33) Parking Area
- 3906
- 3907 C. Special exception uses
- 3908 The following uses are permitted as special exception uses in the MU-KF Zone:
- 3909 (1) Public Utility Facility
- 3910 (2) Research & Development
- 3911
- 3912 D. Standards.
- 3913 (1) The design and performance standards of § 16.7 and 16.8 must be met, except where
3914 specifically altered in this subsection.
- 3915
- 3916 (2) Dimensional standards. The following space standards apply:
- 3917 (a) Minimum land area per dwelling unit: 5,000 square feet.
- 3918 (b) Minimum lot size: 5,000 square feet.
- 3919 (c) Minimum street frontage: zero feet.
- 3920 (d) Minimum front yard along:
- 3921 [1].Government Street east of Jones Avenue including Lot 107 at the corner of
3922 Government and Walker Streets: zero feet.
- 3923 [2].Wallingford Square: zero feet.
- 3924 [3].Other streets: 10 feet.
- 3925
- 3926 (e) Minimum rear and side yards: 10 feet.
- 3927
- 3928 (f) Minimum separation distance between principal buildings on the same lot: 10 feet.
- 3929
- 3930 (g) Maximum building height: 40 feet. (NOTE: Except that for buildings located on
3931 lots that abut tidal waters, the highest point on the primary structure of the
3932 building including the roof, but excluding chimneys, towers, cupolas and similar
3933 appurtenances that have no floor area, may be not more than 35 feet above the
3934 average grade between the highest and lowest elevations of the original ground
3935 level adjacent to the building.)
- 3936
- 3937 (h) Minimum setback from:
- 3938 [1].Water body and wetland water-dependent uses: zero feet.
- 3939 [2].All other uses (including buildings and parking): 75 feet unless modified,
3940 according to the terms of§16.4.25.D(7) through §16.4.25.D(10).

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(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:

[1]. Dwelling unit with two or more bedrooms: 3,000 square feet.

[2]. Dwelling unit with less than two bedrooms: 2,500 square feet.

[3]. 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 § 16.4.28 must conform to the following standards:

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.

[1]. 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.

[2]. 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,

3986 multiunit buildings. In the interest of this objective, building footprints must not
3987 exceed the maximums set forth within this subsection. Larger parcels may be
3988 developed but will require the use of multiple buildings with smaller footprints.
3989 The smaller scale of the buildings will allow new projects to fit in with the
3990 existing architectural styles of the Foreside Zone.

3991

3992 (c) Grouping of smaller buildings. When smaller buildings that are part of one project
3993 are placed adjacent to one another on the same lot or adjacent lots, each building
3994 must have its own structure and elevation treatment that is different from its
3995 neighbor. Small decorative wings may be attached to larger structures if well
3996 integrated into the overall arrangement of shapes.

3997 (d) Building details. Buildings must include architectural details that reflect the
3998 historic style of the Foreside Zone. Molding and trim must be used to decorate or
3999 finish the surface of buildings and doors. Eaves and overhangs should be
4000 incorporated into the design.

4001 (e) Roof slopes and shapes.

4002 [1]. Allowable roof shapes include a simple gable, gambrel, saltbox and hip. The
4003 minimum roof pitch must be 8:12 (rise over run), except in the case of a hip
4004 roof, where a lesser pitch is acceptable.

4005 [2]. The roof pitch of elements that link buildings or portions of buildings must be
4006 the same or greater than the pitch of the roofs on the buildings that are being
4007 linked.

4008 [3]. Flat or nearly flat shed roofs are not allowed except for porches, dormers or
4009 attachments distinct from the primary structure or where systems are
4010 concealed by standard roof forms.

4011 [4]. The roof pitch of additions or wings must be similar to the pitch of the primary
4012 roof. Clusters of buildings must apply the same roof plan principles to pitch
4013 and link roofs.

4014

4015 (f) Fencing and walls.

4016 [1]. Fencing may be used to separate public and private spaces, mark property
4017 lines, and protect plantings.

4018 [2]. Fences must harmonize with nearby structures and not unduly interfere with
4019 existing scenic views or vistas.

4020 [3]. Picket and other medium height fences and low stone walls are permitted.

4021 [4]. Modern concrete walls and similar structures are prohibited.

4022 [5]. Chain-link and stockade fences are not appropriate in front yards and may be
4023 used in side and rear yards only if compatible with the overall design of the
4024 site.

4025 [6]. Waste receptacles, dumpsters, exterior systems, service entrances and similar
4026 areas must be screened with board fences, board and lattice fences, and/or
4027 landscaping.

4028

4029 (g) Utilities. All utilities serving a new building, including electricity, telephone,
4030 cable, Internet and alarm systems must be placed underground from the access
4031 pole.

4032 (h) Preservation of trees. Existing large, healthy trees must be preserved if practical.

4033

4034 (5) Signage. Display of signboard and/or products for sale may be placed on a Town
4035 sidewalk only if:

4036 (a) Products for sale displayed outside the building are limited to an area extending
4037 no greater than two feet from the front facade of the building;

4038 (b) Signboards and/or products for sale must be removed from the sidewalk at the
4039 close of each business day;

4040 (c) An annual permit must be obtained from the Code Enforcement Officer. Permits
4041 are issued for a calendar year or portion thereof, to expire December 31 of each
4042 year. Sign permit application fee, reference Appendix A.

4043

4044 (6) Special parking standards.

4045 The Kittery Foreside Zone is already largely built up and many buildings either
4046 completely or almost completely cover the lot on which they are located. Therefore, it
4047 is not possible to comply with parking standards which would otherwise be required
4048 for open land. To encourage the reuse of existing structures as far as practical, the
4049 Town establishes special parking standards and conditions within the zone.

4050

4051 (7) Revised off-street parking standards.

4052 Insofar as practical, parking requirements are to be met on site unless an existing
4053 building covers so much of the lot as to make the provision of parking impractical in
4054 whole or in part. If meeting the parking requirements is not practical, then the parking
4055 demand may be satisfied off site or through joint-use agreements as specified herein.
4056 Notwithstanding the off-street parking requirements in § 16.7.11.F(3), minimum
4057 parking requirements for the uses below are modified as specified herein:

4058

4059 (a) Dwelling units in buildings that existed as of April 1, 2005, including the
4060 replacement of units destroyed by accidental or natural causes regardless of how
4061 configured: one parking space per dwelling unit;

4062 (b) Dwelling units in new buildings, including the replacement of existing buildings
4063 other than the replacement of units destroyed by accidental or natural causes: 1
4064 1/2 parking spaces per dwelling unit;

4065 (c) Retail, business office or bank facilities: one parking space for each 400 square
4066 feet of gross floor area;

4067 (d) Professional office: one parking space for each 300 square feet of gross floor area;

4068 (e) Inn: one parking space for each guest room;

4069 (f) Church: none required, if primary use occurs on weekends;

4070 (g) Restaurants: one parking space for each 100 square feet of gross floor area used
4071 by the public.

4072 NOTE: For each use in the zone, the total parking demand is calculated using the
4073 standards above or in § 16.7.11.F(3), if not modified above. Then each
4074 nonresidential use is exempt from providing off-street parking for the first three
4075 required spaces. For uses requiring a demand of greater than three, then the off-
4076 street parking is to be provided on site and/or in accordance with Subsection (9)
4077 and (10) of this section.

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(8) Maximum parking on new impervious surface

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(9) Off-site parking

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(10) Joint-use parking

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E. Shoreland Overlay Zone OZ-SL – Mixed-Use – Kittery Foreside Zone (MU-KF)

4117

(1) Permitted uses

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(a) Dwellings if located farther than 75 feet or farther from the normal high-water line of any water bodies, or the upland edge of a wetland

[1] Dwelling, Attached Single-Family

[2] Dwellings, Single-family

[3] Dwellings, Two-Family

- 4123 [4] Dwellings, Multi-Family (up to 12 units per lot)
- 4124 (b) Recreation, Public Open Space
- 4125
- 4126 (2) Special exception uses
- 4127 (a) Art Studio or Gallery
- 4128 (b) Business & Professional Offices
- 4129 (c) Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
- 4130 cooking of seafood occur at the site
- 4131 (d) Parking Area
- 4132 (e) Home Occupation, Major
- 4133 (f) Home Occupation, Minor
- 4134 (g) Inn
- 4135 (h) Marinas
- 4136 (i) Personal Services
- 4137 (j) Business Services
- 4138 (k) Public Assembly Area
- 4139 (l) Public Utility Facility
- 4140 (m) Research & Development;
- 4141 (n) Restaurant, coffee shop, bakery, cafes and similar food service operations, but
- 4142 excluding drive-in facilities; [SD28]
- 4143 (o) Retail Sales, excluding those where the principal activity entails outdoor sales
- 4144 and/or storage
- 4145 (p) Mass Transit Station
- 4146 (q) Specialty Food and/or Beverage Facility
- 4147 (r) Theater

- 4148
- 4149 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

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4151 F. Resource Protection Overlay Zone OZ-RP – Mized Use – Kittery Foreside Zone (MU-

4152 KF)

4153 (1) Permitted Uses

- 4154 (a) Recreation, Public Open Space

4155

4156 (2) Special Exception Uses

- 4157 (a) Accessory Buildings, Structures, and Uses

- 4158 (b) Home Occupation, Major

- 4159 (c) Home Occupation, Minor

- 4160 (d) Public Utility Facility

- 4161 (e) Dwelling, Single-Family

4162

- 4163 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-
- 4164 RP

4165 **16.4.26 Mixed-Use-Neighborhood MU-N**4166 **A. Purpose**

4167 To encourage higher density, mixed-use development that provides increased housing
4168 opportunities and a desirable setting for business while balancing such increased
4169 development with environmentally conscious and ecologically sensitive use of land.

4170

4171 **B. Permitted Uses**4172 (1) Dwelling, Attached Single-Family4173 (2) Dwelling, Multi-Family4174 (3) Dwelling, Multi-Family (units on the upper floors of a mixed-use building that is
4175 served by public sewer)4176 (4) Convalescent Care Facility4177 (5) Nursing Care Facility, Long-term4178 (6) Residential Care Facility (attached dwelling units only)4179 (7) Accessory Buildings, Structures, and Uses4180 (8) Home Occupation, Major4181 (9) Home Occupation, Minor4182 (10) Hotel4183 (11) Inn4184 (12) Day Care Facility4185 (13) Elderly Day Care Facility4186 (14) Hospital4187 (15) Public Utility Facility4188 (16) Recreation, Passive4189 (17) Recreation, Public Open Space4190 (18) Recreation, Commercial Indoor (except shooting and archery ranges) [SD29]4191 (19) Recreation, Commercial Outdoor (except shooting and archery ranges4192 (20) Veterinary Hospital4193 (21) Art Studio or Gallery4194 (22) Business & Professional Offices4195 (23) Business Services4196 (24) Conference Center4197 (25) Personal Services4198 (26) Repair Service4199 (27) Research & Development4200 (28) Restaurant4201 (29) Retail Sales (not to exceed 30,000 square feet in gross floor area unless part of a
4202 mixed-use building)4203 (30) Retail Sales, Convenience (excluding the sale of gasoline)4204 (31) Shops in Pursuit of Trade4205 (32) Specialty Food and/or Beverage Facility

- 4206 (33) Theater
- 4207 (34) Industry, light (less than or equal to 20,000 square feet in gross floor area)
- 4208 (35) Liner Buildings (as part of a mixed-use building)^[SD30]

4209

4210 C. Special exception uses

- 4211 (1) Commercial Kennel
- 4212 (2) Parking Area
- 4213 (3) Construction Services
- 4214 (4) Equipment sales and rentals (only on lots with frontage on Route 236)
- 4215 (5) Gas service station (only on lots with frontage on Route 236)^[SD31]
- 4216 (6) Industry, light (greater than 20,000 square feet in gross floor area)^[SD32]
- 4217 (7) Mass Transit Station
- 4218 (8) Mechanical Services
- 4219 (9) New Motor Vehicle Sales (only on lots with frontage on Route 236)
- 4220 (10) Used Car Lot (only on lots with frontage on Route 236)
- 4221 (11) Repair Garage (only on lots with frontage on Route 236)
- 4222 (12) Retail Sales (greater than 30,000 square feet in gross floor area and less than 50,000
- 4223 square feet in gross floor area)
- 4224 (13) Undefined use; additional commercial/business uses not defined by § 16.3.
- 4225 (f) Undefined uses: will be considered by the Planning Board based on the following
- 4226 criteria:
- 4227 [1]. If the use is consistent with the Comprehensive Plan and zoning district
- 4228 purposes; and
- 4229 [2]. If the use meets special exception criteria found in § 16.3.2.1.C(14)
- 4230 (g) In addition, the undefined use must meet one or both of the following criteria:
- 4231 [1] If the proposed use has substantially similar impacts as a listed use.
- 4232 [2] If the proposed use is compatible with existing uses within the zoning district
- 4233 for which it is proposed.

4234

4235 D. Standards.

4236 All development and the use of land in the MU-N Zone must meet the following standards.

4237 Kittery's Design Handbook illustrates how these standards can be met. In addition, the design

4238 and performance standards of § 16.5, 16.7 and 16.8 must be met unless noted otherwise

4239 below.

4240 (1) All submissions must include a lighting plan. Hours of operation and number of

4241 employees for businesses must also be provided.

4242

4243 (2) The following space standards apply:

4244 (a) Minimum land area per dwelling unit - mixed-use building: 4,000 square feet for

4245 first residential unit plus 3,000 square feet for each additional unit, no minimum

4246 land area for business or commercial uses when combined in a building with

4247 residential uses except that the total lot size must be at least 20,000 square feet.

4248 NOTE: ADA-compliant units may be located on the first floor through a
 4249 special exception permit by the Planning Board but only 50% of the first
 4250 floor may be such ADA-compliant residential units.

4251

4252 (b). Minimum land area per dwelling unit - multiunit residential: 4,000 square feet for first
 4253 unit, plus 2,500 square feet for each additional unit up to 16 units per acre of lot size.
 4254 Total lot size must be a minimum of 20,000 square feet.

4255

4256 (c). Mixed-use or multiunit residential buildings which encompass at least 50% of
 4257 required parking within the building: Two additional residential units may be added to
 4258 each story above the parking with no additional land area required.

4259

4260 (d). Mixed-use buildings which encompass at least 50% of required parking within the
 4261 building and include a liner building for nonresidential uses buffering parking from
 4262 the street: One additional residential unit may be added to each story with no
 4263 additional land area required.

4264

4265 (e). Minimum land area per bed for long-term nursing care and convalescent care facilities
 4266 that are connected to public sewer: 2,000 square feet.

4267

4268 (f). Minimum land area per residential unit for eldercare facilities that are connected to
 4269 public sewer: 3,000 square feet.

4270

4271 (g). Minimum lot size: 20,000 square feet.

4272

4273 (h). Minimum street frontage: 75 feet.

4274

4275 (i). Minimum front setback on Route 236: 30 feet.

4276

4277 (j). Minimum front setback on Dennett Road: 50 feet.

4278

4279 (k). Minimum front setback on Martin Road: 100 feet.

4280

4281 (l). Maximum front setback all other roads: 20 feet.

4282

4283 (m). Spacing between buildings: 15 feet.*

4284

4285 (n). Maximum rear and side setbacks: 20 feet.**

4286

NOTES:

* Or as required by the Fire Department or State Fire Marshal's office.

** Except as may be required by the buffer provisions of Code. See Landscaping, Screening and Buffers § 16.4.26.(8)

4287 (o).Maximum building height: 50 feet (exclusive of solar apparatus).

4288

4289 (p).Maximum impervious and outdoor stored material coverage: 70%.

4290 NOTE: With Best Management Practices (BMPs) and Low Impact
4291 Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's
4292 Maine Stormwater Best Management Practices Manual, Volumes I - III, as
4293 amended from time to time, incorporated in site design, otherwise 60%.
4294 Maximum on-site stormwater infiltration is the desired and measurable
4295 outcome.

4296

4297 (q).Minimum setback from streams, water bodies and wetlands in accordance with
4298 Table 16.5.30.

4299 [1] With Best Management Practices (BMPs) and Low Impact Development
4300 Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine
4301 Stormwater Best Management Practices Manual, Volumes I - III, as amended
4302 from time to time, incorporated in site design, then wetland setbacks pursuant
4303 only to Maine Department of Environmental Protection (MDEP) Rules
4304 Chapters 305 and 310.

4305 [2] Without Best Management Practices (BMPs) and Low Impact Development
4306 Practices (LIDs) as defined in § 16.3 and based on Maine DEP's Maine
4307 Stormwater Best Management Practices Manual, Volumes I - III, as amended
4308 from time to time, incorporated in site design, wetland setbacks pursuant to
4309 Kittery Town Code Title 16, Table 16.5.30.

4310 [3] The Town shall retain expert consultation (qualified wetland scientist and/or
4311 Maine-certified soil scientist) to determine wetland delineations and
4312 classifications and to perform soil testing as needed, all of which shall be paid
4313 for by the applicant at the time of sketch plan. The qualified wetlands scientist
4314 and/or Maine-certified soil scientist shall determine through field investigation
4315 the presence, location and configuration of wetlands on the area proposed for
4316 use. Any wetland alterations proposed must also be reviewed by the Town's
4317 consultant(s) at the applicant's expense. These requirements are in addition to
4318 engineering, stormwater management/BMPs, traffic or other types of peer
4319 review that may also be required.

4320

4321 (r). Minimum open space:

4322 [1] Lot size less than 100,000 square feet: 15%.

4323 [2] Lot size greater than 100,000 square feet: 25%.

4324 NOTE: This requirement may be met by a payment-in-lieu to the Wetland
4325 Mitigation Fund. These fees shall be set by Town Council. Landscaping,
4326 screening and buffer requirements must still be met.

4327

4328 (3) Parking:

4329 (a) Parking is encouraged within buildings. New or revised surface parking areas,
4330 garages, and entrances to parking within buildings must be located to the rear of
4331 buildings. If a rear location is not achievable, as determined by the Planning
4332 Board, parking, garages and entrances to parking must be located to the side of the
4333 building. Screening and/or fencing is required for surface parking areas along a

- 4334 street. See Subsection WW(12), Landscaping, Screening and Buffers. Parking
4335 requirements are based on the Institute of Transportation Engineers (ITE) parking
4336 generation rates.
- 4337 (b).Joint-use agreements (between businesses and residences) for parking are
4338 encouraged. A plan describing how joint-use parking needs will be met is required
4339 as part of any development that proposes such parking and must be reviewed and
4340 approved by the Planning Board.
- 4341 (c).Parking requirements for nonresidential uses may be met partially or in full by
4342 parking on the street except that no parking is allowed on Route 236, Dennett
4343 Road, or Martin Road. Such on-street parking plans must be reviewed by planning
4344 staff prior to submission and then reviewed and approved by the Planning Board.
- 4345 (d).Electric car charging stations are allowed in parking lots but must not interfere
4346 with pedestrian movement on sidewalks.
- 4347 [1] Parking for development that includes trails and low intensity recreation:
4348 Development that includes the creation of public trails and low intensity
4349 recreational opportunities such as wildlife observation stations or boardwalks
4350 may apply the pertinent off-street parking standards below. All other off-street
4351 parking standards as found in § 16.7.11F(3) shall apply.
- 4352
- 4353 (e) Multiunit residential buildings and mixed-use buildings that include residential.
- 4354 [1] One parking space for studio and one-bedroom dwelling units.
- 4355 [2] One and one-half parking spaces for two-bedroom dwelling units plus one
4356 guest parking space per every four dwelling units.
- 4357 [3] Parking spaces for more-than-two-bedroom dwelling units.
- 4358
- 4359 (4) Loading docks, overhead doors, service areas and outdoor storage areas.
- 4360 (a) Loading docks and overhead doors must be located on the rear or side of the
4361 building. Loading docks must be screened from view by adjacent residential uses.
4362 This screening must consist of the following:
- 4363 [1] A fence, constructed of a material similar to surrounding buildings, of
4364 sufficient height as determined by the Planning Board to accomplish the
4365 screening. No fence may be less than six feet tall.
- 4366
- 4367 (b).All service areas for dumpsters, compressors, generators and similar items as well
4368 as any outdoor storage areas must be screened by a fence at least six feet tall,
4369 constructed of a material similar to surrounding buildings, and must surround the
4370 service or storage area except for the necessary ingress/egress.
- 4371
- 4372 (5) Site design
- 4373 Site design and building placement must be attentive to the surrounding environment
4374 including sun, wind and shade patterns related to proposed and existing buildings. A
4375 sun/shade analysis may be required by the Planning Board.
- 4376
- 4377 (6) Energy and sustainability
- 4378 Energy efficiency is allowed and encouraged through the use of solar power,
4379 geothermal, and other alternative and sustainable power sources.

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4381

(7) Building design standards.

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(8) Landscaping, screening and buffers.

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(a) New buildings must meet the general design principles set forth in the Design Handbook except as noted below. In general, buildings should be oriented to the street from which they derive frontage, with the front of the building facing the street. The front facade must contain the following:

[1] A front door for pedestrian access.

[2] Windows.

(b). Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

(a) A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

(b). Native trees, shrubs and herbaceous plantings are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.

(c). Any required plantings approved by the Planning Board that do not survive must be replaced within one year.

(d) Landscaping along the street frontage of each building must consist of one of the following:

[1] Street trees. A minimum of one street tree must be planted for each 20 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement.

[2] Pocket Park. The park must be at least 200 square feet. A minimum of three trees and a bench for sitting are required. Park must be vegetated with ground cover except for walkways.

(e) Surface parking areas that abut a street must provide screening in one of the following ways:

[1] One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting.

4426 [2] A combination of trees and shrubs including at least 50% evergreen species,
4427 all at least six feet high at time of planting, in a planting bed at least eight feet
4428 wide. Plantings must be sufficient, as determined by the Planning Board, to
4429 screen the parking area from the street except for necessary vehicular and
4430 pedestrian access. Planting beds may be mulched but no orange- or red-dyed
4431 mulching material may be used.

4432 [3] A minimum of 10% of any surface parking area consisting of 10 or more
4433 parking spaces must be landscaped with trees and vegetated islands. This
4434 requirement is in addition to the screening requirements in Subsection
4435 §16.4.26.D(8)(e)(i) and §16.4.26.D(8)(e)(ii) if the parking area abuts a
4436 street. Bioretention cells and rain gardens may be utilized to meet the
4437 landscaping requirements and perform stormwater management.

4438

4439 (f) Buffers required between residential uses and mixed use or nonresidential uses,
4440 and between adjacent residential zones and this zone must be 50 feet wide and
4441 consist of one of the following as determined by the Planning Board:

4442 [1].Existing natural woodland and vegetation.

4443 [2].Existing natural woodland augmented by the planting of additional trees
4444 consisting of a variety of species at least 2.5-inch caliper and 12 feet high.

4445 [3].A fence at least six feet high, constructed of material similar to surrounding
4446 buildings, with plantings of trees and shrubs at least six feet tall on either side
4447 of the fence.

4448

4449 (9) Open space

4450 Open space must be provided as a percentage of the total parcel area including
4451 freshwater wetlands, water bodies, streams and setbacks. Required open space must
4452 be shown on the site plan with a note dedicating it as open space. The open space
4453 must be situated to protect significant natural features and resources, minimize
4454 environmental impacts and promote an aesthetically pleasing site.

4455 (a) Wherever possible, large healthy trees and areas with mature tree cover must be
4456 included in the open space.

4457 (b).Location of open space must promote the continuity of open-space networks
4458 across adjacent parcels.

4459 (c). Where possible, open space and open-space networks must include public trails
4460 and low-intensity recreational opportunities.

4461

4462 (10) Special situations

4463 Expansions or modifications of 1,000 square feet or less to existing uses are exempt
4464 from landscaping, screening and buffer requirements.

4465

4466 (11) Conditions for approving special exception uses in the Neighborhood Mixed-
4467 Use Zone.

4468 All applications must include a narrative describing why the use proposed will
4469 promote the general welfare (specifics may be found in § 16.3 Definitions for special
4470 exception) of the Town of Kittery, how the use proposed will meet the special
4471 exception criteria found in § 16.2.12.F.(3) and how the proposed development will

4472

adapt and relate to the natural environmental conditions found on the site.

4473

4474 **16.4.27 Transportation – Maine Turnpike T-MT**4475 **A. Purpose**

4476 The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe,
4477 effective, efficient and environmentally compatible use of the right-of-way owned and
4478 operated by the Maine Department of Transportation and the Maine Turnpike Authority as
4479 authorized by the state, as well as for safe and environmentally compatible buffering for the
4480 adjacent land uses along the right-of-way.

4481

4482 **B. Permitted uses: Permitted and special exception land uses include the highway,**
4483 **information center and other uses as authorized by the state.**

4484

4485 **C. Special exception uses: none.**

4486

4487 **D. Standards.**

4488 **(1) The design and performance standards of § 16.5, 16.7 and 16.8 and the Shoreland and**
4489 **Resource Protection Overlay Zones, where applicable.**

4490 **(2) Dimensional standards.**

4491 **(a) Minimum land area per dwelling unit: not applicable.**

4492 **(b) Minimum lot size: not applicable.**

4493 **(c) Minimum street frontage: not applicable.**

4494 **(d) Minimum front yard: not applicable.**

4495 **(e) Maximum building coverage: not applicable.**

4496 **(f) Minimum rear and side yards: not applicable.**

4497 **(g) Maximum building height: 35 feet.**

4498 **(h) Minimum distance between principal buildings on the same lot: not applicable.**

4499 **(i) Minimum setback from water bodies and wetlands: not applicable.**

4500

4501 **E. Shoreland Overlay Zone OZ-SL – Transportation – Maine Turnpike (T-MT)**

4502 **(1) Permitted uses: Permitted and special exception land uses include the highway,**
4503 **information center and other uses as authorized by the state.**

4504 **(2) Special Exceptions: None.**

4505 **(3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL**

4506

4507 **F. Resource Protection Overlay Zone OZ-RP – Transportation – Maine Turnpike (T-MT)**

4508 **(1) Permitted Uses.**

4509 **(a). Permitted land uses include the highway, information center and other uses as**
4510 **authorized by the state.**

4511 **(2) Special Exception uses: none.**

4512

4513 **16.4.28 Shoreland Overlay Zone OZ-SL**4514 **A. Purpose**

4515 The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of safe and
4516 healthful conditions; to prevent and control water pollution; to protect fish spawning grounds,
4517 aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and
4518 accelerated erosion; to protect archaeological and historic resources, to protect commercial
4519 fishing and maritime industries; to protect freshwater and coastal wetlands; to control
4520 building sites, placement of structures and land uses; to conserve shore cover and visual as
4521 well as actual points of access to inland and coastal waters; to conserve natural beauty and
4522 open space; and to anticipate and respond to the impacts of development in shoreland areas.

4523

4524 **B. Authority**

4525 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4526 to 449.

4527

4528 **C. Applicability and boundaries**

4529 The provisions of this section apply to all uses, lots and structures within the following:

4530

4531 Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-250
4532 feet): Land areas within 250 feet, horizontal distance, of the:

4533 (a) Normal high-water line of any river or saltwater body.

4534 (b).Upland edge of a coastal wetland, including all areas affected by tidal action.

4535 (c).Land edge of a fresh water wetland connecting to a protected stream as identified
4536 on the Zoning Map.

4537

4538 Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land areas
4539 within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive
4540 of those areas within 250 feet horizontal distance of the normal high-water line of a
4541 river or within 250 feet horizontal distance of the upland edge of a freshwater or coastal
4542 wetland.

4543 (a) However, where a stream and its associated Shoreland Overlay Zone area are
4544 located within 250 feet, horizontal distance, of the above water bodies or
4545 wetlands, that land area will be regulated under the provisions of the Shoreland
4546 Overlay Zone associated with that water body or wetland.

4547 (b) Where uncertainty exists as to the exact location of the Shoreland Overlay Zone
4548 boundary, the Planning Board, with expert consultation as may be required, is the
4549 final authority as to location.

4550 **D. Permitted and special exception land use**

4551 The permitted and special exception uses in the Shoreland Overlay Zone section are allowed
4552 in accordance with the land use standards established in the underlying base zone in this
4553 chapter and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §§ 435
4554 to 449.

4555

4556 E. Standards4557 Minimum lot standards4558 (a) Minimum lot size by base zone, within the:4559 [1].Residential-Village (R-V) Zone: 8,000 square feet.4560 [2].Residential-Urban (R-U) Zone: 20,000 square feet.4561 [3].Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery
4562 Point Village (R-KPV) Zones: 40,000 square feet.4563 [4].Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and
4564 Business-Local 1 (B-L1) Zones: 60,000 square feet.4565 [5].Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.4566 [6].Business-Park (B-PK) Zone: 120,000 square feet.4567 [7].Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.4568 [8].Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

4569

4570 (b).Minimum land area per dwelling unit by base zone, within the:4571 [1].Residential-Village (R-V) Zone: 8,000 square feet.4572 [2].Business-Park (B-PK) Zone: 10,000 square feet.4573 [3].Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1)
4574 Zones: 20,000 square feet.4575 [4].Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and
4576 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.4577 [5].Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.4578 [6].Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet. [NOTE: 3,000
4579 square feet for the first two dwelling units.]4580 [7].Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

4581

4582 (c).Minimum shore frontage by base zone per lot and dwelling unit.4583 [1].Mixed Use-Badgers Island (MU-BI): 25 feet.

4584

4585 [2].Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery
4586 Foreside (MU-KF) Zones: 50 feet.

4587

4588 [3].Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-
4589 Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) Zones:4590 [a]. Shore frontage per lot: 150 feet.4591 [b]. Shore frontage per dwelling unit: 50 feet.

4592

4593 [4].Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-
4594 Kittery Point Village (R-KPV) Zones:4595 [a]. Shore frontage per lot: 150 feet.4596 [b]. Shore frontage per dwelling unit: 100 feet.

4597

4598 [5].Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling unit): 250

4599 feet.

4600 [6]. The minimum shore frontage requirement for public and private recreational
4601 facilities is the same as that for residential development in the respective zone.

4602

4603 The total footprint of devegetated area must not exceed 20% of the lot area located
4604 within the Shoreland Overlay Zone, except in the following zones:

4605 (a) Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-
4606 KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals
4607 may approve a miscellaneous appeal application to increase allowable devegetated
4608 area in the Mixed-Use – Badgers Island (MU-BI) Zone to 70% where it is clearly
4609 demonstrated that no practicable alternative exists to accommodate a water-
4610 dependent use.

4611 (b) Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and Industrial
4612 (IND) Zones where the maximum devegetated area is 70%.

4613 (c) Residential – Urban (R-U) Zone where the lot is equal to or less than 10,000
4614 square feet, the maximum devegetated area is 50%.

4615

4616 Principal and accessory structures — setbacks and development

4617 (a) All new principal and accessory structures [except certain patios and decks per §
4618 16.4.28.E(3)b] must be set back at least 100 feet, horizontal distance, from the
4619 normal high-water line of any water bodies, tributary streams, the upland edge of
4620 a coastal wetland, or the upland edge of a freshwater wetland, with the following
4621 exceptions:

4622 [1]. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the setback
4623 requirement is 75 feet, horizontal distance, from the normal high-water line of
4624 any water bodies, or the upland edge of a wetland, unless modified according
4625 to the terms of §§ 16.4.24.D(1) through (6) and 16.4.25.D

4626 [2]. In the Resource Protection Overlay Zone, the setback requirement is 250 feet,
4627 horizontal distance, except for structures, roads, parking spaces or other
4628 regulated objects specifically allowed in the zone, in which case the setback
4629 requirements specified above apply.

4630 [3]. The water body, tributary stream, or wetland setbacks do not apply to
4631 structures that require direct access to the water body or wetland as an
4632 operational necessity, such as piers and retaining walls, nor do they apply to
4633 other functionally water-dependent uses, as defined in § 16.3.

4634

4635 (b). Accessory patios or decks no larger than 500 square feet in area must be set back
4636 at least 75 feet from the normal high-water line of any water bodies, tributary
4637 streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
4638 wetland. Other patios and decks must satisfy the normal setback required for
4639 principal structures in the Shoreland Overlay Zone.

4640

4641 (c). If there is a bluff, setback measurements for principal structures, water and
4642 wetland must be taken from the top of a coastal bluff that has been identified on
4643 coastal bluff maps as being "highly unstable" or "unstable" by the Maine
4644 Geological Survey pursuant to its "Classification of Coastal Bluffs" and published
4645 on the most recent Coastal Bluff Map. If the applicant and Code Enforcement

4646 Officer are in disagreement as to the specific location of a "highly unstable" or
4647 "unstable" bluff, or where the top of the bluff is located, the applicant is
4648 responsible for the employment of a Maine-registered professional engineer, a
4649 Maine-certified soil scientist, or a Maine state geologist qualified to make a
4650 determination. If agreement is still not reached, the applicant may appeal the
4651 matter to the Board of Appeals.

4652

4653 (d).Public access to the waterfront must be discouraged through the use of visually
4654 compatible fencing and/or landscape barriers where parking lots, driveways or
4655 pedestrian routes abut the protective buffer. The planting or retention of thorny
4656 shrubs, such as wild rose or raspberry plants, or dense shrubbery along the
4657 perimeter of the protective buffer is encouraged as a landscape barrier. If hedges
4658 are used as an element of a landscape barrier, they must form a solid continuous
4659 visual screen of at least three feet in height immediately upon planting.

4660

4661 (e). On a nonconforming lot of record on which only a residential structure exists, and
4662 it is not possible to place an accessory structure meeting the required water body,
4663 tributary stream or wetland setbacks, the Code Enforcement Officer may issue a
4664 permit to place a single accessory structure, with no utilities, for the storage of
4665 yard tools and similar equipment. Such accessory structure must not exceed 80
4666 square feet in area nor eight feet in height and must be located as far from the
4667 shoreline or tributary stream as practical and meet all other applicable standards,
4668 including lot coverage and vegetation clearing limitations. In no case will the
4669 structure be allowed to be situated closer to the shoreline or tributary stream than
4670 the existing principal structure.

4671

4672 (f). The lowest floor elevation or openings of all buildings and structures, including
4673 basements, must be elevated at least one foot above the elevation of the one-
4674 hundred-year flood, the flood of record or, in the absence of these, the flood as
4675 defined by soil types identified as recent floodplain soils.

4676

4677 (g).Stairways or similar structures may be allowed with a permit from the Code
4678 Enforcement Officer to provide shoreline access in areas of steep slopes or
4679 unstable soils, provided the:

4680 [1].Structure is limited to a maximum of four feet in width;

4681 [a]. Structure does not extend below or over the normal high-water line of a
4682 water body or upland edge of a wetland (unless permitted by the
4683 Department of Environmental Protection pursuant to the Natural
4684 Resources Protection Act, 38 M.R.S. § 480-C); and

4685 [2].Applicant demonstrates that no reasonable access alternative exists on the
4686 property.

4687

4688 (h).If more than one dwelling unit, principal governmental, institutional, commercial
4689 or industrial structure or use, or combination thereof, is constructed or established
4690 on a single parcel in the Shoreland Overlay Zone, all dimensional requirements
4691 shall be met for each additional dwelling unit, principal structure, or use.

4692

4693 **16.4.29 Resource Protection Overlay Zone OZ-RP**4694 **A. Purpose**

4695 The purposes of this zone are to further the maintenance of safe and healthful conditions;
4696 prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic
4697 life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of
4698 access to inland and coastal waters, and natural beauty.

4699

4700 **B. Authority**

4701 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4702 to 449.

4703

4704 **C. Applicability and boundaries**

4705 The provisions of this section apply to all uses, lots and structures within areas where the
4706 existing conservation and accessory development is consistent with the allowed uses for this
4707 zone. The Resource Protection Overlay Zone includes areas where development would
4708 adversely affect water quality, productive habitat, biological ecosystems, or scenic and
4709 natural values. This includes the following areas when they also occur within the limits of the
4710 Shoreland Overlay Zone, exclusive of a stream protection area, except currently developed
4711 areas and areas that meet the criteria for commercial fisheries/maritime uses:

4712 Waterfowl and wading bird habitat/water body related wetland areas. Land areas within
4713 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes
4714 and salt meadows, and wetlands associated with rivers which are rated "moderate" or
4715 "high" value waterfowl and wading bird habitat, including nesting and feeding areas as
4716 identified as of December 31, 2008, and salt marshes and salt meadows as identified as
4717 of January 1, 1973, by the Maine Department of Inland Fisheries and Wildlife
4718 (MDIF&W). For the purposes of this section "wetlands associated with rivers" means:
4719 areas characterized by nonforested wetland vegetation and hydric soils that are
4720 contiguous with a river and have a surface elevation at or below the water level of the
4721 river during the period of normal high water. "Wetlands associated with rivers" are
4722 considered to be part of that river.

4723

4724 **Steep slope areas.**

4725 (a) Land areas that have two or more contiguous acres of land where the slopes are
4726 20% or greater; and

4727 (b) Land areas along rivers subject to severe bank erosion, undercutting or riverbed
4728 movement; and

4729 (c) Land adjacent to tidal waters which are subject to severe erosion or mass
4730 movement, such as steep coastal bluffs.

4731

4732 Independent wetland areas. Land areas of two or more contiguous acres supporting
4733 wetland vegetation and hydric soils which are not part of a freshwater or coastal
4734 wetland as defined and which are not surficially connected to a water body during the
4735 period of normal high water.

4736

4737 Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters, and
4738 other areas susceptible to flooding as defined as being located within the one-hundred-
4739 year floodplain as designated on the FEMA Flood Insurance Rate Maps or Flood
4740 Hazard Boundary Maps, or the flood of record or, in the absence of these, by soil types
4741 identified as recent floodplain soils.

4742

4743 D. Standards

4744 The design and performance standards of § 16.5, 16.7 and 16.8 and Shoreland Overlay
4745 Zone provisions of § 16.4.28 apply, where applicable, in addition to the following
4746 standards, whichever is the most restrictive.

4747 Dimensional standards such as front, side and rear yards, building coverage, height and
4748 the like are the same as those in the underlying zone.

4749 Road construction and parking facilities are allowed in the Resource Protection Overlay
4750 Zone only where no reasonable alternative route or location is available outside the
4751 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision
4752 plan approval is required by the Planning Board.

4753 Clearing or removal of vegetation for uses, other than timber harvesting as limited per §
4754 16.5.29, in a Resource Protection Overlay Zone, is prohibited within the strip of land
4755 extending 100 feet, horizontal distance, inland from the normal high-water line, except
4756 to remove safety hazards. Elsewhere in a Resource Protection Overlay Zone, the cutting
4757 or removal of vegetation is limited to that which is necessary for uses expressly
4758 authorized in the Resource Protection Overlay Zone.

4759

4760 **16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU**4761 **A. Purpose**

4762 The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the
4763 development and expansion of water-dependent commercial fisheries/maritime activities.
4764 Commercial fisheries/maritime activities and other areas suitable for functionally water-
4765 dependent uses, considers:

4766 Shelter from prevailing winds and waves;

4767 Slope of the land within 250 feet, horizontal distance, of the normal high-water line;

4768 Depth of the water within 150 feet, horizontal distance, of the shoreline;

4769 Available support facilities, including utilities and transportation facilities; and

4770 Compatibility with adjacent upland uses.

4771

4772 **B. Authority**

4773 These provisions have been prepared in accordance with the provisions of 38 M.R.S. §§ 435
4774 to 449.

4775

4776 **C. Applicability and boundaries**

4777 The provisions of this section apply to all uses, lots and structures within areas where the
4778 existing predominant pattern of development is consistent with the allowed uses for this
4779 overlay zone, where consistent with dimensional requirements of the underlying base zone,
4780 and where the active use of lands, buildings, wharves, piers, floats or landings with the
4781 principal intent of such activity is the production of income by an individual or legal business
4782 entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be
4783 either a principal or accessory use, as defined in this title.

4784

4785 **D. Permitted uses: Functionally water-dependent Commercial Fisheries/Marine Activities.**

4786

4787 **E. Special exception uses: none**

4788

4789 **F. Standards. Dimensional standards of the underlying base and overlay zone(s).**

4790

4791 **G. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND**
4792 **and MU-KF, except as permitted herein.**

4793

4794

4795

1 16.5 General Performance Standards

2 General

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

5 16.5.1 Abutter Notice

6 A. Purpose.

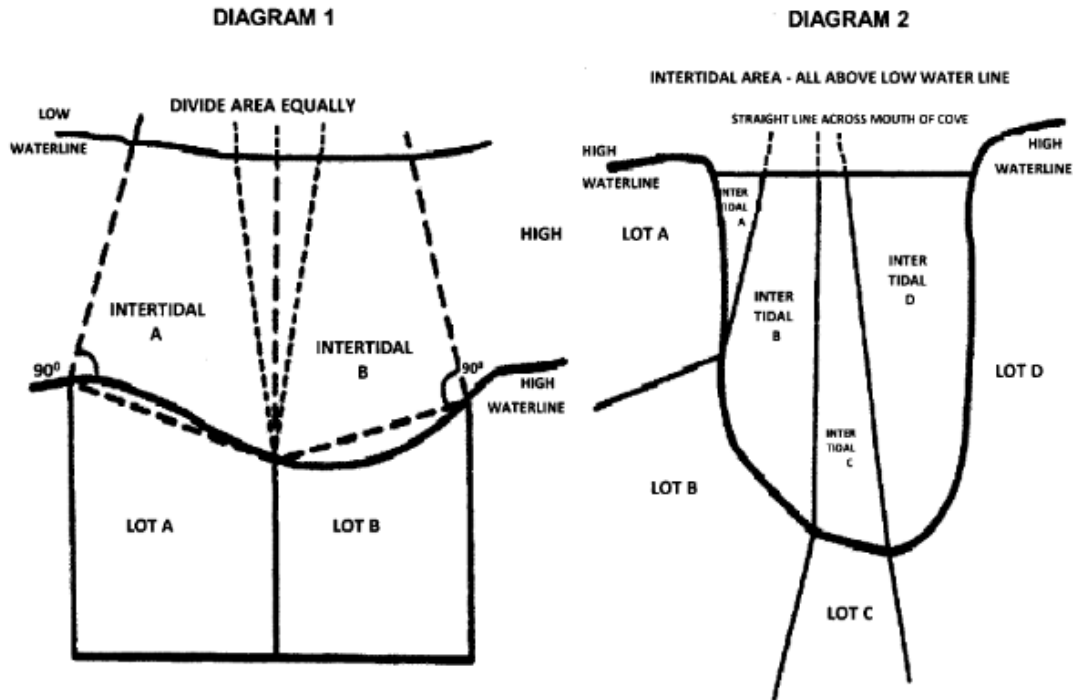
7 It is the intent of this article to impose standards to identify abutting property owners who
8 must be notified in writing when new development or redevelopment is proposed within 150
9 feet of their property boundary(ies).

10 B. Applicability.

11 (1) The Town Planner must cause written notice of the public hearing to be sent by postage
12 paid, first-class mail (cost to be paid by applicant) to all owners of abutting property, as
13 herein defined (within 150 feet of the property), and by regular mail to the Code
14 Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port
15 Authority or Conservation Commission, at least seven days prior to the scheduled date.
16 Failure of the parties to receive said notices does not invalidate any Board action.

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

Figure 1. Abutters



24

Figure 1 Formula for Determining Ownership of Intertidal Land as a Guide for Identifying

25 (3) For a wireless communication system facility (WCSF) plan application, the Town Planner
 26 must cause written notice of the hearing sent by postage paid, first-class mail, provided by
 27 the applicant, at least seven days prior to the hearing to all owners of abutting property and
 28 property located within 1,000 feet of any property line of the property located within 1,000
 29 feet of the proposed telecommunications facility. The applicant must provide this
 30 notification and must present proof of such notification to the Town Planner. The
 31 notification must include: the name of the applicant, location of the property, a brief
 32 description of the project, and a plot plan identifying the proposed site layout in relation to
 33 nearby streets and properties.

34 16.5.2 Accessory Dwelling Units

35 A. Purpose.

36 It is the intent of this article to provide standards that enable homeowners to create accessory
 37 dwelling units that are compatible with this title and to provide a means for residents,
 38 including seniors, single parents, and families with grown children, to remain in their homes

39 and neighborhoods, and increase the housing stock of existing neighborhoods in a manner
40 that is compatible with their size and scale, and allow more efficient use of existing housing
41 stock and infrastructure, and provide a broader range of affordable housing options. The
42 purpose of this article is not intended to create a new supply of short-term rental (STR) units,
43 such as those commonly advertised to tourists.

44 B. Applicability.

45 (1) An accessory dwelling unit is allowed in all zoning districts where the use is permitted in
46 Chapter 16.4. The unit must be located:

47 (a) Within an existing structure, either principal or accessory on the property; or

48 (b) Attached to the existing principal structure, sharing a common wall; or

49 (c) Within a new accessory structure constructed for this purpose on the property.

50 (2) Accessory dwelling units that have a valid certificate of occupancy or have vested rights in
51 the permitting process with an active building permit as of April 28, 2020 are exempted
52 from the use standard, § 16.5.3.D(3).

53 C. Application for accessory dwelling unit.

54 (1) An application for an accessory dwelling unit must be made by the owner of the parcel on
55 which the primary residential unit sits. The completed application and associated fees must
56 be submitted to the Code Enforcement Officer for review.

57 (2) Applications for an accessory dwelling unit that meets the unit size standards and
58 development standards contained in this article may be approved administratively and
59 require approval by the Code Enforcement Officer.

60 (3) An accessory dwelling unit that fails to meet the standards provided in this article may not
61 receive administrative approval; however, the accessory dwelling unit may still be allowed.
62 See § 16.5.3.D(4) below.

63 D. Accessory dwelling unit standards.

64 (1) Lot standards.

65 (a) Legal lot/residence. An accessory dwelling unit is allowed only on lots within the Town
66 that contain one legal, single-family residence as the primary unit.

67 (b) Number of accessory dwelling units per lot. No more than one accessory dwelling unit is
68 permitted on a lot.

69 (c) Zone lot size and unit density. The property on which an accessory dwelling unit is
70 located must meet the size required by the applicable zoning standards for the principal
71 residence, except in the case of legally nonconforming lots. However, an accessory dwelling

72 unit is exempt from the density requirements of the zone in which they are located.

73 (d) Setbacks and coverage. Yard setbacks for the zone must be met. However, for legally
74 nonconforming lots where a proposed accessory dwelling unit will be attached to a
75 principal dwelling unit and cannot meet the zone's side and rear yard setbacks, the
76 percentage by which a lot is smaller than the required lot size for the zone will dictate the
77 required setback for that lot. For example, a 30,000 square foot legally nonconforming lot in
78 a zone that requires 40,000 square feet would require side and rear yard setbacks that are
79 75% of the zone's side and rear yard setbacks. Building coverage requirements will remain
80 as required by the zone.

81 (e) Utility connections. Accessory dwelling units must be connected to adequate water and
82 wastewater services.

83 [1] Public sewer.

84 [a] Service: verification, in writing, of adequate service to support the additional
85 flow from the Superintendent of Wastewater Treatment Facilities.

86 [b] Fees: Payment of appropriate fees for connection to the municipal sewer system
87 is required prior to obtaining the certificate of occupancy.

88 [2] Septic systems. Verification of adequate sewage disposal for subsurface waste
89 disposal is required. The septic system, existing or proposed, must be verified as
90 adequate or reconstructed as required. Plans for subsurface waste disposal must be
91 prepared by a Maine- licensed site evaluator in full compliance with the State of
92 Maine Subsurface Wastewater Disposal Rules, 10-144C.M.R. 241.

93 [3] Public water. Verification in writing is required from the Kittery Water District for
94 volume and supply.

95 [4] Wells. Verification of the potable water supply for private wells is required. Tests of
96 the existing well or proposed well, if applicable, must indicate that the water supply is
97 potable and acceptable for domestic use and must conform to the recommendations
98 included in the "Manual for Evaluating Public Drinking Water Supplies, Public
99 Health Service No. 1180 (1969)."

100 (f) Parking. Each accessory dwelling unit must have one on-site parking space in addition to
101 the parking for the primary dwelling unit. Tandem parking is permitted.

102 (g) Private road or right-of-way access. Where an applicant seeks to locate an accessory
103 dwelling unit on a privately maintained road or right-of-way the following applies:

104 [1] Applicant must submit written consent from the road or homeowner's association or
105 owner and parties responsible for street maintenance.

106 (2) Unit standards.

107 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a
108 dwelling unit as set by building code standards adopted and amended from time to time by
109 Maine's Bureau of Building Codes and Standards, and be no larger than 1,000 square feet.
110 For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit may be
111 no greater than 80% of the size of the principal dwelling unit, as measured in square feet. An
112 accessory dwelling unit may have no more than two bedrooms.

113 (b) Unit location.

114 [1] An accessory dwelling unit must meet one or more of the following conditions:

115 [a] Be fully constructed within the existing footprint of any legal primary residence
116 or accessory building; or

117 [b] Share a common wall with the principal residence, providing yard setbacks per
118 § 16.5.3(2)(a); or

119 [c] Be constructed as a new accessory building containing an accessory dwelling
120 unit, providing yard setbacks can be met for the zone.

121 [2] Accessory dwelling units will be allowed to be fully constructed within the principal
122 residence even if the building does not meet yard setbacks.

123 [3] Accessory dwelling units will not be allowed in accessory buildings encroaching on
124 yard setbacks.

125 (3) Use Standards. The accessory dwelling unit may not be rented to the same person or party
126 for less than a thirty-day period.

127 (4) Development standards. Should an accessory dwelling unit fail to meet the applicable unit
128 standards listed in this article, the accessory dwelling unit may still be allowed if the
129 applicant obtains approval from the Board of Appeals under the provisions of a
130 miscellaneous variation request, as outlines in § 16.2.12. The Board of Appeals shall review
131 any appeal decision in conformance with § 16.2.12.F, Basis for decision.

132 (5) Violations. A violation of the use standard § 16.5.3.D(3) will lose the certificate of
133 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

134 16.5.3 Affordable Housing

135 A. Purpose.

136 Recognizing that the market alone will not provide the range and diversity of
137 housing types needed for a vibrant community, the Town of Kittery desires to
138 encourage affordable housing for households of modest means and for all ages.
139 The purpose of this ordinance is to offer incentives to developers to include
140 affordable housing, either for lease or sale, particularly in those zones that offer
141 utilities and/or services, and to mitigate the impacts of market-rate housing

142 development on the limited supply of land available for suitable using. The Town
143 looks to its comprehensive plan and finds that this ordinance will assist in meeting
144 housing goals and in promoting the public health, safety and welfare of its
145 residents.

146 B. Applicability.

147 (1) Affordable housing regulations are applicable only in zones which explicitly state so and as
148 follows:

149 (a) All development involving three or more new dwelling units. The proposed dwelling
150 units may be new construction, created through a change of use or created through a
151 renovation, rehabilitation or remodel. Projects may not be phased or segmented to avoid
152 compliance with these requirements.

153 (b) All major subdivisions, including those planned in phases, in all zones that create 5 or
154 more lots. Minor subdivisions are exempt.

155 (c) All developments as described in 1) and 2) above whether the dwelling units proposed
156 are intended for sale or for lease.

157 (2) Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed
158 and breakfasts, residential care facilities or elder care facilities.

159 C. Requirements.

160 (1) For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded
161 down to the nearest whole number, must be affordable housing units, as defined by this
162 code. Any fractional unit obligation left after the rounding results in a proportional payment-
163 in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable unit is
164 required plus 50% of a payment-in-lieu. If an additional affordable unit is offered for the
165 fractional unit obligation, no payment-in-lieu is required.

166 (2) The affordable housing units must remain affordable (via a recorded land use restriction,
167 deed restriction or other legal instrument, a copy of which must be submitted to the Town
168 prior to issuance of any building permits) for the longest term permitted under federal, state
169 and local laws and ordinances, or 30 years, whichever is greater.

170 (3) As an alternative to providing affordable housing units, projects may pay a fee in lieu of
171 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund, as
172 ordained by the Kittery Town Council. The fee for affordable units not provided must be
173 established by the Kittery Town Council in the schedule of fees.

174 (4) If the developer prefers to provide a payment-in-lieu instead of the required affordable
175 housing units, that proportional payment will be calculated based on the number of
176 affordable housing units that are required plus any fractional unit obligation. Using the
177 example above, if 15 units are proposed, the developer would provide 1.5 times the current
178 rate set by the Town.

179 D. Location.

180 (1) Required affordable housing may be located either on-site with any market rate dwelling
181 units or off-site within areas appropriately zoned for residential use. For development
182 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
183 located within one of those zones.

184 (2) Off-site affordable housing may be new construction, a rehabilitation, remodel or renovation
185 of an existing structure, or a change of use from non-residential to residential.

186 (3) Developers of market-rate units for sale who seek to provide the required affordable housing
187 units off-site may opt to provide such dwelling units as rentals, subject to review and
188 approval by the Planning Board.

189 E. Incentives.

190 (1) 51 Zoning districts having density incentives may be reviewed under the pertinent zone
191 located in §16.4 Land Use Zone Regulations.

192 (2) The Town will reduce the permitting costs for developments including affordable housing as
193 follows:

194 (a) For developments comprised of 10% – 15% affordable housing units: 10% off total
195 permitting costs except for sewer connection fees.

196 (b) For developments comprised of 16% – 24% affordable housing units: 15% off total
197 permitting costs except for sewer connection fees.

198 (c) For developments comprised of 25% and over affordable housing units: 20% off total
199 permitting costs except for sewer connection fees.

200 F. Standards.

201 (1) Affordable housing units must be built in reasonable accordance with any market-rate units
202 such that at minimum, for every five market rate units built, one affordable unit must be
203 completed. All affordable housing units in a development must have received a certificate of
204 occupancy before the final market rate unit receives such. If a development is proposed for
205 five dwelling units, including one affordable unit, that affordable unit must be completed
206 before the last market rate unit receives its certificate of occupancy.

207 (2) When affordable housing units are part of a development which also includes market rate
208 housing units, the outside appearance of affordable units must be similar to the market rate
209 units and any affordable units must be integrated into the development as a whole.
210 Affordable units cannot be confined to one building of a multiple building development
211 except in the cases of cottage clusters, accessory dwelling units or two-family residences.

212 (3) Affordable housing units need not be the same size as market rate housing units but the
213 number of bedrooms in each such dwelling unit may not be less than 10% of the total

214 number of market rate bedrooms in the development, rounded up when the fractional portion
215 is .5 or more. For example, a five-unit multi-family dwelling with four market rate housing
216 units of 2 bedrooms each would be required to provide one affordable housing unit with one
217 bedroom.

218 (a) Studio dwelling units will be counted as a one-bedroom unit. In cases where a
219 development is providing only studio apartments and one-bedroom apartments, the Planning
220 Board has the authority to decide whether each required affordable housing unit will be a
221 studio or one-bedroom unit.

222 (4) Affordable housing units to be located off-site must be of comparable quality with the same
223 number of bedrooms (see 3) above) as any new affordable housing units that would be
224 created by the project on-site. The Town will not accept off-site units that are run-down or
225 show signs of substantial wear or deterioration. This includes but is not limited to: heating
226 and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and
227 fixtures as well as roofing, siding, doors and windows.

228 G. Eligibility and Restrictions.

229 (1) Affordable housing units or lots that will be owner-occupied must be:

230 (a) Restricted to households having an income that does not exceed 120% of the area median
231 income for the family size having the same number of persons as the subject household for
232 the York-Kittery-South Berwick, Maine, Metro Fair Market Area (HMFA), as published by
233 the U.S. Department of Housing and Urban Development as of the date of the buyer's
234 application, and whose housing and utility costs do not exceed 30 percent of the household's
235 annual gross income; and

236 (b) Maintained as affordable housing units through a land use restriction agreement with the
237 Town of Kittery or its designee for a period no less than the maximum period permitted by
238 Maine law or thirty (30) years, whichever is longer.

239 (2) Affordable housing units that will be leased must be:

240 (a) Restricted to households having an income that does not exceed 80% of the area median
241 income for the family size having the same number of persons as the subject household for
242 the York-Kittery- South Berwick, Maine, Metro Fair Market Area, as published by the U.S.
243 Department of Housing and Urban Development as of the date of the household's
244 application, and whose housing and utility costs do not exceed 30 percent of the household's
245 annual gross income; and

246 (b) Maintained as affordable housing units through a land use restriction agreement with the
247 Town of Kittery or its designee for a period no less than the maximum period permitted
248 Maine law or thirty (30) years, whichever is longer.

249 (3) Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,
250 including short-term rentals, of any owner-occupied affordable housing unit is not permitted.

251 H. Market and Pricing.

252 (1) Affordable housing units must be actively marketed for sale or lease, as applicable, to
253 eligible households, which active marketing must include, as a minimum, the following:

254 (a) The owner shall provide a notice of availability to the Town of intent to lease or sell an
255 affordable housing unit. Such notice must be given at least 14 days prior to advertising the
256 unit.

257 (b) The owner or their authorized representative shall provide an affidavit to the Town
258 confirming that household eligibility requirements have been met upon successful sale or
259 lease of an affordable housing unit. Any lease agreement must be in writing and provided to
260 the Town upon request.

261 (c) A non-eligible household may occupy an affordable housing unit if, despite active
262 marketing, an eligible household is not available to lease the housing unit. If an affordable
263 housing unit is being offered for lease, a non-eligible household may occupy it under the
264 following conditions:

265 [1] The housing unit must be marketed for 90 days after the Town’s receipt of notice of
266 availability.

267 [2] If no eligible household is found, a lease may be signed with a non-eligible household
268 14 days after the Town is notified of the failure to lease, with the condition that the
269 next housing unit that becomes available in the development must be offered as an
270 affordable unit so that the affordable housing requirements for the development
271 continue to be met.

272 (d) If, 120 days after the Town’s receipt of notice of availability, the initial sale of an
273 affordable housing unit by the developer has not occurred, a non-eligible household may
274 occupy it but that household may only lease the unit for one year from the developer thus
275 preserving the affordable restrictions. The unit must again be offered for sale upon
276 termination of the one-year lease. The lease may not be renewed. The Town must be notified
277 of the failure to sell 14 days before the lease is signed and of the subsequent lease agreement
278 within 30 days of such lease being signed.

279 (2) Initial maximum sale pricing of new affordable units must be set as follows:

280 (a) Establish the target percentage of area median income level from the York-Kittery-South
281 Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of
282 Housing and Urban Development that the unit will be marketed to. For projects being
283 funded privately, that number must be 110% of area median income. For projects that
284 include state, federal or municipal funding, that number will be influenced by the
285 stipulations attached to the funding.

286 (b) From the table below, determine the minimum household size based on the number of
287 bedrooms in the unit

288

	<u>1 – bedroom or studio</u>	<u>2 - bedroom</u>	<u>3 - bedroom</u>	<u>4 - bedroom</u>
<u>Minimum Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>

289

290 (c) Calculate 30% of the gross median income based on the area median income from the
 291 York- Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the
 292 U.S. Department of Housing and Urban Development for the minimum household size
 293 based on the number of bedrooms. For example: (Household’s 110% AMI x .30)/12 =
 294 monthly income available for housing-related expenses

295 (d) The amount obtained from the formula above must then have other housing-related
 296 expenses, such as mortgage insurance, real estate taxes, home insurance and any
 297 HOA/condominium fees removed. Mortgage insurance must be estimated similar to current
 298 rates utilized by the Federal Housing Administration unless otherwise agreed to by the Town
 299 or its designee. What remains after removing non-mortgage related housing expenses is that
 300 portion of a household’s monthly income which is available for a mortgage payment.

301 (e) The sale price will then be set based on a 30-year fixed-rate mortgage with a minimum
 302 3.5% down payment. Larger down payments will not change the maximum allowable sale
 303 price.

304 (f) No affordable housing unit may be sold for more than the maximum sale price.

305 (3) Affordable housing units located in a development for which a home owner association
 306 (HOA) or condominium association will be established must obtain the Town’s review and
 307 approval of the draft budget and condominium/HOA documents. The Town or its designee
 308 may request quotes for costs such as replacement reserves and insurance. Fees will be shared
 309 proportionately based on the Town’s tax assessment of the properties or if that information
 310 is not available, on the initial sales price of the units. Affordable units will be assessed with
 311 consideration given to the associated restrictions. The condominium/HOA fees may not
 312 increase more than 5% any given year and cannot exceed 15% within any five-year period
 313 without a supermajority 67% vote of the association. The Town may choose to have a
 314 consultant or the Town Attorney review the condominium/HOA documents, which fee is
 315 payable by the developer.

316 (4) Maximum resale pricing of affordable units must be set as follows:

317 (a) Calculate the average percentage change in the area median income used for the initial
 318 pricing for the relevant minimum household size between the year of purchase and the
 319 present.

320 (b) Using that percentage number, calculate the new selling price. For example, if the
 321 average percentage change in area median income over the time the home was owned is 2%
 322 then: (original purchase price) * 1.02) = new selling price.

323 (5) Monthly rental costs for affordable housing units will be set based on the following:

324 (a) Find the minimum household size based on the number of bedrooms from the table
 325 below:

326

	<u>1 – bedroom or studio</u>	<u>2 - bedroom</u>	<u>3 - bedroom</u>	<u>4 - bedroom</u>
<u>Minimum Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>

327 (b) Use the formula below to calculate the monthly rent:

328 0.30 x (annual income based on minimum household size/12) minus utilities = affordable
 329 rental unit rent.

330 (6) The Town Manager or designee, with recommendation from the Affordable Housing
 331 Committee, may modify the requirements in 16.12.8 as needed to advance Kittery’s
 332 affordable housing goals and objectives.

333 I. Supplemental Standards for Approval.

334 (1) Prior to submission of any plan for review by a Town land use board such as the Planning
 335 Board or Board of Appeals, the developer shall submit a Housing Plan to the Planning
 336 Department outlining the incentives sought, target median income percentage for the
 337 affordable units, proposed location of affordable housing and standards satisfied from this
 338 section.

339 (2) The Town must review the plan and certify in writing that the development for which
 340 approval is sought, as described in the Housing Plan, is consistent with all applicable
 341 requirements of this Section. If the plan does not meet the requirements, the Town must
 342 notify the developer and the project may not proceed to the applicable land use board.

343 (3) In addition, all housing-related projects in the C-1 zone must undergo master site plan
 344 review even if only one building is proposed. See Chapter 16.6.

345 (4) Prior to the submittal of any development application for consideration by a Town land use
 346 board, a pre-application conference between the developer and the Town is required to
 347 discuss the application, site design and relevant requirements of the certified Housing Plan.

348 (5) Prior to issuance of a building permit, a land use restriction agreement shall be executed

349 between the Town Manager and the developer, in a form promulgated by the Town and
350 approved by the Town Attorney, based on the Housing Plan, which land use restriction
351 agreement sets forth the land use restrictions required by this section.

352 (6) Prior to issuance of the certificate of occupancy for a development subject to this section,
353 the developer shall provide the Town with a fully executed copy of the land use restriction
354 agreement as recorded in the real property records maintained by the York County Registry
355 of Deeds.

356 16.5.4 Agriculture

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

359 B. All spreading or disposal of manure must be accomplished in conformance with the
360 Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of
361 Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).

362 C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the
363 normal high-water line of any water bodies, tributary streams, coastal wetlands or
364 freshwater wetlands shown on the Map. Within five years of the effective date of this
365 chapter, all manure storage areas within the Shoreland Overlay and Resource Protection
366 Overlay Zones must be constructed or modified so the facility produces no discharge of
367 effluent or contaminated stormwater. Existing facilities which do not meet the setback
368 requirement may remain, but must meet the no-discharge provision within the above five-
369 year period.

370 D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in
371 surface area or the spreading, disposal or storage of manure within the Shoreland Overlay
372 Zone are required to submit a soil and water conservation plan to the Planning Board for
373 review and approval. Nonconformance with the provisions of said approved plan will be
374 considered to be a violation of this section.

375 E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of
376 water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-
377 water line of tributary streams and freshwater wetlands shown on the Map is prohibited.
378 Operations in existence on the effective date of this chapter and not in conformance with
379 this provision may be maintained.

380 F. After the effective date of this section, newly established livestock grazing areas will not
381 be permitted within 100 feet, horizontal distance, of the normal high-water line of any
382 water bodies or coastal wetlands or within 25 feet, horizontal distance, of the normal high-
383 water line of tributary streams and freshwater wetlands shown on the Zoning Map.
384 Livestock grazing associated with ongoing farm activities, and which are not in
385 conformance with the above setback provision, may continue, provided that such grazing
386 is conducted in accordance with a soil and water conservation plan that has been approved
387 by the Planning Board.

388 16.5.5 Agriculture, Piggery389 A. Number of animals. There may be no more than three (3) pigs allowed on a lot.390 B. Setbacks. The following distances are from the identified use to the nearest property not
391 owned or controlled by the operator/owner of the piggery:392 (1) Structures: _____ 50 ft.393 (2) Feed lots, pens and extensively used areas: _____ 100 ft.394 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code
395 Enforcement Officer that erosion and sediment runoff will not enter an abutting property.396 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be
397 accomplished in conformance with the, "Manual of Best Management Practices for Maine
398 Agriculture," published by the Maine Department of Agriculture in January 2007, and as
399 this may be amended or superseded.400 16.5.6 Agriculture, Poultry Facility401 A. Number of Animals. These standards apply to the keeping of ten (10) or more poultry
402 animals that are six (6) months old or older in zoning districts in which Agriculture,
403 Poultry Facility is either a permitted use or a special exception use.404 B. Setbacks. The following distances are from the identified nearest property not owned or
405 controlled by the operator/owner of the poultry facility:406 (1) Structure, including Barn or Coops: _____ 50 ft.407 (2) Feed lots, pens and extensively used areas: _____ 100 ft.408 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code
409 Enforcement Officer that erosion and sediment runoff will not enter an abutting property.410 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be
411 accomplished in conformance with the, "Manual of Best Management Practices for Maine
412 Agriculture," published by the Maine Department of Agriculture in January 2007, and as
413 this may be amended or superseded.414 16.5.7 Campgrounds and Campsites415 A. Campgrounds. Campgrounds must meet the minimum requirements according to state
416 licensing procedures and the following:417 (1) Campgrounds must contain a minimum of 5,000 square feet of land, not including roads and
418 driveways, for each site.419 (2) Land supporting wetland vegetation and land below the normal high-water line of a water

420 body is not to be included in calculating land area per site.

421 (3) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and
422 service buildings must be set back a minimum of 75 feet, horizontal distance, from the
423 normal high-water line of water bodies, tributary streams or the upland edge of a wetland.

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

427 (1) One campsite per lot existing on the effective date of this chapter or 30,000 square feet of lot
428 area within the SL-OZ, whichever is less, may be permitted.

429 (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent
430 platform, must be set back 75 feet, horizontal distance, from the normal high-water line of
431 water bodies, tributary streams or the upland edge of a wetland.

432 (3) Only one recreational vehicle is allowed on a campsite. Permanent foundations for
433 recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking
434 are permissible. No structures, other than canopies, are allowed for attachment to the
435 recreational vehicle.

436 (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in
437 a Resource Protection Overlay Zone is limited to 1,000 square feet.

438 (5) A written sewage disposal plan describing the proposed method and location of sewage
439 disposal is required for each campsite and must be approved by the local Plumbing
440 Inspector. Where disposal is off site, written authorization from the receiving facility or
441 property owner is required.

442 (6) Recreational vehicles, tents or similar shelters are not allowed to remain on site for a period
443 longer than 120 days per year, unless it can be demonstrated that all requirements for
444 residential structures have been met, including the installation of a subsurface sewage
445 disposal system in compliance with the State of Maine Subsurface Wastewater Disposal
446 Rules and/or the site is served by public sewage facilities.

447 16.5.8 Conservation of Wetlands Including Vernal Pools

448 A. Purpose.

449 (1) Wetlands are a fragile natural resource which, in their natural state, directly and indirectly
450 benefit the public by serving valuable functions such as pollution filtration systems (i.e.,
451 retention of suspended solids, phosphorus and other nutrients), control of floodwaters,
452 erosion control, groundwater recharge, educational and scientific study, wildlife habitat,
453 open space and recreation. Considerable wetland acreage has been lost or impaired by
454 draining, dredging, filling, excavating, building, pollution and other acts inconsistent with
455 the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the
456 Town to:

- 457 (a). Prevent the development of structures and land uses within wetlands and wetland
458 setback areas that may contribute to the pollution of surface water and groundwater by
459 sewage or toxic substances;
- 460 (b). Prevent the destruction of, or significant changes to, wetlands which provide flood and
461 shoreline protection, recharge groundwater supplies, and augment stream flow during
462 dry periods;
- 463 (c). Protect wetland areas and promote healthy wetland buffers that will preserve and
464 enhance the wetlands;
- 465 (d). Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc., and
466 maintain ecological balances; and
- 467 (e). Establish maintenance responsibility and/or fees to protect and maintain the wetland
468 areas.
- 469 (2) The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices and
470 strategies, such as buffering and the avoidance of wetland alterations that serve to protect
471 functional wetlands and the repair of degraded wetlands, are encouraged. The reviewing
472 authority will review plans for proposed development within 100 feet of a wetland to
473 determine if wetlands of special significance are impacted. The applicant may be required to
474 pay the cost of an independent study. For the reviewing authorities, refer to § 16.2.
- 475 (3) Wetlands of special significance have one or more of the following characteristics:
- 476 (a). Critically imperiled or imperiled community. The freshwater wetland contains a natural
477 community that is "critically imperiled" as defined by the Maine Natural Areas Program.
- 478 (b). Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat
479 as defined by 38 M.R.S. §480-B(10).
- 480 (c). Location near coastal wetland. The freshwater wetland is located within 250 feet of a
481 coastal wetland.
- 482 (d). Location near a water body. The freshwater wetland is located within 250 feet of the
483 normal high-water line and within the same watershed of a lake or pond.
- 484 (e). Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland
485 contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation,
486 emergent marsh vegetation or open water, unless the twenty-thousand or more square
487 foot area is the result of an artificial pond or impoundment.
- 488 (f). Wetlands subject to flooding. The freshwater wetland is inundated with floodwater
489 during a one-hundred-year flood event based on flood insurance maps produced by the
490 Federal Emergency Management Agency or other site-specific information.
- 491 (g). Peatlands. The freshwater wetland is or contains peatlands, except that the Planning

492 Board may determine that a previously mined peatland, or portion thereof, is not a
493 wetland of special significance.

494 (h). River, stream or brook. The freshwater wetland is located within 25 feet of a river,
495 stream or brook.

496 (i). Monetary value. An estimation can be determined based on the importance of the
497 wetland with respect to the individual or collective functions it provides.

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

501 B. Wetlands boundaries.

502 The definition of wetland boundaries is as described in this section and in § 16.3. Planning
503 Board approval to alter a wetland area one acre or larger in size will not be issued until the
504 applicant has submitted to the Town a wetlands delineation map and summary prepared by
505 a qualified wetlands scientist or a Maine-certified soil scientist, at the applicant's expense.
506 The qualified wetlands scientist or Maine-certified soil scientist must determine through
507 field investigation the presence, location and configuration of wetlands on the area
508 proposed for use.

509 (1) Disturbed areas. An area which has been disturbed or modified such that natural vegetation,
510 hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event
511 disturbance of a wetland causes the wetland boundary to be altered, a new boundary may
512 need to be delineated in order to determine if the wetland is a regulated wetland. Wetland
513 boundaries are to be delineated according to procedures described in the Corps of Engineers
514 Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1,
515 January 1987, (1987 Manual). Notwithstanding the above, areas legally disturbed or
516 modified prior to May 13, 1987 will be considered "wetlands" for the purpose of this title if
517 such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.

518 (2) Settling disputes over wetland boundaries. If there is a dispute regarding the existence or
519 boundaries of the wetlands, the boundaries of the wetland are to be determined, at the
520 expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified soils
521 scientist agreeable to both the Planning Board and the applicant.

522 (3) Permits required from other agencies. The determination of wetlands boundaries for Town
523 jurisdiction by the Town Planning Board, the Conservation Commission, or the Code
524 Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional
525 determinations and/or permits from the Maine Department of Environmental Protection and
526 the United States Army Corps of Engineers when required.

527 C. Regulated activities within wetlands.

528 (1) Unless otherwise specified, all new structures and activities within wetlands, including but
529 not limited to dredging and filling and expansions of existing structures and activities, are
530 subject to the provisions of these regulations. Proposed activities and structures within a

531 freshwater wetland smaller than 501 square feet in total size are exempt from the regulations
532 in this article.

533 D. Permitted activities within regulated wetlands. The following uses are considered to be
534 compatible within regulated wetlands and are permitted within regulated wetlands without
535 Planning Board approval, provided they are in conformance with all local, federal and
536 state regulations:

537 (1) Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such
538 agriculture must not cause or contribute to surface water or groundwater pollution by use of
539 pesticides, toxic chemicals or other pollutants and must not cause soil erosion;

540 (2) Conservation areas and nature trails;

541 (3) Education and scientific research;

542 (4) Forestry, tree farming and timber harvesting using the best management practices in order to
543 protect streams from damage and prevent sedimentation. Timber harvesting must be
544 conducted during periods when the ground is frozen. The practice known as "clear cutting"
545 is not permitted by right and requires a special permit under § 16.5.29;

546 (5) Low-intensity recreation;

547 (6) Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or
548 utilities. Such repair and maintenance must not negatively impact the wetland or alter the
549 existing watercourse and related hydrology;

550 (7) Repair and maintenance of existing permanent structures requiring the addition or removal
551 of 10 cubic yards or less of earth material to (form) a water body or wetland;

552 (8) Placement of drainage outfall pipes requiring the addition or removal of less than 10 cubic
553 yards of material;

554 (9) Repair in kind, maintenance and necessary upgrade of existing drainage facilities;

555 (10) Repair in kind and maintenance of existing transportation facilities;

556 (11) Placement of moorings, subject to Harbormaster approval;

557 (12) Wilderness areas and natural wildlife refuges;

558 (13) Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not
559 involve draining, grading, filling or dredging within the wetland. All such structures must be
560 constructed of nontoxic materials and designed in such a manner to permit the unobstructed
561 flow of waters and must preserve the natural contour and hydrology of the wetland, unless
562 otherwise authorized by special permit as per § 16.5.9.D;

563 (14) Emergency public safety operations; and

564 (15) Any other activity as determined by the Planning Board that does not result in a measurable
565 alteration of the wetland.

566 E. Prohibited uses within regulated wetlands.

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

569 (1) Disposal or storage of waste and/or hazardous materials;

570 (2) Manure stockpiles;

571 (3) Road salt stockpiles;

572 (4) Topsoil removal except as permitted in § 16.5.9.D or with Planning Board approval;

573 (5) Bulk fuel storage;

574 (6) Herbicidal spraying;

575 (7) Invasive nonnative wetland plants; and

576 (8) Snow dumping.

577 F. Procedures for wetlands alteration application.

578 (1) Application and review process. The application and review process for the review of
579 proposals within regulated wetlands must conform to the procedures explained in § 16.5.9 of
580 this chapter, except where specifically stated otherwise in this section.

581 (2) Submission requirements. An application to alter a wetland must be made in accordance
582 with the submission requirements in § 16.5.9.L to the Town Planner, or designee,
583 accompanied by a fee as determined in Appendix A.

584 (3) Advisory opinion. The Planning Board may request the Town Planner to acquire more
585 specific data and analysis from qualified sources and/or the opinion of the Conservation
586 Commission concerning the proposed activity.

587 (4) Timing after Board acceptance. The Planning Board will issue its decision within 35 days of
588 receipt of the completed wetlands alteration application, unless a public hearing is
589 necessary. A hearing is not necessary if the Planning Board finds that the activity is so minor
590 that it will not significantly affect the wetland or that the hearing will not produce additional
591 information useful to the review. A decision may be rendered at the scheduling hearing if
592 the Board determines that a complete application has been received and no public hearing is
593 necessary. If a public hearing is held, the Planning Board is required to issue its decision
594 within 35 days of completion of the public hearing.

595 (5) Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed
596 alteration must be notified by first class U.S. Mail of any public hearing on the application

597 for wetlands alteration.

598 (6) Coordination. Submission requirements for an application for a wetlands alteration will be
599 integrated into the required submissions for a subdivision or development review application
600 to the Planning Board.

601 G. Wetlands alteration approval criteria.

602 (1) In making the final determination as to whether a wetland application should be approved,
603 the Planning Board will consider existing wetland destruction and the cumulative effect of
604 reasonably anticipated future uses similar to the one proposed. Preference will be given to
605 activities that meet wetland setbacks, have a reasonable stormwater management plan
606 (subject to Planning Board review and approval), and that dedicate easements for the
607 purposes of maintaining the wetland and the associated drainage system. Approval to alter a
608 wetland will not be granted for dredging or ditching solely for the purpose of draining
609 wetlands and creating dry buildable land areas. An application for a wetlands alteration will
610 not be approved for the purpose of creating a sedimentation or retention basin in the
611 wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces
612 from development activities are not allowed.

613 (2) It is the responsibility and burden of the applicant to show that the proposed use meets the
614 purposes of this title and the specific standards listed below to gain Planning Board approval
615 to alter a wetland. The Planning Board will not approve a wetlands alteration unless the
616 applicant provides clear and convincing evidence of compliance with this title.

617 (3) In evaluating the proposed activity, the Planning Board may need to acquire expert advisory
618 opinions. The applicant must be notified in writing, by the Town Planner at the Planning
619 Board's request, that the applicant will bear the expenses incurred for the expert persons or
620 agencies. The Planning Board will consider the advisory opinion, including any
621 recommendations and conditions, provided by the Conservation Commission.

622 (4) When the Planning Board finds the demonstrated public benefits of the project as proposed,
623 or modified, clearly outweigh the detrimental environmental impacts, the Planning Board
624 may approve such development, but not prior to granting approval of a reasonable and
625 practicable mitigation plan (see § 16.5.9.I) and not prior to the completion of all
626 performance guaranties for the project (see § 16.8.11.F).

627 (5) The applicant must submit applicable documentation that demonstrates there is no
628 practicable alternative to the proposed alteration of the wetland. In determining if no
629 practicable alternative exists, the Planning Board will consider the following:

630 (a). The proposed use:

631 [1] Uses, manages or expands one or more other areas of the site that will avoid or reduce
632 the wetland impact;

633 [2] Reduces the size, scope, configuration or density of the project as proposed, thereby
634 avoiding or reducing the wetland impact;

- 635 [3] Provides alternative project designs, such as cluster development, roof gardens,
636 bridges, etc., that avoid or lessen the wetland impact; and
- 637 [4] Demonstrates that the proposed development meets or exceeds best management
638 practices for stormwater management in the wetland areas.
- 639 (6) In determining if the proposed development plan affects no more wetland than is necessary,
640 the Planning Board will consider if the alternatives discussed above in Subsection (1) of this
641 section accomplish the following project objectives:
- 642 (a). The proposed use will not:
- 643 [1] Unreasonably impair or diminish the wetland's existing capacity to absorb, store and
644 slowly release stormwater and surface water runoff;
- 645 [2] Unreasonably increase the flow of surface waters through the wetland;
- 646 [3] Result in a measurable increase in the discharge of surface waters from the wetland;
- 647 [4] Unreasonably impair or diminish the wetland's capacity for retention and absorption
648 of silt, organic matter, and nutrients;
- 649 [5] Result in an unreasonable loss of important feeding, nesting, breeding or wintering
650 habitat for wildlife or aquatic life; all crossings must be designed to provide a moist
651 soil bed in culvert inverts and to not significantly impede the natural migration of
652 wildlife across the filled area;
- 653 [6] Result in a measurable increase of the existing seasonal temperature of surface waters
654 in the wetland or surface waters discharged from the wetlands; or
- 655 [7] Result in a measurable alteration or destruction of a vernal pool.
- 656 H. Expiration of wetlands alteration approval. =
- 657 (1) Wetlands alteration approval will expire if work has not commenced within one year of the
658 Planning Board date of approval. Where work has commenced within one year of approval,
659 such approval will expire unless work is complete within two years of the original approval
660 date.
- 661 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
662 approved plan expiration date upon written request by the developer for an inclusive period
663 from the original approval date, not to exceed five years for a subdivision plan and three
664 years for all other development plans.
- 665 I. Mitigation plan.
- 666 (1) Mitigation activities are actions taken to offset potential adverse environmental impact, as
667 well as the remittance of fees and a plan for the preservation of buildable/usable upland

668 areas when the applicant has proven to the Planning Board's satisfaction that there are no
669 practical alternatives to impacting a wetland.

670 (2) Required fees and compensation.

671 (a). For activities which in total will alter or fill less than 501 square feet of regulated
672 wetlands, the mitigation plan must include the preservation of an undisturbed upland
673 buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to
674 be altered.

675 (b). For activities which in total alter or fill a five-hundred-and-one-square foot to twenty-
676 thousand-square-foot wetland, the mitigation plan must include the preservation of an
677 undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the
678 area of the wetland to be altered. The undisturbed buffer zone from the wetland
679 boundary must be placed in deed restrictions and be located and configured in a manner
680 acceptable to the Planning Board.

681 (c). In addition, a wetlands preservation fee for each square foot of altered wetland area, as
682 determined in Appendix A, will be deposited into the account of the Town to achieve
683 one or more of the following objectives related to the conservation of Kittery wetlands,
684 with the Planning Board's recommendation and release of funds by the Town Council:

685 [1] Restoration and preservation of wetlands;

686 [2] Purchase of buffer areas for wetlands deemed at risk;

687 [3] Monitoring and improvement of water quality;

688 [4] Environmental and conservation projects, such as, but not limited to, education;

689 [5] Matching grant funds;

690 [6] Open space land purchases in conjunction with the Open Space Committee;

691 [7] Assistance to the Kittery Land Trust; and/or

692 [8] Purchase of signage to denote sensitive and wetland areas.

693 (d). Assessment. A functional assessment and report of the wetlands to be altered must be
694 conducted in accordance with the requirements in § 16.5.9.L(3). The assessment must
695 demonstrate the existing wetland functions and functional value and summarize the
696 impairments, degradation and/or loss of function due to the proposed development.

697 [1] When required. Fees for deposit to the wetlands preservation account are required
698 whenever wetland areas or wetland functions will be lost or degraded due to the
699 project, as identified by the functional assessment.

700 [2] Where required. Fees for deposit to the wetlands preservation account must be used

701 on the proposed site or on parcels adjacent to the project site when possible. If not
702 possible, the fees must be used within the same watershed as the proposed alteration,
703 or within the project vicinity, except as allowed for mitigation banking approved in
704 writing by the Maine Department of Environmental Protection. In all cases, use of the
705 fees must occur within the boundaries of the Town.

706 [3] Wetland impact mitigation process. Fees or developable land, or a combination
707 thereof, as determined by the Planning Board, will be used to replace lost wetlands
708 and wetland functions. Where the Maine Department of Environmental Protection
709 and this title require and the Planning Board has approved a mitigation plan, such
710 plan is deemed to satisfy Town standards.

711 (e). Homeowners' association documents, deed covenants, maintenance agreements, and
712 easements must establish responsibility for the maintenance of wetlands. The association
713 documents must stipulate periodic maintenance of the surface and subsurface stormwater
714 system, including but not limited to catch basins, stormwater manholes, pipes, ditches,
715 curbs, settling basins and other structures designed to direct, retain and/or discharge
716 stormwater runoff. In the event the Code Enforcement Officer and/or the Town's
717 Engineer finds the wetlands are not in a natural healthy state, the association will be
718 required to hire a qualified wetlands scientist or a Maine-certified soils scientists to
719 evaluate all wetlands within the development at the association's expense.

720 J. Coordination.

721 To reduce delays, the applicant may, upon written notice to the Town Planner,
722 simultaneously apply to the Army Corps of Engineers and the Maine Department of
723 Environmental Protection for permits during the Town review process. In addition, the
724 applicant may simultaneously apply for other local land use regulation approvals while
725 applying for wetlands alteration approval.

726 K. Enforcement.

727 The provisions of this Section (§16.5.9), Conservation of Wetlands Including Vernal
728 Pools, are to be administered and enforced pursuant to the provisions of § 16.2,
729 Administration and Enforcement.

730 L. Submission requirements for wetland alteration application.

731 (1) Minimum requirements. Unless specifically waived by the Planning Board, all applications
732 must contain the following information:

733 (a). Fifteen copies of the narrative, the site plan and the vicinity map required in this
734 subsection.

735 (b). A copy of the official documents showing legal interest of the applicant in the property
736 to be affected.

737 (c). A narrative, describing:

738 [1] The purpose of the project;

- 739 [2] The type of alteration to the wetland (fill, culvert, dredge, etc.);
- 740 [3] Why there is no practicable alternative to impacting the wetland; and
- 741 [4] How the proposed activity has been designed to minimize the impact on the wetland.
- 742 (d). A plan view showing the site as viewed from above is required. The plan view must:
- 743 [1] Be drawn at an appropriate scale, but no smaller scale than one inch equals 100 feet,
- 744 and show the proposed activity, the location and size of all existing and proposed
- 745 structures, roads, parking areas and sewage treatment facilities.
- 746 [2] Contain a code block in the lower right-hand corner. The block must contain the:
- 747 [a] Name(s) and address(es) of the applicant or owner;
- 748 [b] Name and address of the preparer of the plan, with professional seal, if applicable;
- 749 [c] Name of plan, date of plan preparation, and a revision number and date, if
- 750 applicable; and
- 751 [d] Map and lot number(s), according to Kittery tax maps, shown in the lower right-
- 752 hand corner in bold lettering and 1/4 inch high.
- 753 [3] Show a North arrow.
- 754 [4] Show property boundaries.
- 755 [5] Show the location of any wetlands, shorelines and floodplains. Wetland boundaries
- 756 must be delineated using the Corps of Engineers Wetlands Delineation Manual —
- 757 Waterways Experiment Station Technical Report Y-87-1, January 1987," (1987
- 758 Manual).
- 759 [6] Show the location (tied by measurement to identifiable structures or boundary points)
- 760 of all proposed draining, fill, grading, dredging and vegetation removal, including
- 761 specification of amount of materials to be added or removed and procedures to be
- 762 used.
- 763 [7] Indicate the square footage of wetlands to be affected by the proposed activity.
- 764 [8] Show the direction of natural water flow over the land, in the wetland, and in the
- 765 proposed alteration area.
- 766 [9] Show the location of the one-hundred-year floodway and flood hazard boundaries as
- 767 shown on the current effective National Flood Insurance Program maps, if applicable.
- 768 [10] Specify the number of cubic yards and type of material to be used as fill, if fill
- 769 material is involved.

- 770 [11] Specify the type of material, number of cubic yards, method of handling, and the
771 location of fill and spoil disposal area, if dredge material is involved.
- 772 [a] Show all owners of property within 150 feet of the proposed alteration, together
773 with their mailing addresses and map and lot designations from the Assessor's
774 records.
- 775 [12] A vicinity map, utilizing a topographic map at a scale no smaller than one inch
776 equals 600 feet, showing the boundary of the proposed activity.
- 777 [13] One set of photographs, taken during the growing season if possible, showing the
778 wetland, adjacent water bodies if applicable, and the alteration area before
779 development begins.
- 780 (2) Additional requirements. In its consideration of an application, the Board may at any point
781 in the review require the applicant to submit additional materials, studies, analyses and
782 agreement proposals that the Board may deem necessary for a complete understanding of the
783 application. Such material may include the following items:
- 784 (a). A site plan showing existing and proposed topographic contours at two-foot intervals;
- 785 (b). A hydrologic analysis in accordance with the requirements of this chapter;
- 786 (c). Cross-section drawings showing the nature of the construction, the depth of excavation
787 or height of fill, if applicable, and surface water and groundwater elevations; and
- 788 (d). An evaluation, by a qualified wetlands scientist or a Maine-certified soils scientist,
789 assessing the functions of the wetland and the impact of the proposed activity on these
790 functions.
- 791 (3) Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for
792 activities which, in total, affect or fill more than 500 square feet of wetlands.
- 793 (a). The wetland mitigation plan and report must contain the following:
- 794 [1] Plan at a scale of one inch equals 100 feet that shows two-foot contour intervals,
795 existing wetland boundaries, the area of wetland to be altered, project dimensions and
796 all off-site wetlands being extensions of the wetland to be altered;
- 797 [2] Existing wetland characteristics, including water depth, vegetation and fauna;
- 798 [3] Functional assessment, conducted by a qualified wetlands scientist or a Maine-
799 certified soils scientist, on the wetland to be altered, which analyzes the wetland's
800 value based on the functions it serves and how the wetland will be affected by the
801 proposed alteration. The Wetland Evaluation Technique (WET) methodology,
802 published by the U.S. Army Corps of Engineers, is one acceptable methodology.
803 Other comparable assessment techniques may be accepted, provided the applicant
804 submits documentation of how the methodology was developed, how the wetland

- 805 functions and values are determined, and how much field testing the technique has
806 undergone; and
- 807 [4] Photographs of the wetland to be altered which show its characteristics.
- 808 (b).Description of the overall proposed activity with particular reference to its impact on the
809 wetland, including the precise location of the activity, its dimensions, the amount and
810 type of fill (if any proposed), any proposed drainage, the timing and procedures
811 proposed for the alteration, and any efforts proposed for reducing impacts. The Planning
812 Board may require certain fill areas (such as stormwater storage basins, solid waste
813 landfills, fill behind retaining walls, etc.) to be structurally engineered.
- 814 (c).Plan for the proposed wetlands work, if any, including a topographic plan at the scale of
815 one-inch equals 100 feet, showing two-foot contour intervals and proposed wetland
816 boundaries. This plan must also include:
- 817 [1] Proposed boundaries and characteristics of the mitigation site, including elevation,
818 sources of water, and proposed vegetation;
- 819 [2] Narrative describing the specific goals in terms of particular wetland functions and
820 values. These goals must be related to those of the original wetland;
- 821 [3] Narrative describing the available literature or experience to date (if any) for carrying
822 out the mitigation work;
- 823 [4] Proposed implementation and management procedures for the wetlands work;
- 824 [5] Description of the short-term and long-term sources of water for this wetland,
825 including the water quality of these sources;
- 826 [6] Plans for replanting, including a description of plant species, sizes and sources of
827 plant material, as well as how, when and where seeding or planting will take place;
- 828 [7] Proposed buffers or protective measures, such as sediment control methods;
- 829 [8] Plans for monitoring the wetlands work, showing capability for mid-course
830 corrections; and
- 831 [9] Plans, if any, for control of nonindigenous plant species.
- 832 (d).For wetlands work involving creation, restoration and/or enhancement of degraded
833 wetlands, a maintenance agreement must be approved by the Board and recorded in the
834 York County Registry of Deeds. The maintenance agreement must be conveyed or a
835 deed restriction imposed, and such maintenance responsibility is not dissolvable without
836 Council approval. The maintenance agreement must meet or exceed the criteria listed in
837 § 16.5.9.I.
- 838 (e).For projects involving preservation of wetlands or adjacent uplands, a conservation

839 easement must be conveyed or deed restriction imposed so that the parcel will remain
840 undeveloped in perpetuity.

841 16.5.9 Essential Services

842 A. Installation.

843 Where feasible, the installation of essential services will be limited to existing public ways
844 and existing service corridors.

845 B. Location in CON or OZ-RP Zone.

846 The installation of essential services is not permitted in a Conservation Zone or Resource
847 Protection Overlay Zone, except to provide services to a permitted use within said zone, or
848 except where the applicant demonstrates no reasonable alternative exists. Where
849 permitted, such structures and facilities must be located to minimize any adverse impacts
850 on surrounding uses and resources, including visual impacts.

851 C. Replacement of equipment without permit.

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

854 16.5.10 Floodplain Management

855 A. Statement of purpose and intent.

856 (1) Certain areas of the Town are subject to periodic flooding, causing serious damages to
857 properties within these areas. Relief is available in the form of federally subsidized flood
858 insurance as authorized by the National Flood Insurance Act of 1968.

859 (2) Therefore, the Town has chosen to become a participating community in the National Flood
860 Insurance Program and agrees to comply with the requirements of the National Flood
861 Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

862 (3) It is the intent of the Town to require the recognition and evaluation of flood hazards in all
863 official actions relating to land use in the floodplain areas having special flood hazards. This
864 body has the legal authority to adopt land use and control measures to reduce future flood
865 losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

866 B. Definitions.

867 Unless specifically defined in § 16.3, words and phrases used in this article have the same
868 meanings as they have in common law to give this article its most reasonable application.

869 C. Establishment of areas.

870 (1) The Town elects to comply with the requirements of the National Flood Insurance Act of
871 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the
872 aforesaid Act, provides that areas of the Town having a special flood hazard be identified by
873 the Federal Emergency Management Agency and that floodplain management measures be
874 applied in such flood hazard areas. This article establishes a flood hazard development

875 permit system and review procedure for development activities in the designated flood
876 hazard areas of the Town.

877 (2) The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
878 identified by the Federal Emergency Management Agency in a report entitled "Flood
879 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
880 accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference and
881 declared to be a part of this article.

882 D. Permit required.

883 Before any construction or other development (as defined in § 16.3), including the
884 placement of manufactured homes, begins within any areas of special flood hazard
885 established in § 16.5.11.C, a flood hazard development permit is to be obtained from the
886 Code Enforcement Officer. This permit is in addition to any other building/regulated
887 activity permits which may be required pursuant to this title.

888 E. Application for permit.

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

891 (1) The name and address of the applicant.

892 (2) An address and a map indicating the location of the construction site.

893 (3) A site plan showing the location of existing and/or proposed structures, sewage disposal
894 facilities, water supply facilities, areas to be cut and filled, and lot dimensions.

895 (4) A statement of the intended use of the structure.

896 (5) A statement as to the type of sewage system proposed.

897 (6) Specification of dimensions of the proposed structure.

898 (7) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally
899 established datum in Zone A only, of the:

900 (a). Base flood at the proposed site of all new or substantially improved structures, which is
901 determined:

902 [1] In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data contained in the
903 "Flood Insurance Study — Town of Kittery, Maine," as described in § 16.5.10.C or

904 [2] In Zone A, to be the elevation of the ground at the intersection of the floodplain
905 boundary and a line perpendicular to the shoreline which passes along the ground
906 through the site of the proposed building.

907 (b). Highest and lowest grades at the site adjacent to the walls of the proposed building.

- 908 (c). Lowest floor, including basement, and whether or not such structures contain a
909 basement.
- 910 (d). Level, in the case of nonresidential structures only, to which the structure will be
911 floodproofed.
- 912 (8) A description of a base flood elevation reference point established on the site of all new or
913 substantially improved structures.
- 914 (9) A written certification by a registered land surveyor that the elevations shown on the
915 application are accurate.
- 916 (10) Certification by a registered professional engineer or architect that floodproofing methods
917 for any:
- 918 (a). Nonresidential structures will meet the floodproofing criteria of Subsection 7(d) of this
919 section. Subsection 7 of § 16.5.11.H, and other applicable standards in § 16.5.11.H; and
- 920 (b). Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will meet the
921 floodproofing criteria of Subsection 11 of § 16.5.11.H and other applicable standards in
922 § 16.5.11.H
- 923 (11) A description of the extent to which any watercourse will be altered or relocated as a result
924 of the proposed development.
- 925 (12) A statement of construction plans describing in detail how each applicable development
926 standard in § 16.5.11.H will be met.
- 927 F. Application fee and expert's fee.
- 928 (1) A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk,
929 and a copy of a receipt for the same must accompany the application.
- 930 (2) An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals
931 needs the assistance of a professional engineer or other expert. The expert's fee must be paid
932 in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure
933 to pay the bill constitutes a violation of this title and is grounds for the issuance of a stop-
934 work order. An expert may not be hired by the municipality at the expense of an applicant
935 until the applicant has either consented to such hiring in writing or been given an
936 opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of
937 the Code Enforcement Officer may appeal that decision to the Board of Appeals.
- 938 G. Review of flood hazard development permit applications.
939 The Code Enforcement Officer must:
- 940 (1) Review all applications for a flood hazard development permit to assure that proposed
941 building sites are reasonably safe from flooding and to determine that all pertinent
942 requirements of § 16.5.11.H, Development standards, have or will be met.

- 943 (2) Utilize, in the review of all flood hazard development permit applications, the base flood
944 data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in
945 § 16.5.11.C. In special flood hazard areas where base flood elevation data are not provided,
946 the Code Enforcement Officer is to obtain, review and reasonably utilize any base flood
947 elevation and floodway data from federal, state, or other sources, including information
948 obtained pursuant to §16.5.11.E(7)(a)[2], § 16.5.11.H(9) and §16.5.11.J, in order to
949 administer § 16.5.11.H of this article.
- 950 (3) Make interpretations of the location of boundaries of special flood hazard areas shown on
951 the maps described in § 16.5.11.C.
- 952 (4) In the review of flood hazard development permit applications, determine that all necessary
953 permits have been obtained from those federal, state and local government agencies from
954 which prior approval is required by federal or state law, including, but not limited to,
955 Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.
956 § 1334.
- 957 (5) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine
958 Office of Community Development prior to any alteration or relocation of a watercourse and
959 submit copies of such notifications to the Federal Emergency Management Agency.
- 960 (6) Issue a two-part flood hazard development permit for elevated structures. Part I is to
961 authorize the applicant to build a structure to and including the first horizontal floor only
962 above the base flood level. At that time the applicant must provide the Code Enforcement
963 Officer with an application for Part II of the flood hazard development permit and include an
964 elevation certificate completed by a registered Maine surveyor for compliance with the
965 elevation requirements of Subsections 6, 7, 8 and 11 of § 16.5.11.H. Following review of the
966 application, which review must take place within three working days of receipt of the
967 application, the Code Enforcement Officer is to issue Part II of the flood hazard
968 development permit. Part II authorizes the applicant to complete the construction project.
- 969 (7) Maintain, as a permanent record, copies of all flood hazard development permits issued and
970 data relevant thereto, including reports of the Board of Appeals on variances granted under
971 the provisions of § 16.2.12; and copies of elevation certificates and certificates of
972 compliance required under the provisions of § 16.5.11.I.

973 H. Development standards.

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

976 (1) New construction or substantial improvement of any structure must:

977 (a). Be designed or modified and adequately anchored to prevent flotation, collapse or lateral
978 movement of the structure resulting from hydrodynamic and hydrostatic loads, including
979 the effects of buoyancy;

980 (b). Use construction materials that are resistant to flood damage;

- 981 (c). Use construction methods and practices that will minimize flood damage; and
- 982 (d). Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other
983 service facilities, that are designed and/or located so as to prevent water from entering or
984 accumulating within the components during flooding conditions.
- 985 (2) All new and replacement water supply systems are to be designed to minimize or eliminate
986 infiltration of floodwaters into the systems.
- 987 (3) All new and replacement sanitary sewage systems are to be designed and located to
988 minimize or eliminate infiltration of floodwaters into the system and discharges from the
989 system into floodwaters.
- 990 (4) On-site waste disposal systems are to be located and constructed to avoid impairment to
991 them or contamination from them during floods.
- 992 (5) All development is to be constructed and maintained in such a manner that no reduction
993 occurs in the flood-carrying capacity of any watercourse.
- 994 (6) New construction or substantial improvement of any residential structure located within:
- 995 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
996 at least one foot above the base flood elevation.
- 997 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
998 guide floodwater away from the proposed structures.
- 999 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
1000 adjacent grade:
- 1001 [1] At least one foot higher than the depth specified in feet on the community's Flood
1002 Insurance Rate Map; or
- 1003 [2] At least three feet if no depth number is specified.
- 1004 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1005 above the base flood elevation utilizing information obtained pursuant to
1006 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J(4).
- 1007 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection 11 of this section.
- 1008 (7) New construction or substantial improvement of any nonresidential structure located within:
- 1009 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
1010 at least one foot above the base flood elevation or, together with attendant utility and
1011 sanitary facilities, must:
- 1012 [1] Be floodproofed to at least one foot above the base flood level so that below that
1013 elevation the structure is watertight with walls substantially impermeable to passage

- 1014 of water;
- 1015 [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads
1016 and the effects of buoyancy; and
- 1017 [3] Be certified by a registered professional engineer or architect that the design and
1018 methods of construction are in accordance with accepted standards of practice for
1019 meeting the provisions of this section. Such certification must be provided with the
1020 application for a flood hazard development permit, as required by § 16.5.11.E(10),
1021 and include a record of the elevation above mean sea level of the lowest floor,
1022 including basement.
- 1023 (b). Zones AO and AH is to have adequate drainage paths around structures on slopes, to
1024 guide floodwater away from the proposed structures.
- 1025 (c). Zone AO is to have the lowest floor (including basement) elevated above the highest
1026 adjacent grade:
- 1027 [1] At least one foot higher than the depth specified in feet on the community's Flood
1028 Insurance Rate Map; or
- 1029 [2] At least three feet if no depth number is specified; or
- 1030 [3] Together with attendant utility and sanitary facilities, be floodproofed to meet the
1031 elevation requirements of this section and floodproofing standards of Subsection 7(a)
1032 of this section.
- 1033 (d). Zone A is to have the lowest floor (including basement) elevated to at least one foot
1034 above the base flood elevation utilizing information obtained pursuant to
1035 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J
- 1036 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection 11 of this section.
- 1037 (8) New or substantially improved manufactured homes located within:
- 1038 (a). Zones A1 — 30, AE or AH must:
- 1039 [1] Be elevated on a permanent foundation such that the lowest floor is at least one foot
1040 above the base flood elevation; and
- 1041 [2] Be securely anchored to an adequately anchored foundation system to resist flotation,
1042 collapse, or lateral movement. Methods of anchoring may include, but are not limited
1043 to:
- 1044 [a] Over-the-top ties anchored to the ground at the four corners of the manufactured
1045 home, plus two additional ties per side at intermediate points (manufactured homes
1046 less than 50 feet long require one additional tie per side); or

- 1047 [b] By frame ties at each corner of the home, plus five additional ties along each side
1048 at intermediate points (manufactured homes less than 50 feet long require four
1049 additional ties per side).
- 1050 [c] All components of the anchoring system described in Subsection 8(a)(ii)[a] and
1051 [b] of this section must be capable of carrying a force of 4,800 pounds.
- 1052 (d) Zones AO and AH are to have adequate drainage paths around structures on slopes, to
1053 guide floodwater away from the proposed structures.
- 1054 (e) Zone AO are to have the lowest floor (including basement) elevated above the highest
1055 adjacent grade:
- 1056 [1] At least one foot higher than the depth specified in feet on the community's Flood
1057 Insurance Rate Map; or
- 1058 [2] At least three feet if no depth number is specified; and
- 1059 [3] Meet the requirements of Subsection 8(a)(i) and (ii) of this section.
- 1060 [4] Zone A are to have the lowest floor (including basement) elevated to at least one foot
1061 above the base flood elevation utilizing information obtained pursuant to
1062 § 16.5.11.E(7)(a)[2], 16.5.11.G(2) or 16.5.11.J.
- 1063 [5] Zones V1 — 30 and VE are to meet the requirements of Subsection 11 of this section.
- 1064 (9) Floodways.
- 1065 (a). In Zones A1 — 30 and AE, encroachments, including fill, new construction, substantial
1066 improvement, and other development, are not permitted in riverine areas, for which a
1067 regulatory floodway is designated on the community's "Flood Boundary and Floodway
1068 Map," unless a technical evaluation certified by a registered professional engineer is
1069 provided demonstrating that such encroachments will not result in any increase in flood
1070 levels within the community during the occurrence of the base flood discharge.
- 1071 (b). In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway is
1072 designated, encroachments, including fill, new construction, substantial improvement,
1073 and other development, are not permitted unless a technical evaluation certified by a
1074 registered professional engineer is provided demonstrating that the cumulative effect of
1075 the proposed development, when combined with all other existing development and
1076 anticipated development:
- 1077 [1] Will not increase the water surface elevation of the base flood more than one foot at
1078 any point within the community; and
- 1079 [2] Is consistent with the technical criteria contained in Section 2-7, entitled "Hydraulic
1080 Analyses," Flood Insurance Study — Guidelines and Specifications for Study

- 1081 Contractors, FEMA 37/September, 1985, as amended.
- 1082 (c). In Zone A riverine areas, in which the regulatory floodway is determined to be the
1083 channel of the river or other watercourse and the adjacent land areas to a distance of 1/2
1084 the width of the floodplain as measured from the normal high-water mark to the upland
1085 limit of the floodplain, encroachments, including fill, new construction, substantial
1086 improvement, and other development, are not permitted unless a technical evaluation
1087 certified by a registered professional engineer is provided meeting the requirements of
1088 Subsection 9(b) of this section.
- 1089 (10) New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO,
1090 AH and A that meets the development standards of this section, including the elevation
1091 requirements of Subsection 6, 7 or 8 of this section, and is elevated on posts, columns, piers,
1092 piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the
1093 elevation requirements provided all the following criteria are met or exceeded:
- 1094 (a). Walls, with the exception of crawl spaces less than three feet in height, must not be part
1095 of the structural support of the building; and
- 1096 (b). Enclosed areas are not "basements" as defined in § 16.5.11.B; and
- 1097 (c). Enclosed areas are to be designed to automatically equalize hydrostatic flood forces on
1098 exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this
1099 requirement must either:
- 1100 [1] Be certified by a registered professional engineer or architect; or
- 1101 [2] Meet or exceed the following minimum criteria:
- 1102 [a] A minimum of two openings having a total net area of not less than one square
1103 inch for every square foot of the enclosed area;
- 1104 [b] The bottom of all openings may be no higher than one foot above the lowest
1105 grade; and
- 1106 [c] Openings may be equipped with screens, louvers, valves, or other coverings or
1107 devices, provided that they permit the entry and exit of floodwaters automatically
1108 without any external influence or control, such as human intervention, including the
1109 use of electrical and other nonautomatic mechanical means; and
- 1110 (f) The enclosed area may not be used for human habitation; and
- 1111 (g) The enclosed area may be used for building maintenance, access, parking vehicles, or
1112 storing of articles and equipment used for maintenance of the building.
- 1113 (11) Coastal floodplains.
- 1114 (a). All new construction located within Zones V1 — 30 and VE is to be located landward of

- 1115 the reach of the highest annual spring tide.
- 1116 (b).New construction or substantial improvement of any structure located within Zones V1
1117 — 30 or VE must:
- 1118 [1] Be prohibited unless the following criteria are met:
- 1119 [a] The area is zoned for general development or its equivalent, as defined in the
1120 Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S. § 438-A; or
- 1121 [b] The area is designated as densely developed as defined in 38 M.R.S. § 436-A,
1122 Subsection 3.
- 1123 [2] Be elevated on posts or columns such that:
- 1124 [a] The bottom of the lowest structural member of the lowest floor (excluding the
1125 pilings or columns) is elevated to one foot above the base flood level;
- 1126 [b] The pile or column foundation and the elevated portion of the structure attached
1127 thereto is anchored to resist flotation, collapse, and lateral movement due to the
1128 effects of wind and water loads acting simultaneously on all building components;
1129 and
- 1130 [c] Water loading values used must be those associated with the base flood. Wind
1131 loading values used must be those required by applicable state and local building
1132 standards.
- 1133 [3] Have the space below the lowest floor:
- 1134 [a] Free of obstructions; or
- 1135 [b] Constructed with open wood lattice-work, or insect screening intended to collapse
1136 under wind and water without causing collapse, displacement, or other structural
1137 damage to the elevated portion of the building or supporting piles or columns; or
- 1138 [c] Constructed with nonsupporting breakaway walls which have a design safe
1139 loading resistance of not less than 10 nor more than 20 pounds per square foot.
- 1140 (c) A registered professional engineer or architect must:
- 1141 [1] Develop or review the structural design, specifications and plans for the construction,
1142 which must meet or exceed the technical criteria contained in the Coastal
1143 Construction Manual (FEMA-55/February, 1986); and
- 1144 [a] Certify that the design and methods of construction to be used are in accordance
1145 with accepted standards of practice for meeting the criteria of Subsection 11(b) of this
1146 section.

- 1147 (d) The use of fill for structural support in Zones V1 — 30 and VE is prohibited.
- 1148 (e) Human alteration of sand dunes within Zones V1 — 30 and VE is prohibited unless it
1149 can be demonstrated that such alterations will not increase potential flood damage.
- 1150 (f) The enclosed areas may be used solely for parking vehicles, building access, and
1151 storage.
- 1152 I. Certificate of compliance.
1153 No land in a special flood hazard area may be occupied or used and no structure which is
1154 constructed or substantially improved may be occupied until a certificate of compliance is
1155 issued by the Code Enforcement Officer subject to the following provisions:
- 1156 (1) The applicant must submit an elevation certificate completed by:
- 1157 (a). A registered Maine surveyor for compliance with Subsection 6, 7, 8 or 11 of
1158 § 16.5.11.H; and
- 1159 (b). A registered professional engineer or architect in the case of:
- 1160 [1] Floodproofed, nonresidential structures, for compliance with § 16.5.11.H(7); and
- 1161 [2] Construction of structures in the coastal floodplains for compliance with
1162 § 16.5.11.H(11)(c).
- 1163 (2) The application for a certificate of compliance is to be submitted by the applicant in writing,
1164 along with a completed elevation certificate, to the Code Enforcement Officer.
- 1165 (3) The Code Enforcement Officer is to review the application within 10 working days of
1166 receipt of the application and issue a certificate of compliance, provided the building
1167 conforms with the provisions of this article.
- 1168 J. Review of subdivision and development proposals.
1169 The Planning Board must, when reviewing subdivisions and other proposed developments
1170 that require review under other federal law, state law or local ordinances or regulations,
1171 and all projects on five or more acres, or in the case of manufactured home parks divided
1172 into two or more lots, assure that:
- 1173 (1) All such proposals are consistent with the need to minimize flood damage.
- 1174 (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located
1175 and constructed to minimize or eliminate flood damages.
- 1176 (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- 1177 (4) All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- 1178 (5) Any proposed development plan must include a statement that the developer will require
1179 that structures on lots in the development be constructed in accordance with § 16.5.11.H and

1180 that such requirement will be included in any deed, lease, purchase and sale agreement, or
1181 document transferring or expressing an intent to transfer any interest in real estate or
1182 structure, including, but not limited to, a time-share interest. The statement must clearly
1183 articulate that the municipality may enforce any violation of the construction requirement
1184 and that fact is also to be included in the deed or any other document previously described.
1185 The construction requirement must also be clearly stated on any map, plat or plan to be
1186 signed by the Planning Board or local reviewing authority as part of the approval process.

1187 16.5.11 Home Occupation

1188 A. Purpose.

1189 (1) It is the intent of these regulations governing home occupations to balance the economic and
1190 community benefits of allowing home-based businesses with the goal of protecting the
1191 quality of life of the surrounding residential neighborhood from unreasonable or unsafe
1192 intrusions and nuisances inappropriate to a residential setting. The regulations attempt to
1193 ensure that any home-based business operates in a manner that respects the neighborhood in
1194 which it is situated.

1195 (2) Regulation of home occupations should not prohibit beneficial and unobtrusive uses and
1196 should provide standards to protect the health, safety and general welfare of the surrounding
1197 neighborhood. A home occupation should not degrade the residential character of the
1198 neighborhood.

1199 (3) These regulations take a two-tier approach to regulating home occupations. At the least
1200 intrusive level are business activities that by their nature and intensity will be compatible
1201 with a residential location. These types of businesses are considered minor home
1202 occupations and require only review by the Code Enforcement Officer for compliance with
1203 the standards. A major home occupation in a residential district has the potential to be
1204 incompatible with its neighborhood setting. Therefore, a public hearing with notification to
1205 abutting property owners and BOA approval is necessary.

1206 (4) A more extensive business activity that does not satisfy the standards for a major home
1207 occupation is treated as a type of commercial use and does not qualify as an acceptable type
1208 of home occupation. Such businesses should be located in an appropriately zoned area of the
1209 Town.

1210 B. Minor home occupation standards.

1211 (1) Compliance with the definition of a "home occupation."

1212 (a). An applicant must be a resident of a dwelling on the premises where the home
1213 occupation will occur. An applicant who is not the owner of the property, but is residing
1214 on the premises, must submit written permission of the property owner for the proposed
1215 home occupation.

1216 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1217 Quantitative measures that may be considered in determining whether a proposed

- 1218 activity is an accessory use include, but are not limited to, percentage and/or total
1219 amount of square footage attributed to the home occupation(s) use in relation to the
1220 residential use. Qualitative factors include, but are not limited to, the projected activity
1221 level of the home occupation(s) on the premises in relation to the residential use and
1222 whether the proposed home occupation is a traditional accessory use in the community.
- 1223 (2) Number of workers. There must be no more than three persons, inclusive of residents of the
1224 premises, working in the home occupation(s) at the site at any one time.
- 1225 (3) Prohibited uses. The following uses are categorically prohibited as minor home occupations:
1226 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
1227 storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking;
1228 processing and/or cleaning; bait sales; Marijuana Business.
- 1229 (4) Business hours. Business activities involving clients or customers on the premises or
1230 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1231 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1232 water-dependent use.
- 1233 (5) Nuisances.
- 1234 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes,
1235 traffic or electrical interference detected at the property boundary must not be greater in
1236 duration or intensity than that expected in the surrounding residential neighborhood.
- 1237 (b). When reviewing a functionally water-dependent use, the above standards allow
1238 customary noises and smells caused by the use if all practicable steps are taken to
1239 manage and minimize the adverse impact on abutting property owners.
- 1240 (6) Parking. A plan must be submitted showing sufficient and safe parking for customers',
1241 clients' and workers' use during normal business operations. To the maximum extent
1242 practicable, parking should be arranged so as to avoid vehicles backing out into the street. In
1243 addition to parking required for the residence, the following parking is required:
- 1244 (a). One parking space per nonresident worker at the site during the peak shift;
- 1245 (b). One parking space if clients or customers frequently visit the site;
- 1246 (c). One parking space per adult student up to the maximum class size; or
- 1247 (d). One parking space per rental unit.
- 1248 (7) The parking design standards in Table 16.7.11.F of § 16.7 Site Plan Review, set out at the
1249 end of § 16.7.11.F, Parking Loading and Traffic (e.g., aisle width, stall size, etc.), may be
1250 modified for parking by workers if the parking arrangement will still provide for practical
1251 off-street parking adequate to prevent parking from overflowing the site.
- 1252 (8) With the exception of a bed-and-breakfast with more than three rooms for rent, three

- 1253 additional off-street parking spaces should satisfy the parking demand for a minor home
1254 occupation. Any recurring observed parking overflow is a violation of these standards.
- 1255 (9) The CEO may approve the joint use of a parking area where it is clearly demonstrated that
1256 the parking area will be available for use by customers or workers during the hours of
1257 operation due to the variation in time of use.
- 1258 (10) Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment associated
1259 with the home occupation is prohibited except for the following:
- 1260 (a). One vehicle used in conjunction with the home occupation;
- 1261 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
1262 lobster traps; and
- 1263 (c). Vehicles owned by residents of the premises with valid license plates.
- 1264 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
1265 prevent offensive odors.
- 1266 (11) Business conduct. All business activities on the site must take place within the dwelling or
1267 enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or
1268 functionally water-dependent uses.
- 1269 (12) Refuse and recyclables. All refuse and recyclables must be stored within an enclosed
1270 building. No outdoor dumpsters are allowed. All waste materials from the home occupation
1271 must be removed from the premises on at least a monthly basis.
- 1272 (13) Traffic. The home occupation must not result in creating or significantly exacerbating a
1273 traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed
1274 axle, thirty-foot total length truck is prohibited.
- 1275 (14) Retail sales. Retail sales in which customers do not come to the premises are permissible,
1276 such as mail order or telephone sales. On-site retail sales are limited to the following:
- 1277 (a). Sales of products grown, raised or produced on the premises. For the purposes of this
1278 subsection, the term "produced" is not to be construed to allow the assembly of a product
1279 from components produced elsewhere; and
- 1280 (b). Sales of items customarily incidental and subordinate to a nonretail home occupation,
1281 such as sales of shampoo and hair brushes at a beauty salon.
- 1282 (c). All other on-site retail sales are prohibited as a minor home occupation.
- 1283 (15) Health and safety. The proposed use must not create a health or safety hazard.
- 1284 C. Major home occupation standards.
- 1285 (1) Compliance with the Definition of a "Home Occupation."

- 1286 (a). An applicant must be a resident of a dwelling on the premises where the home
1287 occupation will occur. An applicant who is not the owner of the property, but is residing
1288 on the premises, must submit written permission of the property owner for the proposed
1289 home occupation.
- 1290 (b). As an accessory use, the home occupation(s) must be subordinate to the principal use.
1291 Quantitative measures that may be considered in determining whether a proposed
1292 activity is an accessory use include, but are not limited to, percentage and/or total
1293 amount of square footage attributed to the home occupation(s) use in relation to the
1294 residential use. Qualitative factors include, but are not limited to, the projected activity
1295 level of the home occupation(s) on the premises in relation to the residential use and
1296 whether the proposed home occupation is a traditional accessory use in the community.
- 1297 (2) Number of workers. There must be no more than five persons, inclusive of residents of the
1298 premises, working in the home occupation(s) at the site at any one time.
- 1299 (3) Prohibited uses. The following uses are categorically prohibited as major home occupations:
1300 motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor
1301 storage; junkyard; auto salvage yard; marijuana retail use; and marijuana medical use except
1302 the activities of a primary caregiver registered under 22 M.R.S. § 2425.
- 1303 (4) Business hours. Business activities involving clients or customers on the premises or
1304 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1305 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1306 water-dependent use. This limitation may be modified by the BOA provided the proposal
1307 satisfies the intent of this section.
- 1308 (5) Nuisances.
- 1309 (a). Any excessive noise, dust, smoke, vibrations, glare, direct lighting, obnoxious fumes or
1310 odors, traffic, or electrical interference detected at the property boundary must not be
1311 greater in duration or intensity than that expected in the surrounding residential
1312 neighborhood.
- 1313 (b). When reviewing a functionally water-dependent use, the above standards allow
1314 customary noises and smells caused by the use if all practicable steps are taken to
1315 manage and minimize the adverse impact on abutting properties.
- 1316 (6) Parking. A plan must be submitted that provides safe and sufficient off-street parking to
1317 meet the needs of the business to prevent parking from overflowing off the site. Any
1318 recurring observed parking overflow is a violation of these standards. The creation of more
1319 than four off-street parking spaces must be located, designed, screened and landscaped to
1320 minimize adverse impact on abutting properties.
- 1321 (7) Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the
1322 home occupation must be screened from view of abutting properties and from all streets
1323 except for the following:

- 1324 (a). One vehicle used in conjunction with the home occupation;
- 1325 (b). Seasonal storage of items necessary for functionally water-dependent uses, such as
1326 lobster traps; and
- 1327 (c). Vehicles owned by residents of the premises with valid license plates.
- 1328 (d). All bait must be stored indoors and must be kept refrigerated or otherwise stored to
1329 prevent offensive odors.
- 1330 (8) Business conduct. All business activities on the site must take place within an enclosed
1331 building or be screened from view of abutting properties and from all publicly maintained
1332 streets, except for outdoor recreational uses, agriculturally oriented uses or functionally
1333 water-dependent uses. This standard may be modified by the BOA provided the proposal
1334 satisfies the intent of this section.
- 1335 (9) Refuse and recyclables. All refuse and recyclables must be stored in containers that are
1336 screened from view of abutting properties and from streets. No emptying of dumpsters is
1337 allowed before 8:00 a.m. or after 7:00 p.m.
- 1338 (10) Traffic. The home occupation must not result in creating or significantly exacerbating a
1339 traffic hazard. Furthermore, the home occupation must not create an objectionable increase
1340 in vehicle traffic considering the type, time and amount of vehicle traffic generated and the
1341 design and capacity of the roads to the site and traffic normal for the neighborhood.
- 1342 (11) Retail sales. Retail sales on the premises are limited to the following:
- 1343 (a). Sales in which customers do not come to the premises, such as mail order or telephone
1344 sales;
- 1345 (b). Sales of products grown, raised or produced on the premises;
- 1346 (c). Sales of seafood harvested by the residents of the premises;
- 1347 (d). Sales of items customarily incidental and subordinate to a nonretail home occupation,
1348 such as sales of shampoo and hair brushes at a beauty salon; and/or
- 1349 (e). Sales by appointment only for which any signage identifying the business states a "by
1350 appointment only" policy.
- 1351 (12) Health and safety. The proposed use must not create a health or safety hazard.
- 1352 (13) Neighborhood compatibility. The proposed use is determined to be compatible with the
1353 surrounding neighborhood. In reaching this determination, the following factors are to be
1354 considered:
- 1355 (a). The nature of the property;
- 1356 (b). The physical characteristics of the neighborhood, including the amount of nonresidential

- 1357 activity;
- 1358 (c). Hours of operation;
- 1359 (d). Intensity of the activity;
- 1360 (e). Potential to degrade the quality of life for residents of the surrounding neighborhood;
1361 and
- 1362 (f). The cumulative impact of existing home occupations and other accessory uses both on
1363 the premises and in the surrounding neighborhood.
- 1364 (g). Medical marijuana use is restricted to single-family residences only.
- 1365 (14) Large lots. When a seventy-five-foot-deep buffer yard is provided between all business
1366 activities (including storage and parking, except a driveway) and contiguous properties, and
1367 the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the
1368 home occupation activities from an abutting property, the BOA may relax the above
1369 standards, except those pertaining to nuisances and prohibited uses, if the use is considered
1370 to comply with the intent of this subsection.
- 1371 (15) Annual renewal.
- 1372 (a). Upon approval of a major home occupation by the Board of Appeals, the Code
1373 Enforcement Officer is authorized to issue a certificate of occupancy permit for not more
1374 than a one-year time period. Such permit may be renewed annually upon application to
1375 the Code Enforcement Officer. Operation of a major home occupation with an expired
1376 certificate of occupancy is a violation of this Code.
- 1377 (b). The annual permit may be renewed only if the Code Enforcement Officer finds the
1378 major home occupation complies with all applicable standards of this Code and any
1379 conditions required by the Board of Appeals in the original approval.
- 1380 16.5.12 Junkyards and/or Automobile Salvage Yards
- 1381 A. Buffering.
- 1382 Buffering will be 100 feet on all sides except on the street, where 200 feet will be the
1383 minimum. Trees, shrubbery and fencing not less than eight feet in height, or all three, may
1384 be required by the Board to restrict visibility of the area from the road and neighbors.
1385 Land contour is to be taken into consideration. Approval of the junkyard plan is required
1386 by the Police, Highway and Fire Departments before any permit is presented to the Town
1387 Council for consideration.
- 1388 B. Buildings.
- 1389 Office, control or storage building must be inside the buffered area and no more than a
1390 maximum of 30 feet in height. The adequacy of buffering is to be considered in allowing
1391 heights over 20 feet.

- 1392 C. Junk piles.
1393 Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- 1394 D. Waste.
1395 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State
1396 Plumbing Code will apply for sanitary waste and any state laws regulating toxic waste.
1397 Separate storage must be maintained for toxic waste, including but not limited to oil,
1398 grease, gasoline and solvents. This waste must be removed at least twice a year by an
1399 accredited dealer in such wastes. All tanks of vehicles must be drained and contents
1400 properly disposed of.
- 1401 E. Drainage.
1402 Provision must be made for proper drainage of stormwater or other wastewater, so that
1403 contaminated, rusted or other noticeable effluent does not go beyond actual junk area or
1404 into buffering. Special attention is to be given to acceptable drainage of normal
1405 stormwater. § 16.7.11.C of this chapter also applies.
- 1406 F. Hours of operation.
1407 Work in connection with demolishing or wrecking cars or purchasing or selling items is
1408 permitted only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
- 1409 G. Signs.
1410 One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to
1411 the property.
- 1412 H. Cleanliness.
1413 Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or
1414 other nuisance permitted outside of the buffered area.
- 1415 I. Permits.
1416 A permit for not more than one year's operation is required in addition to the state permit.
1417 The Town fee is as set by the Town Council. Periodic inspections must be made by the
1418 Code Enforcement Officer during the year to ensure compliance with the state and local
1419 ordinances.
- 1420 J. Other standards application.
1421 All other applicable standards of this chapter not specifically mentioned here, such as
1422 parking, noise, etc., also apply to this use.
- 1423 16.5.13 Lots
- 1424 A. Dimensions.
1425 The lot size, width, depth and shape and orientation and the minimum building setback
1426 lines must be appropriate for the location of the development and for the type of
1427 development and use contemplated. The lot configuration should be designed to maximize
1428 access to solar energy for building sites with suitable orientation.
- 1429 B. Lot shape.

- 1430 (1) The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are prohibited.
1431 Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet
1432 minimum lot size requirements are also prohibited.
- 1433 (2) Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a
1434 river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B,
1435 none of the lots created within the subdivision may have a lot depth to shore frontage ratio
1436 greater than 5:1.
- 1437 C. Double/reverse-frontage lots.
1438 Double-frontage and reverse-frontage lots are to be avoided except where essential to
1439 provide separation of residential development from traffic arteries or to overcome specific
1440 disadvantages of topography and orientation. A planting screen easement of at least 10
1441 feet, across which there may be no right of access, is to be provided along the lot lines
1442 abutting such a traffic artery or other disadvantageous use.
- 1443 D. Side lot lines.
1444 Side lot lines must be substantially at right angles or radial to street lines.
- 1445 E. Substantially larger lots.
1446 Where a tract is subdivided into lots substantially larger than the minimum size required in
1447 the zone in which a subdivision is located, and where no covenants exist to preclude lots
1448 from resubdivision, the Board may require that streets and lots be laid out so as to permit
1449 future resubdivision in accordance with the requirements contained in these standards.
- 1450 F. Multiple frontages.
1451 When lots have frontage on two or more streets, the plan and deed restrictions must
1452 indicate vehicular access to be located only on the least-traveled way.
- 1453 G. Divided lots.
1454 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the
1455 minimum requirements for lot size, it may not be combined with a lot on the other side of
1456 such barrier to meet the minimum lot size unless in conformance with § 16.1.8.B, General
1457 Development Requirements, Conformity.
- 1458 H. Off-street parking.
1459 Depth and width of properties reserved or laid out for all purposes must be adequate to
1460 provide for off-street parking and service facilities for vehicles required by type of
1461 development and use contemplated.
- 1462 I. Access to arterial street.
1463 Where a major subdivision abuts or contains an existing or proposed arterial street, no
1464 residential lot may have vehicular access directly onto the arterial street. This requirement
1465 must be noted on the plan and in the deed of any lot with frontage on the arterial street.
- 1466 J. Land subdivision.
1467 The subdividing of land must conform to the requirements of § 16.4.

1468 16.5.14 Manufactured Housing1469 A. Standards.1470 Standards for manufactured housing include the following:1471 (1) All mobile home units must be manufactured after June 15, 1976, and shall have a
1472 manufacturer-installed sticker indicating HUD approval.1473 (2) All units must be manufactured with a pitched, shingled roof, with a minimum slope three
1474 inches on 12 inches (3:12).1475 (3) All units must have residential-type siding, such as clapboards, shakes, horizontally applied
1476 aluminum, or vinyl resembling clapboards.1477 (4) All units, excluding individual mobile home park installations, must have a permanent
1478 foundation, which may be either a full basement or a poured or block frost wall.1479 (5) All other sections of this title must be adhered to.1480 16.5.15 Mineral/earth material exploration and removal1481 A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations
1482 where permitted under the terms of this title, only after a special permit for such
1483 operations has been issued by the Code Enforcement Officer, upon approval and review of
1484 plans by the Planning Board in accordance with the provisions of this title, and provided
1485 that nothing herein may be deemed to apply to normal excavation operations incidental to
1486 construction activities for which a valid permit is held. The following standards must be
1487 met:1488 (1) The applicant must submit to the Code Enforcement Officer plans of the proposed extraction
1489 site, showing the property lines and names of all abutting owners and ways, indicating by
1490 not greater than five-foot contour intervals related to U.S. Geodetic Survey data, the location
1491 and slope of the grades existing and as proposed upon completion of the extraction
1492 operation; proposed fencing; buffer strips; signs; lighting; parking and loading areas;
1493 entrances and exits, together with a written statement of the proposed method, regularity,
1494 working hours and total proposed rehabilitation and restoration of the site upon completion
1495 of the operation.1496 (2) Said plans and statement are to be promptly submitted with the recommendations of the
1497 Code Enforcement Officer to the Planning Board for its consideration with respect to the
1498 effect of the proposed operation upon existing and foreseeable traffic patterns within the
1499 Town, upon existing or approved land uses which might be affected by the operations. The
1500 Planning Board may recommend changes to the applicant for resubmission to the Planning
1501 Board. The Planning Board is to promptly call and hold a public hearing upon the final
1502 application in the same manner as provided for any final plan review.1503 (3) The Planning Board shall render a written decision as to whether, and under what
1504 conditions, the proposed operation may be permitted, consistent with public health and

1505 safety; the preservation of attractive natural features; compatibility, despite temporary and
1506 reasonable disturbance, with existing or approved land uses which might be affected; and
1507 implementation of the Comprehensive Plan. If the Planning Board approves the application,
1508 it may condition the special permit upon such alterations in the proposed operation or upon
1509 the performance or omission of such acts as it may deem proper to assure attainment of the
1510 objectives set forth in the preceding sentence, and it may require filing of a performance
1511 guaranty in an amount and form acceptable to the Town Manager to indemnify the Town
1512 against any claims arising from the proposed operations and to assure satisfactory
1513 performance of all conditions imposed or otherwise applicable.

1514 B. Mandatory restrictions. All extraction operations and sites within the Town must be
1515 conducted and maintained in accordance with, and the Planning Board shall impose, such
1516 conditions upon any special permit issued under this subsection as it deems necessary or
1517 desirable to assure compliance with the following requirements:

1518 (1) Mineral exploration to determine the nature or extent of mineral resources must be
1519 accomplished by hand sampling, test boring, or other methods which create minimal
1520 disturbance of less than 100 square feet of ground surface. A permit from the Code
1521 Enforcement Officer is required for mineral exploration which exceeds the above limitation.
1522 All excavations, including test pits and holes, must immediately be capped, filled or secured
1523 by other equally effective measures so as to restore disturbed areas and to protect the public
1524 health and safety.

1525 (2) Mineral extraction, including sand and gravel extraction, is prohibited within the
1526 Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

1527 (3) No part of any extraction operation may be permitted within 100 feet of any property or
1528 street line, and natural vegetation must be left and maintained on the undisturbed land.
1529 Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven
1530 feet for construction in an urban residential zone. Topographical change will not result in
1531 cuts or fills exceeding seven feet.

1532 (4) No standing water may be permitted in any extraction site during or after extraction
1533 operations; except that, during or after extraction operations, standing water may be
1534 permitted under strict conditions with respect to fencing, safe levels of coliform bacteria
1535 count, and treatment to prevent breeding of insects so as to assure the public health and
1536 safety, as determined by the Town Health Officer.

1537 (5) No slopes steeper than three feet horizontal to one foot vertical may be permitted at any
1538 extraction site unless a fence at least three feet high is erected to limit access to such
1539 locations.

1540 (6) Before commencing removal of any earth materials, the owner or operator of the extraction
1541 site must present evidence to the Planning Board of insurance against liability arising from
1542 the proposed extraction operations and maintain such insurance throughout the period of
1543 operation.

1544 (7) Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required for

1545 restoration, be stripped from the locations of extraction operations and stockpiled for use in
1546 restoring the location after extraction operations have ceased.

1547 (8) Upon completion of active extraction operations, the land must be left so that natural storm
1548 drainage and watercourses leave the location at the original natural drainage points and in a
1549 manner such that the amount of drainage at any point is not significantly increased.

1550 (9) The hours of operation at any extraction site are to be limited as the Planning Board deems
1551 advisable to ensure operational compatibility with residents of the Town.

1552 (10) Loaded vehicles must be suitably covered to prevent dust and contents from spilling or
1553 blowing from the load, and all trucking routes and methods are subject to approval by the
1554 Chief of Police.

1555 (11) All access roads leading from the extraction site to public ways must be treated with stone,
1556 calcium or other suitable materials to reduce dust and mud for a distance of at least 100 feet
1557 from such public ways.

1558 (12) No equipment, debris, junk or other material is permitted at an extraction site except those
1559 directly relating to active extraction operations, and any temporary shelters or buildings
1560 erected for such operations and equipment used in connection therewith must be removed
1561 within 30 days following completion of active extraction operations.

1562 (13) Following the completion of extraction operations at any extraction site or at any one or
1563 more locations within any extraction site, ground levels and grades must be established in
1564 accordance with the approved plans filed with the Planning Board; all debris, stumps,
1565 boulders and similar materials must be removed and disposed of in an approved location or,
1566 in the case of inorganic material, buried and covered with a minimum of two feet of soil.
1567 Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be
1568 revegetated and properly restored to a stable condition adequate to meet the provisions of
1569 the "Maine Erosion and Sediment Control BMPs," March 2003.

1570 C. Issuance and renewal of permits. Special permits may be issued in accordance with the
1571 foregoing provisions for a period not to exceed one year, and they are renewable only
1572 upon application by the owner, after a finding by the Planning Board that the conduct of
1573 the operation has been substantially in accordance with any and all conditions imposed or
1574 material representations made in connection with the original special permit, and upon
1575 such additional and altered conditions as the Board may deem necessary in accordance
1576 with Subsection A(3) of this section.

1577 16.5.16 Mobile Home Parks, Recreational Vehicle Parks and Campgrounds

1578 A. Permit required. No person, firm, corporation or other legal entity may establish or
1579 maintain a Mobile Home Park, Recreational Vehicle Park or Campground within the
1580 Town without a permit issued in conformity with the provisions of this title. It is the park
1581 operator's responsibility to obtain the permit.

1582 (1) Application. Application for a Mobile Home Park, Recreational Vehicle Park or

1583 Campground permit must be filed with the Code Enforcement Officer, who will present said
1584 application to the Planning Board for review as a subdivision, except that permit renewals
1585 are not subject to Board review. The Board must review the proposal in accordance with the
1586 standards contained herein and inform the CEO of its decision. The CEO shall then act on
1587 the application as required.

1588 (2) Fee and expiration. Each application for a permit or a renewal thereof must be accompanied
1589 by a fee as established by the Town Council for a Mobile Home Park, Recreational Vehicle
1590 Park or Campground designed for the accommodation of no more than 10 Manufactured
1591 Housing units, Recreational Vehicles or tent sites and an additional fee, as established by the
1592 Town Council, for each additional Manufactured Housing unit, Recreational Vehicle or tent
1593 site located at the site. (See Appendix A for annual mobile home park fee schedule.) Permits
1594 expire on the first day of April next following date of issuance. Before any permit is
1595 renewed, the premises are subject to inspection by the Health Officer and CEO. If all
1596 requirements of this and other federal, state and local laws have been complied with, the
1597 same is to be certified and the permit renewed.

1598 (3) Permit display. Permits issued under this section must be conspicuously posted on the
1599 premises at all times and are not transferable.

1600 (4) Revocation. The CEO is authorized to revoke any permit issued under this section pursuant
1601 to the terms of this title if, after due investigation, it is determined the holder thereof has
1602 violated any of the provisions of this or any applicable code, law or statute.

1603 B. Compliance.

1604 Applications for development of Mobile Home Parks, Recreational Vehicle Parks or
1605 Campgrounds must comply with all state laws and local ordinances and meet the
1606 requirements of subdivision law, except as stipulated below. Such developments in
1607 existence prior to adoption of this title may be enlarged only if the extension complies
1608 with the terms specified herein.

1609 C. Recreational Vehicle Parks and Campgrounds.

1610 In any district where Campgrounds or Recreational Vehicle Parks are permitted under the
1611 terms of this title, the following regulations and minimum standards apply:

1612 (1) A time limit is placed on the occupancy of any one camping space on a continuing basis as
1613 follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for all
1614 other periods. No Recreational Vehicles or Manufactured Housing units other than such as
1615 are camping units, as defined herein, are permitted within any camper park, temporarily or
1616 otherwise.

1617 (2) A Campground or Recreational Vehicle Park may not be constructed on less than five acres
1618 of land.

1619 (3) Each tent site must be provided with a masonry or metal fireplace approved by the Fire
1620 Chief.

1621 (4) Spaces in Campgrounds and Recreational Vehicle Parks may be used by travel trailers.

- 1622 equivalent facilities constructed in or on automotive vehicles, tents or other short-term
1623 shelter devices.
- 1624 (5) A Recreational Vehicle Park or Campground must provide water and sewerage systems,
1625 sanitary stations and convenience facilities in accordance with the regulations of the State
1626 Plumbing Code and the Maine Department of Human Services. In no case may less than one
1627 toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites or
1628 major portion thereof.
- 1629 (6) Recreational Vehicles must be parked on sites containing a minimum of 2,500 square feet
1630 and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and
1631 aisles.
- 1632 (7) Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30
1633 feet between tents.
- 1634 (8) Recreational Vehicles must be so parked in spaces that:
- 1635 (a). There will be a minimum of 15 feet between vehicles.
- 1636 (b). There will be a minimum of 15 feet between all Recreational Vehicles and the exterior
1637 boundary of the park.
- 1638 (c). There will be a minimum of 25 feet between all Recreational Vehicles and all public
1639 rights-of-way located inside the boundaries of the Recreational Vehicle Park or
1640 Campground. Setbacks from roads outside the Recreational Vehicle Park will be a
1641 minimum of 150 feet.
- 1642 (d). No camping unit or structure may be located less than 100 feet from any residence.
- 1643 (e). Buffering: planting, landscaping, disposition and form of building and other
1644 improvements, or fencing and screening is to be utilized to integrate the proposed
1645 development with the landscape and the character of any surrounding development.
- 1646 (9) The storage, collection and disposal of refuse must not create health hazards, rodent
1647 harborage, insect breeding areas, accident hazards or air pollution.
- 1648 (10) No unoccupied camping unit may be stored or exhibited for sale for commercial purposes
1649 within the park.
- 1650 D. Mobile Home Parks.
- 1651 (1) Mobile Home Parks, by special exception, may be located as indicated in § 16.4.
- 1652 (2) Lots within a shoreland zoning district must meet the lot area, setback and shore frontage
1653 requirements for that district.
- 1654 (3) Lots in a Mobile Home Park must meet the following lot size, width and density

- 1655 requirements:
- 1656 (a). Lots by public sewer.
- 1657 [1] Minimum lot area: 6,000 square feet.
- 1658 [2] Minimum lot width: 50 feet.
- 1659 (b). Lots served by individual on-site subsurface wastewater disposal system.
- 1660 [1] Minimum lot area: 20,000 square feet.
- 1661 [2] Minimum lot width: 100 feet.
- 1662 (c). Lots served by a central on-site subsurface wastewater disposal system*.
- 1663 * The overall density of a Mobile Home Park served by a central on-site subsurface
- 1664 wastewater disposal system may be no greater than one unit per 20,000 square feet of
- 1665 total park area
- 1666 [1] Minimum lot area: 12,000 square feet.
- 1667 [2] Minimum lot width: 75 feet.
- 1668 (d). The overall density of the Mobile Home Park is the combined area of its mobile home
- 1669 lots plus:
- 1670 [1] The area required for road rights-of-way;
- 1671 [2] The area required for buffer strips, if any;
- 1672 [3] For areas served by public sewer, an open space area for storage and recreation equal
- 1673 to 10% of the combined area of the individual lots; and
- 1674 [4] The area within the municipality's shoreland setback.
- 1675 (e). All buildings on the lot, including accessory buildings and structures, but excluding open
- 1676 decks and parking spaces, may not cover more than 50% of the lot area.
- 1677 (4) The following setback rules apply to all mobile homes and accessory buildings:
- 1678 (a). Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these requirements
- 1679 conflict with the requirements of the title, 38 M.R.S. § 435 et seq., Mandatory Shoreland
- 1680 Zoning, or subsequent amendments or revisions thereto, the stricter standards apply.
- 1681 (b). If a lot is on a public road, the setback must conform with the residential setback
- 1682 requirements applicable to other residential dwelling units in the zone.
- 1683 (c). So as to avoid monotony and sameness, the Code Enforcement Officer may allow:

- 1684 [1] The front setback on a private road within a mobile home park to be varied, provided
1685 no mobile home may be closer than 10 feet from the right-of-way and the average
1686 distance is at least 20 feet for all units.
- 1687 [2] The replacement and/or relocation of a mobile home to be located no closer to the
1688 front yard setback than the existing mobile home or pad.
- 1689 (d). Carports of noncombustible materials are not subject to setback requirements.
- 1690 (e). The CEO may allow side yard setbacks to be reduced to five feet, provided a distance of
1691 20 feet is maintained between mobile homes for the purpose of providing more usable
1692 yard space on one side of the home.
- 1693 (f). A minimum twenty-foot separation must be maintained between all mobile homes in all
1694 directions.
- 1695 (5) All buildings on the lot, including accessory buildings and structures, but excluding open
1696 decks and parking spaces, may cover not more than 50% of the lot area.
- 1697 (6) Where a developer elects to create a Mobile Home Park where all land is under unified
1698 ownership, the park plan must demonstrate that the development standards described herein
1699 are met.
- 1700 (7) Privately owned roads within the Mobile Home Park must be designed by a professional
1701 engineer, registered in the State of Maine, and built according to accepted engineering
1702 standards.
- 1703 (a). The layout and general development plan for major and minor access streets within the
1704 Mobile Home Park, together with the location and dimensions of access junctions with
1705 existing public streets and rights-of-way must be approved by the Planning Board.
- 1706 (b). For Mobile Home Park expected to generate 200 trips per day or more, there must be at
1707 least two entrances from public streets or roads.
- 1708 (8) Mobile home park streets which intersect with public roads must meet the following
1709 standards:
- 1710 (a). Angle of intersection. The desired angle of intersection is to be 90°. The minimum angle
1711 of intersection is to be 75°.
- 1712 (b). Grade. The maximum permissible grade within 75 feet of the intersection is 2%.
- 1713 (c). Minimum sight distance. The minimum sight distance must be 10 times the posted speed
1714 limit on the existing road. Sight distance is measured from the driver's seat of a vehicle
1715 that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2
1716 feet above the pavement and the height of an object 4 1/4 feet.
- 1717 (d). Distance from other intersections. The center line of any street within a park intersecting

- 1718 an existing public street must be at least 125 feet from the center line of any other street
1719 intersecting that public street.
- 1720 (9) Right-of-way and pavement width are to be as follows:
- 1721 (a). Two-way park roads must have a minimum right-of-way of 23 feet and a minimum
1722 paved surface of 20 feet. On-street parking is prohibited.
- 1723 (b). One-way streets must have a minimum right-of-way of 18 feet and a minimum paved
1724 surface of 14 feet. On-street parking is prohibited.
- 1725 (c). Parking lanes are to be a minimum of eight feet in width, if provided.
- 1726 (d). Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer edge of the
1727 pavement, exclusive of any parking areas.
- 1728 (e). Curvilinear streets must be utilized wherever possible. No street within the park may be
1729 more than 200 feet without a curve or bend.
- 1730 (f). If the developer intends to dedicate park streets to the public, such streets must meet
1731 municipal standards as contained in § 16.7.12.F and § 16.8.11.J of this chapter.
- 1732 (10) No mobile home lot may have vehicular access directly onto a state highway.
- 1733 (11) A traffic impact analysis is required if the park will generate more than 500 trips/day.
- 1734 (12) Parking requirements for Mobile Home Park areas follows:
- 1735 (a). For each mobile home lot there must be provided and maintained at least two off-street
1736 parking spaces. This requirement may be waived if an equivalent number of spaces are
1737 provided by a parking lane. Each space is design-dependent as indicated in Table
1738 16.7.11.F of this chapter, set out at the end of § 16.7.11.E and F, Parking Loading and
1739 Traffic. This requirement may be waived if an equivalent number of spaces are provided
1740 by a parking lane.
- 1741 (b). In addition to occupant parking, off-street guest and service parking must be provided
1742 within the boundaries of the park at a ratio of one space for each four mobile home lots.
1743 Such parking must be reserved for that sole use. This requirement may be waived if a
1744 parking lane provides an equivalent number of spaces.
- 1745 (c). On-street parking is prohibited unless an eight-foot parking lane is provided, in which
1746 case on-street parking may be permitted on the side of the road where the parking lane is
1747 located.
- 1748 (13) The mobile home park must contain pedestrian walkways that link all units and all service
1749 and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion of
1750 the road surface may be reserved for walkways, provided the street width is increased
1751 accordingly. Walkways should be a minimum of width of three feet.

- 1752 (14) Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian
1753 walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent
1754 properties and vehicular traffic.
- 1755 (15) Open space calculations are as follows:
- 1756 (a). For Mobile Home Park served by a public sewer, an area amounting to 10% of the total
1757 area devoted to individual lots must be set aside for open space and/or recreation. Such
1758 space is to be accessible and usable by all residents of the park. Parking space,
1759 driveways and streets and buffer areas are not considered usable open space but
1760 community recreation buildings, pools and courts are considered as open space.
- 1761 (b). At least 50% of the required open space must consist of land that is suitable for active
1762 recreation.
- 1763 (c). All developed open space is to be designed and landscaped for the use and enjoyment of
1764 the park residents and maintained for their long-term use. Plans for these areas must be
1765 submitted by the developer.
- 1766 (d). To the maximum extent possible, undeveloped open space must be left in its natural
1767 state. Improvements to make trails for walking and jogging or to make picnic areas are
1768 permitted.
- 1769 (e). The developer must submit, as part of the application, a copy of that portion of the
1770 proposed park rules and a plan which specify how the open space is to be used and
1771 maintained and what conditions apply to its use. The plan must specify the area to be
1772 dedicated open space or recreation.
- 1773 (f). Open space must be maintained and used for its approved purposes.
- 1774 (16) All Mobile Home Park must provide permanent electrical, water and sewage disposal
1775 connections to each mobile home in accordance with applicable state and local rules and
1776 regulations. If other than public water is to be utilized, the water system(s) must be capable
1777 of delivering 250 gallons per day per lot of water certified to be of primary drinking water
1778 standards.
- 1779 (17) Signs and advertising devices are prohibited in a Mobile Home Park, except:
- 1780 (a). One identifying sign at each entrance of the Mobile Home Park sized in compliance with
1781 § 16.5.16 of this chapter may be installed.
- 1782 (b). Directional and informational signs for the convenience of tenants and the public relative
1783 to parking, office, traffic movement, etc., are permitted.
- 1784 (c). Mobile/manufactured home "for sale" signs, provided that such signs that face a public
1785 road may be no more than 10 square feet and limited to two signs per Mobile Home
1786 Park.

- 1787 (d). Mobile/manufactured homes address signs are permitted when in compliance with §
1788 16.5.17 of this chapter.
- 1789 (e). The styles and location of the identifying sign must not interfere with vehicle sight
1790 distance and be constructed in accordance with § 16.5.17(17) of this chapter.
- 1791 (18) At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided
1792 on or near each mobile home lot for the storage of materials and equipment.
- 1793 (19) A storm drainage plan must be prepared by a professional engineer, registered in the State of
1794 Maine, in accordance with § 16.7.11.C, Stormwater drainage. Such plan must be approved
1795 by the York County Soil and Water Conservation District or found satisfactory and
1796 compliant to the Code by the Town’s Engineering Peer Reviewer prior to Planning Board
1797 approval of the final plan.
- 1798 (20) Groundwater requirements for Mobile Home Park are as contained in § 16.7.11.J, which
1799 must be complied with for all Mobile Home Park applications.
- 1800 (21) Each mobile home lot must be provided with an area for refuse storage. Within a maximum
1801 150 feet from each mobile home lot, there must be a fly tight, watertight and rodent proof
1802 container capable of storing the amount of refuse that the mobile home park for which it was
1803 designed could generate within one week as well as any separation containers as required by
1804 the Kittery recycling program.[1] The park management is responsible for disposal of refuse
1805 from such containers at least once a week.
- 1806 (22) Buffering requirements are as follows:
- 1807 (a). A fifty-foot-wide buffer strip must be provided along all property boundary lines that:
- 1808 [1] Abut residential land which has a gross density of less than half that proposed in the
1809 park; or
- 1810 [2] Abut residential land that is zoned at a density of less than half that proposed in the
1811 park.
- 1812 (b). Further, no structures, streets or utilities may be placed in the buffer strip, except that
1813 they may cross a buffer strip to provide services to the park.
- 1814 (c). Within 25 feet of any property line and within the buffer strip, visual screening and/or
1815 landscaping must be provided. The visual screening may consist of fences, berms,
1816 landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening is
1817 to effectively screen at least 80% of the homes from view from the adjacent property and
1818 be maintained throughout the life of the project.
- 1819 (23) The owner or operator of a mobile home park is responsible for ensuring the maintenance of
1820 all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park
1821 management must comply with state laws. Compliance with this title does not exempt the
1822 park owner, developer or manager from complying with other applicable local, state and

1823 federal codes and regulations.

1824 (24) No development or subdivision which is approved under this section as a mobile home park
 1825 may be conveyed to another use without the approval of the Planning Board and meeting the
 1826 appropriate lot size, lot width, setback and other requirements contained in this title. The
 1827 approved final plan is to be recorded at the York County Registry of Deeds and filed with
 1828 the Town and have noted the following restrictions as well as any other notes or conditions
 1829 of approval: (1) "The land within this park must remain in a unified ownership and the fee to
 1830 lots or portions of lots not be transferred." (2) "No dwelling unit other than a mobile home
 1831 unit may be located within the park."

1832 16.5.17 Net Residential Acreage

1833 A. Purpose.

1834 To determine for regulatory purposes the land area suitable for dwelling units. This land
 1835 area, the net residential acreage, is used to determine the maximum number of dwelling
 1836 units allowed on a parcel that is subject to subdivision. The total number of dwelling units
 1837 allowed is equal to the net residential acreage divided by the minimum land area per
 1838 dwelling unit for a given land use zone.

1839 B. Net residential acreage calculation.

1840 To calculate net residential acreage, the land area listed below must be subtracted from a
 1841 parcel's gross area. Where land areas to be subtracted overlap, the area therein is
 1842 subtracted once.

1843 (1) All land located below the highest annual tide elevation as published in the Maine DEP
 1844 Highest Annual Tide (HAT) levels for the most-current year.

1845 (2) All land located within the floodplain as defined in the definition of "flood, one-hundred-
 1846 year" in § 16.3.

1847 (3) All wetlands as defined in the definition of "wetland" in § 16.3, as well as vernal pools,
 1848 ponds, lakes, streams and other water bodies, including 50% of the associated setbacks
 1849 described in other Buildings and Structures, Table 16.5.30, § 16.5 of this title.

1850 (4) All land located on filled tidal lands, per the definition of "tidal land, filled" in § 16.3.

1851 (5) All land located within existing rights-of-way and other existing easements wherein
 1852 dwelling units cannot be built.

1853 (6) All land located within proposed rights-of-way, including parking and travel ways.
 1854 Driveways are excluded.

1855 (7) All land isolated from the principal location for development on the parcel by a road/street,
 1856 existing land uses, or any physical feature, natural or man-made, such that it creates a barrier
 1857 to the central development of the site and no means of access is proposed nor likely to be
 1858 provided in the future. However, to demonstrate that identified isolated land may be
 1859 considered developable for the purpose of this calculation, the applicant must submit a plan

- 1860 and supporting documentation for the Board's consideration.
- 1861 (8) All land zoned commercial (C-1, C-2, or C-3).
- 1862 (9) All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 1863 (10) All land identified as exposed bedrock, and soils with a drainage class of "poorly drained"
1864 and/or "very poorly drained" as defined in the definition of "soils" in § 16.3.
- 1865 (11) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"
1866 unless public sewer is used, in which case no land area is subtracted.
- 1867 (12) All land area within a cemetery and burying ground as defined in § 16.3, including
1868 associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation
1869 near burial sites.
- 1870 (13) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection
1871 Overlay Zone not included in Subsection 12 above.
- 1872 C. Documentation.
- 1873 The net residential acreage calculation must be supported by verifiable information and
1874 accurate data and be shown on the subdivision plan or other plan when applicable.
- 1875 D. Exemptions to net residential acreage calculations.
- 1876 (1) The maximum number of dwelling units for residential development not subject to
1877 subdivision is based on minimum land area per dwelling unit defined in § 16.2, Definitions
1878 of this title.
- 1879 (2) The creation of dwelling units subject to subdivision within existing buildings that are
1880 connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use -
1881 Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are exempt
1882 from the net residential acreage calculations in § 16.5.18.A. The total number of dwelling
1883 units permitted is determined by dividing the gross lot area by the minimum land area per
1884 dwelling unit allowed in the zone. The exemption is allowed in the above base zones when
1885 subject to the Shoreland Overlay Zone.
- 1886 (3) The Mixed-Use – Neighborhood Zone (MU-N) and certain residential uses in the C-1 and
1887 C-3 zone as noted in 16.4.19 and 16.4.21 are exempt from § 16.5.18, Net residential acreage
1888 calculation, but is subject to the minimum land area per dwelling unit as defined in Chapter
1889 2, Definitions, except that 50% of all wetlands may be subtracted, rather than 100%.
- 1890
- 1891 16.5.18 Nonstormwater Discharge
- 1892 A. Basis/purpose/objectives.

1893 (1) The Maine Department of Environmental Protection, through its promulgation of the
 1894 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
 1895 Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated small
 1896 municipal separate storm sewer system ("small MS4"); under this general permit, listing as a
 1897 regulated small MS4 necessitates enactment of this article as part of the municipality's
 1898 stormwater management plan.

1899 (2) The purpose of this article is to provide for the health, safety, and general welfare of the
 1900 citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the
 1901 municipality's storm drainage system as required by federal and state law. This article
 1902 establishes methods for controlling the introduction of pollutants into the Town's storm
 1903 drainage system in order to comply with requirements of the federal Clean Water Act and
 1904 state law.

1905 (3) The objectives of this article are:

1906 (a). To prohibit unpermitted or unapproved nonstormwater discharges to the storm drainage
 1907 system; and

1908 (b). To set forth the legal authority and procedures to carry out all inspection, monitoring and
 1909 enforcement activities necessary to ensure compliance with this article.

1910 B. Applicability.

1911 This article shall apply to all persons discharging stormwater and/or nonstormwater
 1912 discharge from any premise into the storm drainage system.

1913 C. Responsibility for administration.

1914 The Code Enforcement Officer is the enforcement authority who shall administer,
 1915 implement, and enforce the provisions of this article.

1916 D. Prohibition of nonstormwater discharges.

1917 (1) Except as allowed or exempted herein, a person may not create, initiate, originate or
 1918 maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater
 1919 discharges are prohibited even where the municipality has approved the connections, drains
 1920 or conveyances through which a person creates an illicit nonstormwater discharge to the
 1921 storm drainage system.

1922 (2) The creation, initiation, origination and maintenance of the following nonstormwater
 1923 discharges to the storm drainage system are allowed as long as they do not cause or
 1924 contribute to a violation of the state's water quality standards:

1925 (a). Flow: Landscape irrigation; diverted stream flows; rising groundwaters; uncontaminated
 1926 groundwater infiltration [as defined at 40 CFR 35.2005(20)]; uncontaminated pumped
 1927 groundwater; uncontaminated flows from foundation drains; air conditioning and
 1928 compressor condensate; irrigation water; flows from uncontaminated springs;
 1929 uncontaminated water from crawlspace pumps; uncontaminated flows from footing
 1930 drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street

- 1931 wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless
 1932 all spilled material has been removed and detergents are not used); hydrant flushing and
 1933 firefighting activity runoff; water line flushing and discharges from potable water
 1934 sources; individual residential car washing; and dechlorinated swimming pool
 1935 discharges, as defined as having 0.5 ppm or less. Pools may only be emptied a minimum
 1936 of 48 hours after any chemical treatments were added.
- 1937 (b). Discharges specified in writing by the enforcement authority as being necessary to
 1938 protect public health and safety; and
- 1939 (c). Dye testing, with verbal notification to the enforcement authority prior to the time of the
 1940 test.
- 1941 E. Exempt person or discharge.
 1942 This article shall not apply to an exempt person or discharge, except that the enforcement
 1943 authority may request from exempt persons and persons with exempt discharges copies of
 1944 permits, notices of intent, licenses and orders from the EPA or DEP that authorize the
 1945 discharge(s).
- 1946 F. Suspension of access to municipality's storm drainage system.
- 1947 (1) The enforcement authority may, without prior notice, physically suspend discharge access to
 1948 the storm drainage system to a person when such suspension is necessary to stop an actual or
 1949 threatened nonstormwater discharge to the storm drainage system which presents or may
 1950 present imminent and substantial danger to the environment, or to the health or welfare of
 1951 persons, or to the storm drainage system, or which may cause the municipality to violate the
 1952 terms of its environmental permits. Such suspension may include, but is not limited to,
 1953 blocking pipes, constructing dams or taking other measures, on public ways or public
 1954 property, to physically block the discharge to prevent or minimize a nonstormwater
 1955 discharge to the storm drainage system.
- 1956 (2) If the person fails to comply with a suspension order issued in an emergency, the
 1957 enforcement authority may take such steps as deemed necessary to prevent or minimize
 1958 damage to the storm drainage system, or to minimize danger to persons. Only with the
 1959 consent of the premises' owner, occupant or agent may the enforcement authority enter the
 1960 premises that are the source of the actual or threatened nonstormwater discharge to the storm
 1961 drainage system.
- 1962 G. Monitoring of discharges.
 1963 In order to determine compliance with this article, the enforcement authority may enter
 1964 upon and inspect premises subject to this article at reasonable hours with the consent of
 1965 the premises' owner, occupant or agent: to inspect the premises and connections thereon to
 1966 the storm drainage system; and to conduct monitoring, sampling and testing of the
 1967 discharge to the storm drainage system.
- 1968 H. Enforcement and penalties.
 1969 See §§ 16.2.7 and 16.2.14.

- 1970 I. Ultimate responsibility of discharger.
1971 The standards set forth herein are minimum standards; therefore this article does not
1972 intend nor imply that compliance by any person will ensure that there will be no
1973 contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S.
1974 caused by said person. This article shall not create liability on the part of the municipality,
1975 or any officer agent or employee thereof for any damages that result from any person's
1976 reliance on this article or any administrative decision lawfully made hereunder.
- 1977 16.5.19 Outdoor Dining
- 1978 A. Applicability.
- 1979 (1) Outdoor dining, as defined in Chapter §16.3 of this Title, is allowed as follows:
- 1980 (a) Within the buildable lot area in all zoning districts where restaurants are allowed as either
1981 a permitted or a special exception use;
- 1982 (b) Within the front, side and/or rear yards (setbacks) of the C-1, C-2, C-3, B-L, B-L1, MU,
1983 MU-BI, MU-KF and MU-N zones where such a setback does not abut a residential use; and
- 1984 (c) Outdoor dining in the public way is permitted subject to Title 5 and all Town
1985 requirements.
- 1986 (2) Any existing restaurant that meets the above requirements may apply for approval for
1987 outdoor dining on-site.
- 1988 (3) New restaurants to be constructed may include outdoor dining plans on-site as part of their
1989 site plan review.
- 1990 B. Standards.
- 1991 (1) Outdoor dining on-site must meet all the requirements of the pertinent zone's buffering and
1992 screening requirements.
- 1993 (2) Proposed outdoor dining on-site must comply with all conditions pertaining to any existing
1994 variances, special exceptions or other approvals granted for the property as well as any
1995 conditions imposed by the granting of the site plan review approval for the outdoor dining
1996 itself.
- 1997 (3) All the proposed outdoor dining activities must be conducted on private property owned,
1998 leased or otherwise controlled by the applicant unless separate approval for the use of any
1999 public rights-of-way has been obtained from the Town.
- 2000 (4) The proposed outdoor dining must not impede a site's internal circulation or its access and
2001 egress.
- 2002 (5) No additional parking is required for outdoor dining at existing restaurants where on-street
2003 parking is available. For outdoor dining areas in existing restaurants where on-street parking

2004 is not available, if the outdoor dining area is 1,000 square feet or less, no additional parking
2005 is required. For outdoor dining areas in existing restaurants over 1,000 square feet but less
2006 than 2,000 square feet, one additional parking space is required. Thereafter, one additional
2007 parking space is required for every additional 1,000 sf.

2008 C. Site Plan Review submission requirements

2009 (1) The site plan must be drawn to scale, showing the dimensions of the proposed outdoor
2010 dining area, and its location relative to the structure where the restaurant is located.

2011 (2) The site plan must show the location of any proposed or existing pavement, hardscaping,
2012 landscaping, planters, fencing, canopies, umbrellas, awnings or barriers surrounding or
2013 delineating the outside dining area.

2014 (3) Calculations demonstrating the number of tables that may be placed within the proposed
2015 outdoor dining area according to state and local regulations must be submitted.

2016 (4) The above submission requirements are all that is required for outdoor dining areas that
2017 require Code Enforcement approval under §16.2.6. For outdoor dining areas that must be
2018 reviewed under site plan review, the above requirements must be met in addition to the
2019 submission requirements of §16.7 unless a submission requirements waiver is granted by the
2020 Planning Board.

2021 16.5.20 Overboard Discharge Systems

2022 A. Treated overboard discharge system defined.

2023 "Treated overboard discharge system" means any sand-filter system, mechanical system or
2024 primary treatment with disinfection system designed to State of Maine Department of
2025 Environmental Protection specifications which discharges effluent or other liquids into
2026 any water body or watercourse.

2027 B. Permit requirement.

2028 No person, firm or corporation may construct, install or maintain any treated overboard
2029 discharge system without first obtaining a Town permit for the same. Such permit is in
2030 addition to any other permit or license required by state or federal authorities for the same.

2031 C. Permit application.

2032 (1) Application for permit; fee. All applicants for permits must first apply to the Board of
2033 Appeals with a copy of the application given to the Code Enforcement Officer. The
2034 application form for a treated overboard discharge system must include the property owner's
2035 name and mailing address and telephone number, the applicant's name and address and
2036 telephone number, the location address; tax maps and lot numbers; engineer's scale drawing
2037 showing all relevant details of the system; and any other information deemed relevant or
2038 necessary by either the Board of Appeals or the Code Enforcement Officer. A fee as set out
2039 in Appendix A is required for each application. Application forms are to be available from
2040 the Code Enforcement Officer.

- 2041 (2) Issuance of permits; fee. The treated overboard discharge permit may be issued by the Code
2042 Enforcement Officer only after Board of Appeals approval. A permit issue fee as set out in
2043 Appendix A is required for each system.
- 2044 (3) Notice of hearing.
- 2045 (a). Upon receipt of the completed application, the Board must timely notify the Code
2046 Enforcement Officer of the established hearing date, which may be no more than 30 days
2047 from the date of the receipted application. The Code Enforcement Officer must also
2048 notify the Planning Board, abutters and applicant of the hearing date. The Code
2049 Enforcement Officer must also give public notice of the permit hearing date by
2050 advertising the same in a newspaper of general circulation within the Town at least
2051 seven days prior to the hearing date.
- 2052 (b). For the purposes of this section, the abutting owners of property are considered to be the
2053 parties listed by the Assessors of taxes for the Town as those against whom taxes are
2054 assessed. Failure of any property owner to receive a notice of public hearing does not
2055 necessitate another hearing or invalidate any action by the Board of Appeals.
- 2056 (4) Conduct of hearing and standards. The Board must conduct the hearing on the application
2057 for a treated overboard discharge system permit by following the same procedures
2058 established for the consideration of a special exception under the terms of § 16.2.12.
- 2059 (a). The Board may receive oral and documentary evidence and testimony. At the close of
2060 the evidentiary portion of the hearing, the Board must consider whether the effluent or
2061 discharge from the proposed treated overboard discharge system will have a negative
2062 impact on any aquatic or fowl life, will lower the water quality standard or impair the
2063 uses designated by the classification of the receiving waters. In addition, the Board may
2064 consider any relevant provisions of the performance standards set forth in § 16.5, 16.7
2065 and 16.8.
- 2066 (b). The Board may also consider any relevant state or federal statute, rules or regulations
2067 bearing on the same. After applying the standards contained herein, the Board must issue
2068 its decision containing its findings of fact and conclusions and approve the application if
2069 the Board is satisfied that the standards have been met.
- 2070 (5) Notice of decision. The Board of Appeals must notify the applicant in writing of its decision
2071 no later than 10 days thereafter.
- 2072 D. Systems exempted.
2073 The permit requirement of this chapter does not apply to any sewage disposal system in
2074 operation at the time this chapter is adopted or the subsequent repair or replacement of any
2075 such system, including replacement by treated overboard discharge system, except that
2076 any treated overboard discharge system, as defined herein and operating as of the date of
2077 the adoption of this chapter or subsequently installed as a replacement for an existing
2078 malfuction in-ground or overboard system under license by the State of Maine, is
2079 required to conform to the standards of maintenance and monitoring set forth in
2080 § 16.5.21.E.

- 2081 E. Standards of maintenance and monitoring.
2082 Treated overboard discharge systems that are operating by virtue of a permit issued under
2083 the terms of this chapter, or any such system operating as of the date of the enactment of
2084 this chapter pursuant to a license issued by the State of Maine, must be maintained and
2085 monitored pursuant to the following standards:
- 2086 (1) Disinfection. Disinfection is to be provided in a manner acceptable to the Maine Department
2087 of Environmental Protection. An approved disinfectant must be used and maintained
2088 according to the replacement or renewal schedule established by the Department of
2089 Environmental Protection.
- 2090 (2) Septic tanks. Septic tanks which are part of an overboard discharge system must be pumped
2091 annually to ensure that the accumulated sludge is never nearer than 12 inches to the invert of
2092 the outlet pipe leading from the septic tank to the sand filter.
- 2093 (3) Monitoring.
- 2094 (a). The permit holder and/or the property owner must supply to the Code Enforcement
2095 Officer, prior to August 1 of each year, a report of the effluent analysis conducted by a
2096 recognized testing laboratory. All water samples for evaluation must be obtained and
2097 analyzed during the month of July. Each analysis must include the following tests:
- 2098 [1] Fecal coliform (number of colonies per milligram of water);
- 2099 [2] Biological oxygen demand (BOD) and suspended solids (mg/l); and
- 2100 [3] Settleable solids (mg/l after a twenty-minute settling period in an Imhoff cone).
- 2101 (b). In addition to the requirements contained in this subsection, the Code Enforcement
2102 Officer may require periodic operational reports from recognized laboratories in such
2103 form and containing such information as the Code Enforcement Officer may require.
- 2104 (4) Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of the
2105 Maine Department of Environmental Protection, or when there are other indications of the
2106 sand-filter malfunctioning, the sand filter is to be inspected by a qualified professional. If the
2107 sand filter is found to be clogged, it must be replaced with new material meeting
2108 specifications of the Maine Department of Environmental Protection.
- 2109 (5) Emergency measures. In the event that a treated overboard discharge system is found to be
2110 malfunctioning, for any reason, the septic or settling tank must be pumped immediately and
2111 continue to be pumped as often as required until the malfunctioning is corrected.
- 2112 F. Malfunctioning of systems.
2113 The permit owner and/or property owner must immediately notify the Code Enforcement
2114 Officer of any malfunction of any component of the treated overboard discharge system.
2115 In the event that the system malfunctions, the Code Enforcement Officer may order that
2116 the effluent discharge cease within a time set by the Code Enforcement Officer.

2117 G. System construction.

2118 (1) Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to a
2119 permit issued under the terms of this chapter, the permit holder and/or property owner must
2120 notify the Code Enforcement Officer and the Department of Environmental Protection
2121 (DEP) at least seven days prior to commencement of the system's construction in order that
2122 all proper inspections of the proposed construction may be made by the Code Enforcement
2123 Officer and the DEP.

2124 (2) Certificate of compliance. Upon the completion of the construction of the treated overboard
2125 discharge system and prior to its operation, the Code Enforcement Officer is to issue a
2126 certificate of compliance, certifying that the system complies with all municipal ordinances,
2127 rules and regulations.

2128 H. Violations and penalties.

2129 Failure to conform to the provisions of the chapter constitutes a violation. A written notice
2130 of violation must be sent by the Code Enforcement Officer to the permit holder and/or the
2131 property owner operating the treated overboard discharge system which is in
2132 noncompliance with this chapter.

2133 (1) This notice is to be sent by certified mail, return receipt requested, and must inform the
2134 permit holder and/or property owner of the deadline for correcting the malfunction. The
2135 permit holder and/or property owner is to be given a reasonable time, not to exceed 30 days,
2136 to correct the malfunction.

2137 (2) If the violation is not corrected within this specified time period, the Code Enforcement
2138 Officer must notify the permit holder and/or the property owner by certified mail, return
2139 receipt requested, that the permit is revoked.

2140 (3) Each day that the system is allowed to discharge after the notice of permit revocation is
2141 received constitutes a separate offense. A fine of not more than \$100 will be levied for each
2142 such separate offense. In addition to the remedy contained herein, said violation constitutes a
2143 nuisance for which the municipality, through its Code Enforcement Officer, may seek
2144 adequate remedy.

2145 (4) Any actual and direct expenses incurred by the Town in abatement of such nuisance may be
2146 recovered from the permit holder and/or property owner by civil complaint.

2147 I. Property rights.

2148 The issuance of any permit authorized by this chapter does not convey any property rights
2149 to the permit holder. The permit holder and/or the property owner, by accepting the permit
2150 under the terms of this chapter, consent to allow the Code Enforcement Officer or
2151 authorized agent, at all reasonable and proper times, to enter upon the property for
2152 inspection of the system or otherwise enforce the terms of this chapter.

2153 J. Permit expiration date.

2154 Such permit automatically expires within 90 days after the municipal sanitary sewer
2155 system becomes available within 200 feet of the property line of the lot or parcel of land

2156 on which the treated overboard discharge system is located, as measured along the public
2157 way.^[2]

2158 16.5.21 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies

2159 A. Standards.

2160 Development involving piers, wharves, marinas and other uses projecting into water
2161 bodies must conform to the following standards:

2162 (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional
2163 and other standards (excluding setbacks from water bodies) of this title apply to structures
2164 and uses projecting into a water body beyond the normal high-water mark.

2165 (2) Boathouses, while convenient to locate near the water, are not considered functionally
2166 water-dependent uses and must meet the same setback requirement as principal structures.
2167 The State of Maine no longer issues permits for construction of boathouses below the
2168 normal high-water line due to the adverse environmental impact; therefore, new boathouses
2169 must be located on uplands.

2170 (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
2171 other structure beyond the normal high-water line.

2172 (4) Access from shore must be developed on soils appropriate for such use and constructed so as
2173 to control erosion.

2174 (5) The location must not interfere with existing developed recreational and maritime commerce
2175 or natural beach areas.

2176 (6) The facility must be located so as to minimize adverse effects on fisheries.

2177 (7) The facility must be a water-dependent use and no larger in dimension than necessary to
2178 carry on the activity and must be consistent with existing conditions, use and character of
2179 the area.

2180 (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
2181 extending beyond the normal high-water line of a water body or within a wetland unless the
2182 structure requires direct access to the water as an operational necessity.

2183 (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure
2184 extending beyond the normal high-water line of a water body or within a wetland may be
2185 converted to residential dwelling units in any district.

2186 (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over
2187 or abutting a pier, wharf, dock or other structure extending beyond the normal high-water
2188 line of a water body or within a wetland must not exceed 20 feet in height above the pier,
2189 wharf, dock or other structure.

2190 (11) Applicants proposing any construction or fill activities in a waterway or wetland requiring

2191 approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water
 2192 Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection,
 2193 Research and Sanctuaries Act, must submit proof of a valid permit issued.

2194 (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use
 2195 pier, or any residential-development-use pier require Planning Board approval.

2196 (13) A residential development containing five or more lots in a zone permitting a residential-
 2197 development-use pier may construct only one residential development use pier.

2198 (14) Commercial development of the shoreline must provide for access by the general public as
 2199 part of a shoreline development plan.

2200 (15) Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial
 2201 lot.

2202 (16) Marine-related permanent structures located below the mean low-water line require the
 2203 following permits, leases and approvals:

2204 (a). Port Authority approval;

2205 (b). Department of Environmental Protection permit pursuant to the Natural Resources
 2206 Protection Act, 38 M.R.S. § 480-C;

2207 (c). Army Corps of Engineers permit;

2208 (d). Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land
 2209 Coordinator approval; and

2210 (e). Building permit.

2211 16.5.22 Signs

2212 A. Purpose.

2213 The purpose of this article is to balance the need for adequate identification and
 2214 advertising for land uses to promote the economic well-being of the Town with the need to
 2215 protect the public safety and maintain and enhance the physical appearance of the
 2216 community. This objective is to be achieved by:

2217 (1) Allowing adequate signage for the effective use of signs as a means of identifying,
 2218 advertising and communication of land uses;

2219 (2) Establishing the appropriate bounds for location, size, number, type and use of signs to
 2220 protect traffic safety, preserve property values and to promote visual order and clarity; and

2221 (3) Establishing procedures and regulations for the fair and consistent administration and
 2222 enforcement of these sign restrictions.

2223 B. Nonconforming existing signs.

- 2224 (1) All signs lawfully existing on October 1, 1997 that do not conform to the terms of this
2225 article may be continued and maintained, subject to § 16.5.23.B(2), but may neither be
2226 enlarged nor substantially altered except in conformity with this article.
- 2227 (2) Lawfully nonconforming signs must be made to conform or be removed if any of the
2228 following circumstances occur, individually or in combination, for a consecutive three-year
2229 time period:
- 2230 (a). The sign has ceased to be accurate by reason of vacancy or closure of the business which
2231 the sign advertises.
- 2232 (b). The sign face is blank, illegible, obscured, painted over, concealed or otherwise not
2233 decipherable.
- 2234 (3) In no event may the degree of nonconformity of any sign or type of signage on any lot be
2235 increased.
- 2236 C. General requirements.
- 2237 (1) No sign may be erected, posted, enlarged, or substantially changed without a permit issued
2238 by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except
2239 where § 16.5.23.J provides otherwise.
- 2240 (2) No exterior sign may be artificially illuminated except where hooded or shielded or
2241 otherwise designed to prevent direct light spilling onto traveled ways or neighboring
2242 property.
- 2243 (3) No sign may contain a moving message board or intermittent illumination, except where
2244 necessary in time/temperature/date signs.
- 2245 (4) Any sign that interferes with or closely imitates any official traffic sign, signal or device is
2246 prohibited.
- 2247 (5) No sign designed to be transported by means of wheels is allowed, unless said vehicle is
2248 used in the normal day-to-day transportation operations of the business. All trailer signs are
2249 prohibited.
- 2250 (6) Any changeable message signs must be integrated into a permanently-mounted sign. Such a
2251 changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.
- 2252 (7) All signs must be maintained in a safe and sound structural condition.
- 2253 (8) Advertising. No advertising or signage is permitted on wireless communication services
2254 facilities.
- 2255 (9) Any sign not expressly permitted herein is prohibited.
- 2256 D. Sign location.

- 2257 (1) All signs must be permanently installed on the premises of the activity to which the
2258 advertising message refers, except where § 16.5.23.H provides otherwise or upon approval
2259 by the Town Council.
- 2260 (2) All signs must be located outside the full width of the right-of-way of any public way, unless
2261 authorized by the Town Council.
- 2262 (3) Except for signs authorized in §§ 16.5.23.H and 16.5.23.J, freestanding signs erected after
2263 October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state
2264 numbered highway less than 66 feet in width and at least 20 feet from the outside edge of
2265 the paved portion of any travel lane of any U.S. or state numbered highway which has both
2266 more than two travel lanes and a total paved portion in excess of 24 feet in width.
- 2267 (4) Signs must not be placed on or above the roof of any building. All signs must be located
2268 below the level of the eaves of the portion of building where the sign is to be erected, except
2269 as follows:
- 2270 (a) Signage may be located above the eaves on a gable or dormer of a building, providing it
2271 does not extend above or beyond the roofline of the gable or dormer; and
- 2272 (b) Signage may be located on a parapet wall, provided the sign neither extends any more
2273 than eight feet above the roof-wall junction of the parapet wall nor extends beyond the
2274 height of the parapet wall.
- 2275 Note: Please see Figure 3 of § 16.5 at the end of this article to assist the reader in
2276 understanding acceptable and unacceptable locations of building-mounted signs according to
2277 the terms of § 16.5.23.D
- 2278 (5) Building-mounted signs which extend more than six inches from the surface of the structure
2279 must provide a minimum of eight feet of vertical clearance to a walkway, parking area,
2280 private drive and ground surface. Such signs must not extend beyond the street right-of-way
2281 boundary unless authorized by the Town Council.
- 2282 (6) Freestanding signs must not extend higher than 20 feet above the original ground level or the
2283 elevation of the center line of the nearest street measured at the closest point to the sign,
2284 whichever is greater.
- 2285 (7) Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor
2286 vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any
2287 unpermitted and unallowed sign located in a public road right-of-way may be caused to be
2288 removed by the Town without notice to the owner of such sign.
- 2289 (8) No sign may be located so that it interferes with the safe sight distances necessary for
2290 motorists to proceed safely through intersections or to enter onto or exit from public streets,
2291 private roads or driveways.
- 2292 (9) All building-mounted signs must be located only on the building that contains the activities
2293 or businesses advertised, except that up to 10% of the allowed signage for building-mounted

- 2294 signs in § 16.5.23.K may be allocated to signs mounted on fuel pumps and/or fuel pump
2295 canopies.
- 2296 (10) In cases where multiple freestanding signs are permitted, any additional allowed smaller
2297 freestanding sign must face and be located along a separate publicly maintained street.
- 2298 E. Number of freestanding signs.
- 2299 (1) Except as otherwise authorized in this section, as well as §§ 16.5.23.I and 16.5.23.J, each
2300 development is prohibited from having more than one freestanding sign.
- 2301 (2) Multisided signs are considered as one sign; however, the square footage of each sign face is
2302 calculated to determine total sign area.
- 2303 (3) Where a development fronts on two publicly maintained streets and has designed and
2304 approved access onto both those publicly maintained streets, the development is allowed one
2305 additional freestanding sign that faces and is located along a second publicly maintained
2306 street in accordance with § 16.5.23.G.
- 2307 (4) Where a development fronts on three publicly maintained streets and has designed and
2308 approved access onto each publicly maintained street, a third freestanding sign facing and
2309 located along the third publicly maintained street may be authorized at the Planning Board's
2310 discretion if it finds that other freestanding signage is not visible from the third street and
2311 that there is a need for a third freestanding sign to adequately communicate the business
2312 location to travelers on a third road fronted by the business.
- 2313 F. Number of building-mounted signs.
2314 To prevent sign clutter, except for those signs authorized by § 16.5.23.I or 16.5.23.J, each
2315 business facility which is on a site where two or more businesses occupy the same
2316 building, lot or development is prohibited from having more than two building-mounted,
2317 nontemporary signs.
- 2318 G. Sign area.
- 2319 (1) Residential Zones. Zones designated Residential - Rural Conservation, Residential - Rural,
2320 Residential - Suburban, Residential - Urban, and Residential - Village on the Zoning Map
2321 are residential zones for the purpose of this section.
- 2322 (a). Accessory uses, including home occupations, are allowed sign area no greater than eight
2323 square feet.
- 2324 (b). Other permitted uses are allowed sign area no greater than 16 square feet, except as
2325 otherwise provided. Residential developments are also allowed 24 square feet, provided
2326 that signs are located within the development on premises owned by the developer or an
2327 owners' association.
- 2328 (2) All other zones.

2329 (a). A single business situated on a lot of record is allowed a total sign area no greater than
 2330 300 square feet or 1 1/2 square feet for every linear foot of building frontage, whichever
 2331 is smaller. In any case, a single business on a lot of record is allowed a minimum sign
 2332 area of 72 square feet.

2333 (b). Where two or more business facilities occupy the same building, lot or development,
 2334 allowable sign area is calculated as follows:

2335 [1] Total building-mounted sign area equals 1 1/2 square feet per linear foot of building
 2336 frontage for each business facility. The total allowed building-mounted sign area may
 2337 be allocated among individual business facilities at the property owner's discretion.

2338 [2] The development is allowed one freestanding sign not greater than 150 square feet in
 2339 sign area. An additional freestanding sign no greater than 72 square feet in sign area
 2340 facing and located along that secondary street is allowed if the development fronts on
 2341 multiple streets and has designed and approved access onto each publicly maintained
 2342 street. A third freestanding sign may be permitted at the Planning Board's discretion
 2343 in accordance with § 16.5.23.E.

2344 H. Off-premises signs.

2345 (1) An individual business or service, upon application, may be assigned no more than three off-
 2346 premises business directional signs (OBDS). An OBDS must be designed and located so as
 2347 to avoid conflict with other signs and minimize impact on the scenic environment through
 2348 the following standards:

2349 (a). Dimensions: 12 inches by 48 inches.

2350 (b). Coloring: state standard blue background, white lettering, logo may be any color.

2351 (c). Reflectorization: optional.

2352 (d). Location: on existing assemblies (posts) where possible. No more than two assemblies
 2353 per intersection approach.

2354 (e). Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic
 2355 circle within 400 feet of its outer perimeter, or adjacent to points of scenic or historical
 2356 interest, including but not limited to federal, state and local parks and reserves,
 2357 recognized historic sites and buildings, water bridges and cemeteries.

2358 (2) An off-premises sign which advertises commercial or other activity without advertising any
 2359 specific enterprise (generic signs) may be approved by the Planning Board at size and
 2360 location to be specified.

2361 I. Temporary signs.

2362 All temporary signs must be installed on the premises of the activity to which the
 2363 advertising message refers. Moveable signs are prohibited as temporary signs. The
 2364 following types of temporary signs are allowed with an approved sign permit:

- 2365 (1) The use of one temporary sign, other than a trailer sign, at any one time per business, that is
 2366 mounted to the building or attached to a freestanding sign structure for the purpose of
 2367 advertising special events, provided that such signs are displayed for no longer than a
 2368 combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be
 2369 permitted. Total sign area for a temporary sign must not exceed 72 square feet. The allowed
 2370 twenty-one-day display period may be divided into no more than three separate,
 2371 nonoverlapping temporary periods of not less than seven days.
- 2372 (2) One additional temporary sign, other than a trailer sign, mounted to the building or to a
 2373 freestanding sign structure, is permitted per legally participating site for the duration of each
 2374 Town Council-approved sidewalk sales event.
- 2375 J. Signs allowed without sign permit.
 2376 The following types of signs, in sizes and under conditions stated, are allowed without a
 2377 Town sign permit, but must conform with all other provisions of § 16.5.23 of this chapter
 2378 except for the provisions restricting the number of signs (§§ 16.5.23.E and 16.5.23.F) and
 2379 limiting the total sign area (§ 16.5.23.G).
- 2380 (1) Public information signs. Signs for the control of traffic and other regulatory purposes, route
 2381 markers, street signs, warning signs, utility, danger or warning signs, signs which indicate
 2382 direction to hospitals, churches or other places of worship, or other public facilities.
- 2383 (2) General information signs. Signs which provide direction or instruction, such as location of
 2384 telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances
 2385 and exits, open and closed signs, where installed entirely upon the property to which they
 2386 pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general
 2387 information signs must not exceed two square feet in size. Except for identifying approved
 2388 off-premises parking stalls, no logos, trademarks or names of businesses are permitted on
 2389 general information signs. The Planning Board may approve increased sizes and/or the use
 2390 of logos or names of businesses on general information signs when considered necessary to
 2391 promote safety or eliminate confusion.
- 2392 (3) Memorial tablets. Grave markers, signs commemorating a historical figure or event, names
 2393 or dates of buildings to which a sign is attached.
- 2394 (4) Public notices and community signs. Official notices posted by public employees in
 2395 performance of their duties, and any sign for Town sponsored or supported events or
 2396 facilities as approved by the Town Council.
- 2397 (5) Flags of any government or recognized political subdivision. The flag of any government or
 2398 recognized political subdivision is allowed, provided it is displayed no higher than 50 feet
 2399 above the original ground level or the elevation of the center line of the nearest street
 2400 measured at the closest point to the flag, whichever is greater. A single memorial flagpole
 2401 installation sponsored by private funding not to exceed 129 feet in height installed on Town-
 2402 owned or regulated property at Memorial Circle is allowed.
- 2403 (6) Religious symbols.

- 2404 (7) Building street numbers. In accordance with the street-numbering map on file with the Town
2405 Assessing Department;
- 2406 (8) Political campaign signs. Signs bearing political messages relating to an election, primary or
2407 referendum, provided these signs may be displayed on:
- 2408 (a). Public property not earlier than 30 days prior to the election, primary or referendum to
2409 which they relate and are removed not later than two days thereafter.
- 2410 (b). Private property without time constraints.
- 2411 (9) Interior signs. Signs placed inside a building which are located at least 10 feet inside the
2412 building or otherwise not oriented to be viewed from outside the building;
- 2413 (10) Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where
2414 such signs are clearly incidental to the regular transportation function of the vehicle.
- 2415 (11) Service club signs. Service club signs may be placed within the right-of-way of a street with
2416 approval of the Commissioner of Public Works. Such signs are encouraged to be
2417 consolidated on a single designated assembly structure at major entranceways to the Town.
2418 In addition, such signs not exceeding four square feet in size may be erected at locations
2419 where meetings of such service clubs are convened.
- 2420 (12) Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
- 2421 (a). Each sign does not exceed 12 square feet;
- 2422 (b). Each sign is located on the property being advertised, except one sign may be located as
2423 an off-premises directional sign, provided the sign does not restrict safe sight distances
2424 or impair safety;
- 2425 (c). No more than two signs are erected per property being advertised; and
- 2426 (d). Each sign is removed within 60 days of transfer of title.
- 2427 (13) Window signs. Any sign that is placed inside a window and is visible from the exterior of
2428 the window, provided such signage covers no more than 50% of the area of any window.
- 2429 (14) Legally required signs. Any sign required by local, state or federal law with sign area no
2430 greater than two square feet or the minimum size required by law, whichever is larger.
- 2431 (15) Food menu signs. Up to two signs advertising food items for sale on the premises at a
2432 legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed,
2433 provided that:
- 2434 (a). The total sign area of each such food menu sign on the site must not exceed 32 square
2435 feet; and
- 2436 (b). Such food menu signs must either be building-mounted or comply with the front yard

- 2437 requirements for structures and be located within 75 feet of the restaurant.
- 2438 (16) Undercanopy, pedestrian-oriented signs. One building-mounted business identification sign
2439 per business facility, not to exceed 10 square feet in size per sign, where two or more
2440 businesses occupy the same building with a pedestrian walkway and canopy that parallels
2441 and connects the front entrances of the business facilities. The sign must be oriented toward
2442 pedestrians using the walkway, be located under the canopy near the main entrance to the
2443 business advertised and solely identify the business name or logo.
- 2444 (17) Construction phase and contractor signs. Signs, other than trailer signs, identifying the name
2445 of a contractor working on the premises or describing a construction project, erected only
2446 during the construction phase of a development, provided each sign does not exceed 75
2447 square feet.
- 2448 (18) Garage sale signs as allowed by § 5.4.9A(2). [3]
- 2449 K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.
2450 The following provisions govern signs in the Conservation, Shoreland Overlay and
2451 Resource Protection Overlay Zones, except where either is overlaid by the Commercial
2452 Fisheries/Maritime Uses Overlay Zone:
- 2453 (1) Signs relating to goods and services sold on the premises are allowed, provided such signs
2454 do not exceed six square feet in area and do not exceed two signs per premises.
- 2455 (2) Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 2456 (3) Name signs are allowed, provided such signs do not exceed two signs per premises and do
2457 not exceed 12 square feet in the aggregate.
- 2458 (4) Residential users may display a temporary single sign not over three square feet in area
2459 relating to the sale, rental or lease of the premises.
- 2460 (5) Signs relating to trespassing and hunting are allowed without restriction as to number,
2461 provided no such sign exceeds two square feet in area.
- 2462 (6) Signs relating to public safety are allowed without restriction.
- 2463 (7) Signs higher than 20 feet above the ground are prohibited.
- 2464 (8) Signs may be illuminated only by shielded, nonflashing lights.
- 2465 L. Sign permit application procedures.
- 2466 (1) No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance
2467 with a permit issued by the Code Enforcement Officer and also approved by the Town
2468 Planner. Notwithstanding the above statement, the following signs may be erected or
2469 modified without a sign permit:

- 2470 (a). Signs authorized in § 16.5.23.J.
- 2471 (b). Changes to nameplates or "shingles" to reflect occupancy changes on an existing
2472 approved freestanding sign identifying individual occupants on the site, provided no
2473 change is made to the shape or size of the sign or sign area.
- 2474 (c). Characters, letters and numbers may be changed on approved changeable message signs
2475 without a sign permit, provided no other change is made to the sign.
- 2476 (d). Signs may be maintained, cleaned or repainted, provided no change is made to the shape
2477 or size of the sign or to the sign area, and provided no new business name is advertised.
- 2478 (2) A complete sign application submission consists of the following items submitted to the
2479 Code Enforcement Officer:
- 2480 (a). A completed sign permit application form provided by the Town;
- 2481 (b). An application fee in accordance with a fee schedule established by the Town
2482 Council; [4] and
- 2483 (c). A self-addressed, stamped envelope.
- 2484 (3) Complete applications must be reviewed by the CEO for compliance with this title.
2485 Complete sign permit application submissions must be returned by the CEO after rendering
2486 a decision to the applicant if accompanied by an SASE. Incomplete sign permit application
2487 submissions will only be returned to the applicant if accompanied by an SASE.
- 2488 (4) Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny or
2489 seek a formal Planning Board opinion within 14 working days of receiving a complete sign
2490 permit application submission. If either a Planning Board opinion is sought or the proposed
2491 sign is located within the Shoreland Zone, the CEO must issue or deny the application
2492 within 35 calendar days of receiving a complete sign permit application submission.
- 2493 (5) The sign permit must be approved if the proposed sign conforms in every respect with the
2494 requirements of this article. In the CEO's absence, or if no action is taken by the CEO within
2495 the above time limits, the Town Manager or the Town Manager's designee may approve or
2496 deny the sign permit application submission.
- 2497 (6) All new signs approved as of October 1, 1997 must display a numbered sign permit sticker
2498 provided by the Town in a visible location at the lower right-hand corner of the sign face.
2499 Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be
2500 considered a violation of this article. Replacement stickers are available from the CEO based
2501 on a fee schedule established by the Town Council. [BWS5]
- 2502 M. Sign violations and appeal.
- 2503 (1) The CEO must notify and order the owner to immediately correct any sign that endangers
2504 public safety. Signs that endanger public safety include, but are not limited to, those which

2505 are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe
2506 operation of a motor vehicle.

2507 (2) A nonconforming sign which is required to conform to the sign regulations per § 16.5.23.B
2508 must be brought into conformity.

2509 (3) Enforcement of the provisions of this article is in accordance with §16.2.

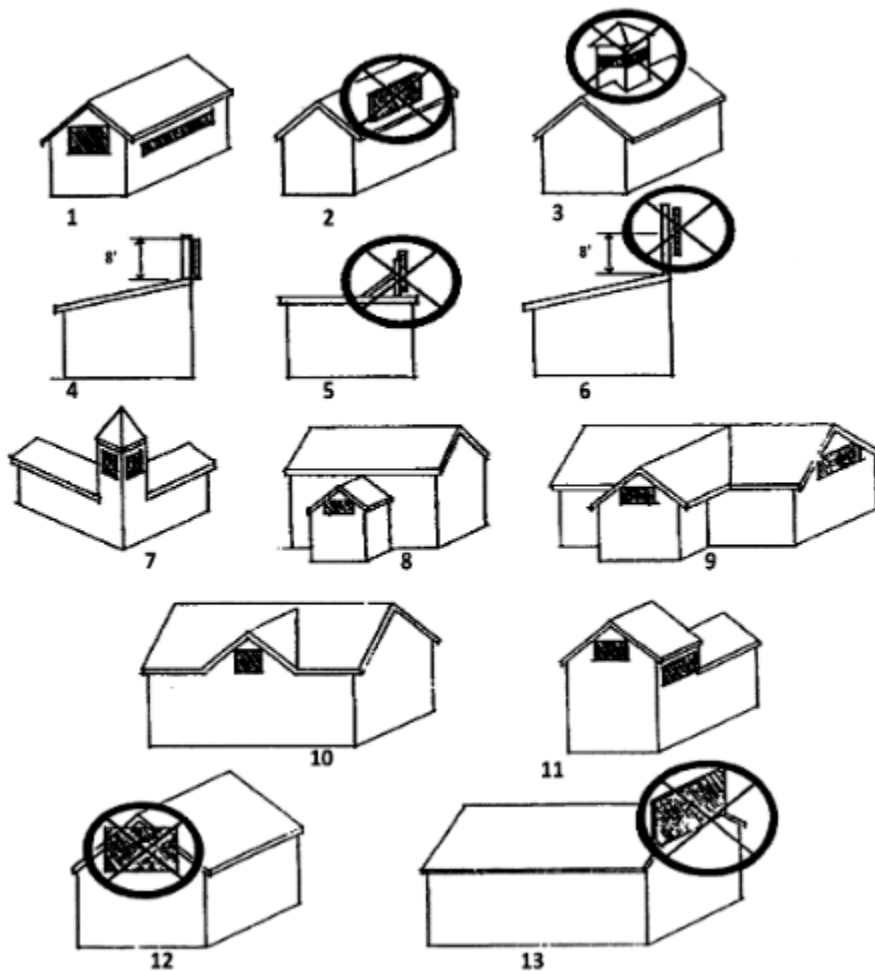
2510

2511 Figure 3

2512 Examples of Allowed and Prohibited Sign Placement

2513 These drawings are illustrative and meant to be an aid to the reader; refer to § 16.5.21, for full
2514 details.

2515



2516

2517 16.5.23 Dwellings in Resource Protection and Shoreland Overlay Zones2518 A. Dwellings in Resource Protection and Shoreland Overlay Zones.

2519 The Code Enforcement Officer may issue a permit for a new dwelling outside the base zone
2520 setback on the Shoreland Overlay Zone only provided the structure is conforming with all base
2521 zone standards. In addition to the criteria specified in § 16.2.12.F, § 16.8.9.D(5) and §
2522 16.7.10.D(6), applicable to the granting of a special exception use request, the Planning Board
2523 may approve an application for a single-family dwelling special exception use request within the
2524 Resource Protection Overlay Zone, where applicable, provided the applicant demonstrates all of
2525 the following conditions are met:

2526 (1) There is no location on the property, other than a location within Resource Protection
2527 Overlay Zones, where a single-family dwelling can be built, provided the structure is
2528 conforming with all base zone standards.

2529 (2) The lot on which the structure is proposed is undeveloped and was established and recorded
2530 in the York County Registry of Deeds before inclusion in the Shoreland or Resource
2531 Protection Overlay Zones.

2532 (3) All proposed buildings, sewage disposal systems, other than municipal sewer, and other
2533 improvements are located:

2534 (a). On natural ground slopes of less than 20%;

2535 (b). Outside the floodway of the one-hundred-year floodplain along rivers; and

2536 (c). Outside the velocity zone in areas subject to tides, based on detailed flood insurance
2537 studies and as delineated on the Federal Emergency Management Agency's Flood
2538 Boundary and Floodway Maps and Flood Insurance Rate Maps.

2539 (4) The lowest floor elevation or openings of all buildings and structures, including basements,
2540 must be elevated at least one foot above the elevation of the one-hundred-year flood, the
2541 flood of record or, in the absence of these, the flood as defined by soil types identified as
2542 recent floodplain soils.

2543 (5) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
2544 deemed to be 1/2 the width of the one-hundred-year floodplain.

2545 (6) The total ground-floor area, including cantilevered or similar overhanging extensions, of all
2546 principal and accessory structures is limited to a maximum of 1,500 square feet. This
2547 limitation may not be altered by variance.

2548 (7) All structures, except functionally water-dependent structures, are set back from the normal
2549 high-water line of a water body, tributary stream or upland edge of a wetland to the greatest
2550 practical extent but not less than 75 feet horizontal distance. In determining the greatest
2551 practical extent, the Planning Board must consider the depth of the lot, the slope of the land,
2552 the potential for soil erosion, the type and amount of vegetation to be removed, the proposed

- 2553 building site's elevation in regard to the floodplain and its proximity to the wetlands.
- 2554 16.5.24 Sprinkler Systems
- 2555 A. Requirement.
- 2556 (1) An approved automatic sprinkler system must be installed in all areas of new buildings
2557 meeting any or all of the following criteria:
- 2558 (a). Three or more stories in height; or
- 2559 (b). Thirty-six or more feet in height; or
- 2560 (c). One hundred thousand cubic feet in volume or 10,000 square feet in floor area; or
- 2561 (d). Multiple-family or multiple-occupant dwelling and/or all lodging units; or
- 2562 (e). Any single-family attached units, such as garden apartments or townhouse with three or
2563 more units attached together; or
- 2564 (f). All motels, hotels, rooming houses, inns or other structures containing more than two
2565 dwelling or living units, hotel or motel rooms.
- 2566 (2) An approved automatic sprinkler system must be installed in new additions to existing
2567 buildings and to the existing building(s) meeting any or all of the following criteria:
- 2568 (a). When the addition causes the building to become three or more stories in height; or
- 2569 (b). When the addition causes the building to become 36 or more feet in height; or
- 2570 (c). When the addition causes the building to become 100,000 cubic feet in volume or
2571 10,000 square feet in area;
- 2572 (d). When the addition to or renovation of the existing building results in the end use
2573 becoming a motel, hotel, rooming house, inn or other structure which contains more than
2574 two dwelling or living units, hotel or motel rooms; or
- 2575 (e). When the addition to or renovation of the existing building results in the end use
2576 becoming single-family attached units, such as garden apartments or townhouses with
2577 three or more units attached together.
- 2578 B. Sprinkler system standards.
- 2579 (1) An approved automatic sprinkler system means a system installed in accordance with the
2580 National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system
2581 otherwise lawfully approved in writing by the State Fire Marshal's office; provided,
2582 however, any such system remains subject to the Fire Chief's approval under Subsection (3)
2583 of this section.

- 2584 (2) Any structure requiring the installation of a NFPA Standard 13 system must have a Fire
2585 Department connection with location approved by the Fire Chief.
- 2586 (3) The type of system to be installed and its adequacy of life safety from fire in accordance
2587 with the provisions of this title must be reviewed and approved by the Fire Chief or duly
2588 authorized designee, provided adequate provision is made for life and property safety.
- 2589 (4) All sprinkler systems installed under this title must have the following:
- 2590 (a). A tamper-switch alarm at the system shutoff.
- 2591 (b). An evacuation alarm for the building that will sound when the sprinkler system is
2592 activated; such evacuation alarm is to be audible throughout the entire structure.
- 2593 (c). An outside water-flow alarm.
- 2594 (d). Butterfly valves will not be allowed on any Standard 13 system.
- 2595 (e). Local fire alarm panel.
- 2596 (5) Occupied or unoccupied buildings or portions thereof or any under construction having a
2597 sprinkler system in place must maintain all sprinklers and standpipe systems and all
2598 component parts in a workable condition at all times, and it is unlawful for any owner,
2599 occupant or other person whatever to reduce the effectiveness of the protection these
2600 systems provide, except that this does not prohibit the owner or occupant from temporarily
2601 reducing or discontinuing the protection where necessary for the purposes of conducting
2602 tests, repairs, alterations or additions, provided that the test, repairs, alterations or additions
2603 are done in such a way as to avoid the creation of a safety hazard.
- 2604 (6) For the purposes of this section, the term "building" means any structure excluding single-
2605 family dwellings, two-family dwellings and any barn or stable used exclusively for
2606 agricultural purposes, having a roof supported by columns or walls and intended for the
2607 shelter, storage, housing or enclosure of persons, animals or property. The term "building"
2608 also includes any garage, outbuilding or other accessory building used for any commercial
2609 or industrial purposes.
- 2610 (7) Any building having more than one sprinkler riser must have the risers separately zoned and
2611 wired to a local fire alarm panel to provide zone identification upon activation. The
2612 firealarm panel is to be located as near as possible to the main exit door. There must also be
2613 a building map located at the fire alarm panel showing each zone of the building.
- 2614 (8) A lock box must be provided outside the main entrance to any buildings regulated
2615 hereunder, containing a key to allow access to all Fire Department areas. So as to be
2616 compatible with existing lock box systems, the type of lock box must be approved by the
2617 Fire Chief.
- 2618 (9) Any structure containing a sprinkler system is required to have a yearly test completed on
2619 the system by a qualified sprinkler technician. A written copy of the yearly test report must

2620 be forwarded to the Fire Chief.

2621 C. Permit.

2622 (1) A permit must be obtained from the Fire Chief before the start of construction of the system
2623 and a set of blueprints showing the entire sprinkler system and the rate of flow provided to
2624 and approved by the Fire Chief in order to obtain the permit.

2625 (2) A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may be
2626 issued until the system has been properly installed, tested by a qualified technician and
2627 approved by the Fire Chief or duly authorized designee.

2628 D. Fees and fines.

2629 (1) A sprinkler system permit fee is to be paid with the permit request in such amount as
2630 established by Council. The fee for a sprinkler permit is as set out in Appendix A.

2631 (2) Any person, firm or corporation being the owner or having control or use of any building or
2632 premises who violates this section of this title will be assessed a penalty under Title 1,
2633 Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a
2634 separate offense.^[6]

2635 E. Sprinkler administrative appeal.

2636 If any party is aggrieved by a determination of the Fire Chief under the requirements of
2637 this section, a written appeal may be filed with the BOA within 10 days from the date of
2638 notification of such determination by the Fire Chief. Such written appeal must set forth a
2639 concise statement of the grounds upon which the party contends the Fire Chief's
2640 determination to be in error.

2641 16.5.25 Street Signage

2642 A. Names.

2643 Streets which join or are in alignment with streets of abutting or neighboring properties
2644 must bear the same name. Names of new streets may not duplicate, nor bear phonetic
2645 resemblance to, the names of existing streets within the municipality and are subject to the
2646 approval of the Planning Board.

2647 B. Signs provided.

2648 Street name signs are to be furnished and installed by the developer; the type, size and
2649 location to be approved by the Commissioner of Public Works.

2650 16.5.26 Streets and Pedestrianways/Sidewalks Site Design Standards

2651 A. Purpose.

2652 The design of streets must provide for proper continuation of streets from adjacent
2653 development and for proper projection into adjacent undeveloped and open land. These
2654 design standards must be met by all streets within Kittery and control street shoulders,
2655 curbs, pedestrianways/sidewalks, drainage systems, culverts and other appurtenances.

2656 B. Layout.

2657 (1) Streets are to be designed to discourage through traffic on minor streets within a residential
2658 subdivision.

2659 (2) Reserve strips controlling access to streets are prohibited except where control is definitely
2660 placed with the municipality.

2661 (3) Any development expected to generate average daily traffic of 201 or more trips per day is
2662 to have at least two street connections with existing public street(s).

2663 (4) Where a development borders an existing narrow street (below standards set herein) or when
2664 the Comprehensive Plan indicates plans for realignment or widening of a street that would
2665 require use of some of the land in a development, the plans must indicate reserved areas for
2666 widening or realigning such streets, marked on the plan "reserved for street
2667 widening/realignment purposes." Land reserved for such purposes may not be included in
2668 computing lot area or setback requirements of this title.

2669 (5) Where a development abuts or contains an existing or proposed arterial street, the Board
2670 may require marginal access streets (i.e., street parallel to arterial street providing access to
2671 adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed
2672 arterial street) with screen planting contained in a non-access reservation along the rear
2673 property line, or such other treatments as may be necessary for adequate protection of
2674 residential properties and to afford separation of through and local traffic.

2675 (6) Entrances onto existing or proposed arterial highways/secondary arterials may not exceed a
2676 frequency of one per 1,000 feet of street frontage.

2677 C. Street classification.

2678 Streets are classified by purpose, function and use frequency.

2679 (1) Arterial highways are major traffic ways that provide connections with other thoroughfare or
2680 interstate roads and have a high potential for the location of significant community activity
2681 centers as well as retail, commercial and industrial facilities. The average daily traffic count
2682 (ADT) would be 9,001 or more trip ends.

2683 (2) Secondary arterials carry relatively high volumes of traffic to or from arterial highways,
2684 adjacent communities and through local residential areas, activity centers and minor
2685 commercial establishments. The ADT would be 3,001 to 9,000 trip ends.

2686 (3) Commercial, light industrial and mixed-use zone developments are located in areas where
2687 street design is oriented to accommodate community-wide and regional interests with
2688 limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional
2689 information that may be required by the Board will determine their classification, which
2690 may not be lower than a secondary collector.

2691 (4) Primary collectors may be residential or business, or both, and serve both as collectors to
2692 lesser residential streets and as connections to or between arterials. The ADT would be from

- 2693 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned and
2694 maintained by the Town.
- 2695 (5) Secondary collectors may be residential or business, or both, and connect to or between
2696 streets of a higher classification, and/or may collect traffic from minor streets or private
2697 ways. The ADT would be 201 to 800 trip ends.
- 2698 (6) Minor streets are predominantly single-family residential short or dead-end streets, which
2699 may have branching minor streets, private lanes or private ways and conduct traffic to streets
2700 of higher classification. This is the lowest level of public street in the hierarchy and must
2701 serve at least four dwelling units. The ADT would be 35 to 200 trip ends.
- 2702 (7) Private streets function exclusively as residential streets serving high-density housing
2703 developments, including clustered housing, multi-family dwellings, elderly housing, and
2704 mobile home parks, and may not be dedicated for public acceptance. Maintenance and
2705 improvements must be controlled by proprietorship, corporation, association or deed
2706 covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in
2707 accordance with the applicable standards and specifications for minor streets or secondary
2708 collectors.
- 2709 (8) Private lanes are short low-traffic volume residential dead-end streets which may serve part
2710 of a high-density development or other residential uses conforming to the applicable
2711 standard residential space requirements enumerated in this title. Private ways may not be
2712 dedicated for public acceptance, and improvements must be controlled by proprietorship,
2713 corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.
- 2714 (9) Private ways are dead-end, very-low-volume residential streets that connect to streets of a
2715 higher classification and function similar to an individual driveway by providing a low
2716 standard two-way traffic flow. Private ways may not be used in high-density residential
2717 developments or subdivisions of four or more lots. Private ways cannot be dedicated for
2718 public acceptance, and all maintenance and improvements must be controlled by
2719 proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35 trip
2720 ends.
- 2721 (10) Average daily traffic (ADT) is computed using the latest Institute for Transportation
2722 Engineers (ITE) codes and figures.
- 2723 D. Street design standards.
2724 Design standards for classified streets and sidewalks are those contained in attachment
2725 Table 1 Design and Construction Standards for Streets and Pedestrianways, which is
2726 attached to this chapter.
- 2727 E. Access control and traffic impacts.
2728 Provision must be made for vehicular access to a development and circulation upon the lot
2729 in such a manner as to safeguard against hazards to traffic and pedestrians in the street and
2730 within the development, to avoid traffic congestion on any street and to provide safe and
2731 convenient circulation on public streets and within the development. Access and
2732 circulation must also conform to the standards and criteria listed below.

- 2733 (1) Vehicular access to the development must be arranged to avoid traffic use of local
2734 residential streets.
- 2735 (2) Where a lot has frontage on two or more streets, the access to the lot must be provided to the
2736 lot across the frontage and to the street where there is lesser potential for traffic congestion
2737 and for hazards to traffic and pedestrians.
- 2738 (3) The street giving access to the lot and neighboring streets which can be expected to carry
2739 traffic to and from the development must have traffic-carrying capacity and be suitably
2740 improved to accommodate the amount and types of traffic generated by the proposed use.
2741 No development may increase the volume/capacity ratio of any street above 0.8 nor reduce
2742 any intersection or link level of service to "D" or below.
- 2743 (4) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid
2744 traffic congestion, provision must be made for turning lanes, traffic directional islands,
2745 frontage roads, driveways and traffic controls within public streets.
- 2746 (5) Accessways must be of a design and have sufficient capacity to avoid hazardous queuing of
2747 entering vehicles on any street.
- 2748 (6) Where topographic and other conditions allow, provision must be made for circulation
2749 driveway connections to adjoining lots of similar existing or potential use:
- 2750 (a). When such driveway connection will facilitate fire protection services as approved by
2751 the Fire Chief; or
- 2752 (b). When such driveway will enable the public to travel between two existing or potential
2753 uses, generally open to the public, without need to travel upon a street.
- 2754 F. Center line.
2755 The center line of a roadway must be the center line of the right-of-way.
- 2756 G. Dead-end streets.
- 2757 (1) Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of
2758 trees must be maintained within the center of the cul-de-sac.
- 2759 (2) The Board may require the reservation of a twenty-foot easement in line with the street to
2760 provide continuation of pedestrian traffic or utilities to the next street.
- 2761 (3) The Board may also require the reservation of a fifty-foot easement in line with the street to
2762 provide for continuation of the road where future development is possible.
- 2763 H. Grades, intersections and sight distances.
- 2764 (1) Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are
2765 minimized while maintaining the grade standards of this title.

2766 (2) All changes in grade are to be corrected by vertical curves in order to provide the following
 2767 minimum stopping distance where based on street design speed calculated with a height of
 2768 eye at 3.5 feet and the height of object at 0.5 feet:

<u>Design [BWS7] speed (mph)</u>	<u>20</u>	<u>25</u>	<u>30</u>	<u>35</u>
<u>Stopping sight distance (feet)</u>	<u>125</u>	<u>150</u>	<u>200</u>	<u>250</u>

2769 (3) Intersections of streets are to be at angles as close to 90° as possible, and in no case may two
 2770 streets intersect at an angle smaller than 60°. To this end, where one street approaches
 2771 another between 60° and 90°, the former street should be curved approaching the
 2772 intersection.

2773 (4) Where new street intersections or curb cuts are proposed, sight distances, as measured along
 2774 the street onto which traffic would be turning, is based on the posted speed limit and must
 2775 conform to the table following:

<u>Posted [BWS8] speed limit (mph)</u>	<u>25</u>	<u>30</u>	<u>35</u>	<u>40</u>	<u>45</u>	<u>50</u>	<u>55</u>
<u>Sight distance (feet)</u>	<u>250</u>	<u>300</u>	<u>350</u>	<u>400</u>	<u>450</u>	<u>500</u>	<u>550</u>

2776 (a). Sight distance is the length of roadway visible to a driver exiting an intersection or curb
 2777 cut. Such sight distance is measured from a point that is located at the center line of the
 2778 exit lane and 15 feet back from the edge of the travel way to the center line of the
 2779 oncoming lane(s), with the height of eye at 3.5 feet and the height of an object 4.25 feet
 2780 above the pavement.

2781 (b). When the actual traveling speed of normal traffic on a road is substantially higher than
 2782 the posted speed limit, the sight distance is computed by multiplying the 85th percentile
 2783 of such speed as measured by a qualified traffic engineer by a factor of 10. The result, in
 2784 feet, is the minimum sight distance required.

2785 (c). Where necessary, corner lots must be cleared of all growth or other sight obstructions,
 2786 including ground excavations, to achieve the required visibility.

2787 (5) Cross (four-cornered) intersections are to be avoided insofar as possible.

2788 I. Side slopes.
 2789 Side slopes of all streets must be graded, covered with appropriate compost or loamed,
 2790 fertilized and seeded in accordance with the specifications of the erosion and
 2791 sedimentation plan.

2792 J. Right-of-way (ROW) grading.
 2793 Streets are to be rough-graded full width.

2794 K. Street construction standards.

2795 (1) The subgrade of the roadway. On soils which have been identified by the Commissioner of
 2796 Public Works as not suitable for roadways, the subsoil must be removed from such locations
 2797 to a depth of two feet below subgrade and replaced with material meeting the specifications
 2798 for gravel aggregate subbase or a substitute acceptable to the Commissioner of Public
 2799 Works.

2800 (2) The aggregate subbase course must be sand or gravel of hard, durable particles, free from
 2801 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2802 the part that passes a three-inch-square mesh sieve must meet the following grading
 2803 requirements and contain no particles of rock exceeding four inches in diameter [MDOT
 2804 Specification 703.06(b) Type D]:

<u>Sieve Designation Percent by Weight Passing Square Mesh</u>	
<u>Sieve [BWS9]</u>	
<u>1/4 inch</u>	<u>25% to 70%</u>
<u>No. 40</u>	<u>0% to 30%</u>
<u>No. 200</u>	<u>0% to 7%</u>

2805 (3) The aggregate base course must be sand or gravel of hard, durable particles, free from
 2806 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of
 2807 the part that passes a three-inch square mesh sieve must meet the following requirements
 2808 [MDOT Specification 703.06(a) Type A]:

<u>Sieve Designation Percent by Weight Passing Square Mesh</u>	
<u>Sieve [BWS10]</u>	
<u>1/2 inch</u>	<u>45% to 70%</u>
<u>1/4 inch</u>	<u>30% to 55%</u>
<u>No. 40</u>	<u>0% to 20%</u>
<u>No. 200</u>	<u>0% to 5%</u>

2809 L. Street plantings.
 2810 When appropriate, the Board may require a street design that incorporates a green
 2811 space/planting area within the street's ROW. Said plantings must be installed at the
 2812 developer's expense according to a plan drawn up by a landscape architect.

2813 M. Sidewalks.

2814 (1) Where required, sidewalks must be installed to meet minimum requirements as specified in
 2815 Table 1 of this chapter. [11]

2816 (2) The position of any sidewalk within the street ROW in relation to the pavement surface is to
2817 be determined by the Planning Board.

2818 N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.

2819 (1) Road construction and parking facilities are allowed in the Resource Protection Overlay
2820 Zone only where no reasonable alternative route or location is available outside the
2821 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan
2822 approval is required by the Planning Board.

2823 (2) The following standards apply to the construction of roads and/or driveways and drainage
2824 systems, culverts and other related features in the Shoreland and Resource Protection
2825 Overlay Zones:

2826 (a). Roads and driveways must be set back:

2827 [1] At least 100 feet from the normal high-water line of any water bodies, tributary
2828 streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
2829 wetland; and

2830 [2] Seventy-five feet from the normal high-water line of any water bodies or the upland
2831 edge of a wetland on Badgers Island, unless no reasonable alternative exists, as
2832 determined by the Planning Board.

2833 [3] If no other reasonable alternative exists, the Planning Board may reduce the road
2834 and/or driveway setback requirement to no less than 50 feet upon clear showing by
2835 the applicant that appropriate techniques will be used to prevent sedimentation of the
2836 water body. Said erosion and sediment control measures for roads and driveways
2837 must meet "Maine Erosion and Sediment Control Best Management Practices,"
2838 March 2003.

2839 (b). On slopes of greater than 20%, the road and/or driveway setback must be increased by
2840 10 feet, horizontal distance, for each five-percent increase in slope above 20%.

2841 (c). Existing public roads may be expanded within the legal road right-of-way, regardless of
2842 their setback from a water body.

2843 (d). New roads and driveways are prohibited in a Resource Protection Overlay Zone, except
2844 the Planning Board may grant a permit to construct a road or driveway to provide access
2845 to permitted uses within the zone. A road or driveway also may be approved by the
2846 Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable
2847 alternative route or location is available outside the zone. When a road or driveway is
2848 permitted in a Resource Protection Overlay Zone, the road and/or driveway must be set
2849 back as far as practicable from the normal high-water line of a water body, tributary
2850 stream, or upland edge of a wetland.

2851 (e). The maximum slope for road and driveway banks is two horizontal to one vertical (2:1).
2852 Bank slopes must be graded and stabilized in accordance with the provisions for erosion

2853 and sedimentation control contained in Section.

2854 (f). The maximum slope for road and driveway grades is 10%, except for segments of less
 2855 than 200 feet.

2856 (g). To prevent road and driveway surface drainage from directly entering water bodies,
 2857 tributary streams or wetlands, roads and driveways must be designed, constructed and
 2858 maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the
 2859 average slope [50 feet + (2 x S average)], in width between the outflow point of the ditch
 2860 or culvert and the normal high-water line of a water body, tributary stream or upland
 2861 edge of a wetland. Surface drainage that is directed to an unscarified buffer strip must be
 2862 diffused or spread out to promote infiltration of the runoff and to minimize channelized
 2863 flow of the drainage through the buffer strip.

2864 (h). Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge
 2865 must be designed and constructed so that drainage is diverted onto unscarified buffer
 2866 strips before the flow gains sufficient volume or head. The following criteria should be
 2867 implemented where possible to deter and prevent excessive erosion:

2868 [1] Ditch relief culverts, drainage dips and associated water turnouts must be spaced
 2869 along the road or driveway at intervals no greater than indicated in the following
 2870 table:

<u>Grade</u> <u>(percent)</u>	<u>Spacing</u> ^{BWS12} ₃₇₁ <u>(feet)</u> 2872
<u>0 to 2%</u>	<u>250 maximum</u> 2873
<u>3 to 5%</u>	<u>135 to 200 maximum</u> 2874
<u>6 to 10%</u>	<u>80 to 100 maximum</u> 2875
<u>11 to 14% maximum</u>	<u>60 to 80 maximum</u> 2876

2877 [2] Drainage dips may be used in place of ditch relief culverts only where the grade is
 2878 10% or less.

2879 [3] On sections having slopes greater than 10%, ditch relief culverts must be placed at
 2880 approximately a thirty-degree angle downslope from a line perpendicular to the center
 2881 line of the road or driveway.

2882 [4] Ditch relief culverts must be sufficiently sized and properly installed to allow for
 2883 effective functioning, and their inlet and outlet ends appropriately stabilized with
 2884 acceptable materials and construction techniques.

2885 (i). Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control

2886 installations associated with roads and driveways must be maintained by the owner(s) on
2887 a regular basis to assure effective functioning.

2888 (j). In a Shoreland or Resource Protection Overlay Zone, when replacing an existing culvert
2889 the watercourse must be protected so the crossing does not block fish passage, and
2890 adequate erosion control measures must be taken to prevent sedimentation of the water
2891 in the watercourse.

2892 (k). A permit is not required for the replacement of an existing road culvert, provided the
2893 replacement culvert is:

2894 [1] Not more than one standard culvert size larger in diameter than the culvert being
2895 replaced;

2896 [2] Not more than 25% longer than the culvert being replaced; and

2897 [3] Not longer than 75 feet.

2898 16.5.27 Temporary Housing

2899 A. Purpose. The intent of this section is to provide temporary housing for resident owners
2900 (exclusive of corporations, trusts and estates) and their immediate families who have lost
2901 primary dwellings through fire or natural disaster.

2902 B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages,
2903 or renders a dwelling or dwelling unit uninhabitable, the following apply:

2904 (1) The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot as
2905 a temporary residence for the dwelling owner for a period of six months;

2906 (2) The applicant must file such an application within six months from the date of the disaster
2907 and agree, in writing, that a time limit of six months is acceptable. Proof of financial ability
2908 to reconstruct the building must be furnished;

2909 (3) If at the end of six months substantial work has been completed to the satisfaction of the
2910 CEO, the permit may be extended for an additional six months. No further extensions may
2911 be granted;

2912 (4) A multifamily dwelling may be temporarily replaced by a single mobile home unit for the
2913 use of the dwelling owner only; and

2914 (5) Setback requirements may be waived for temporary mobile homes by the CEO, provided
2915 matters of public health and safety are not impaired.

2916 16.5.28 Timber Harvesting

2917 A. Timber harvesting (as permitted in R-RLC and MU Zones).

2918 (1) Repeal of the timber harvesting regulation. Subsequent to the establishment of the State of

2919 Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the
2920 state will commence administration of all timber harvesting within the Shoreland Overlay
2921 Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be repealed: In
2922 § 16.3, the definitions of "forest management activities" and "residual basal area."

2923 (2) Timber harvesting must conform to the following provisions:

2924 (a). Selective cutting of no more than 40% of the total volume of trees four inches or more in
2925 diameter, measured at 4 1/2 feet above ground level, on any lot in any ten-year period is
2926 permitted. In addition:

2927 [1] Within 75 feet, horizontal distance, of the normal high-water line of water bodies,
2928 tributary streams or the upland edge of a wetland, clear-cut openings are prohibited
2929 and a well-distributed stand of trees and other vegetation, including existing ground
2930 cover, must be maintained.

2931 [2] At distances greater than 75 feet, horizontal distance, of the normal high-water line of
2932 water bodies or the upland edge of a wetland, harvesting operations are limited to
2933 single clear-cut openings of 10,000 square feet or less in the forest canopy. Where
2934 such openings exceed 5,000 square feet, they must be at least 100 feet, horizontal
2935 distance, apart. Such clear-cut openings must be included in the calculation of total
2936 volume removal. For purposes of these standards, volume may be considered
2937 equivalent to basal area.

2938 (b). Timber harvesting operations exceeding the forty-percent limitation in § 16.5.29(2).a
2939 above may be allowed by the Planning Board upon a clear showing, including a forest
2940 management plan signed by a Maine-licensed professional forester, that such an
2941 exception is necessary for good forest management and will be carried out in accordance
2942 with the purposes of this title. The Planning Board is required to notify the
2943 Commissioner of the Department of Environmental Protection of each exception
2944 allowed within 14 days of the Planning Board's decision.

2945 (c). No accumulation of slash is to be left within 50 feet, horizontal distance, of the normal
2946 high-water line of a water body. In all other areas slash must either be removed or
2947 disposed of in such a manner that it lies on the ground and no part thereof extends more
2948 than four feet above the ground. Any debris that falls below the normal high-water line
2949 of a water body or tributary stream must be removed.

2950 (d). Timber harvesting equipment is prohibited from using stream channels as travel routes,
2951 except when:

2952 [1] Surface waters are frozen; and

2953 [2] The activity will not result in any ground disturbance.

2954 (e). All crossings of flowing water require a bridge or culvert, except in areas with low banks
2955 and channel beds which are composed of gravel, rock or similar hard surface which
2956 would not be eroded or otherwise damaged.

2957 (f). Skid trail approaches to water crossings must be located and designed to prevent water
 2958 runoff from directly entering the water body or tributary stream. Upon completion of
 2959 timber harvesting, temporary bridges and culverts must be removed and areas of exposed
 2960 soil revegetated.

2961 (g). Except for water crossings, skid trails and other sites where the operation of machinery
 2962 used in timber harvesting results in the exposure of mineral soil must be located so an
 2963 unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes
 2964 up to 10% must be retained between the exposed mineral soil and the normal high-water
 2965 line of a water body or upland edge of a wetland. For each ten-percent increase in slope,
 2966 the unscarified strip must be increased by 20 feet, horizontal distance. The provisions of
 2967 this section apply only to a face sloping toward the water body or wetland; provided,
 2968 however, that no portion of such exposed mineral soil on a back face can be closer than
 2969 25 feet, horizontal distance, from the normal high-water line of a water body or upland
 2970 edge of a wetland.

2971 16.5.29 Wetland Setbacks for Special Situations

2972 A. Wetland setbacks extending beyond publicly accepted streets.

2973 The required setback distances do not extend beyond the center line of publicly accepted
 2974 street that generally parallels the normal high-water line of a water body, tributary stream
 2975 or the upland edge of a wetland.

2976 B. Newly created wetlands and water bodies.

2977 Setbacks are not required from a wetland or water body created from upland land area,
 2978 provided the newly created wetland or water body is not part of a required mitigation plan.

2979 (1) Wetland setbacks for the zoning district and the Shoreland Overlay District apply.

2980 (2) A performance guarantee, such as an escrow or bond, is required to guarantee that new
 2981 vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written
 2982 statement from a qualified wetlands scientist that says the vegetation is thriving must be
 2983 submitted to the Town Manager.

2984 C. Setbacks from altered wetlands or water bodies.

2985 (1) The illegal altering of a water body or wetland area, where the surface area of the water
 2986 body is decreased (lowered), after May 13, 1987, may not be used to change the location
 2987 from which a setback is measured. The illegal filling of a water body or wetland area, where
 2988 the normal water surface area of the water body is increased (raised), after May 13, 1987,
 2989 must be measured from the most recent edge of the normal water surface elevation.

2990 (2) Alterations to the wetland boundaries that have been approved by the Planning Board and
 2991 are in compliance with regulations of the Army Corps of Engineers and the Maine
 2992 Department of Environmental Protection may be constructed per the Planning Board's
 2993 approved wetlands alteration plan.

2994 D. Setbacks for utility poles.

2995 Setbacks for utility poles must be shown and identified on the development plans.
 2996 Distances from utility pole structures and the upland edge of wetlands of any type may not
 2997 have to be set back from the wetland. Such setback distances require Planning Board
 2998 approval.

2999 E. Utilities within wetland.
 3000 Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the
 3001 applicant's engineer must provide trench details for depth, distance between pipes, if
 3002 applicable, fill materials, minimum compaction and/or encasement.

3003 (1) Rotted material, muck and unsuitable soils must be removed from the trench and replaced
 3004 with select materials that provide the required compaction, pipe support and protection.

3005 (2) Trenches for shallow-depth pipes (having less than four feet of cover) must be designed to
 3006 avoid pipe movement that may result in breakage.

<u>Table 16.5.30</u>			
<u>Minimum Setbacks from Wetlands and Water Bodies*</u>			
<u>Structure/Activity</u>	<u>Total Size of Wetland and/or Water Body</u>		
	<u>Less than 501 square feet</u> <u>(feet)</u>	<u>501 square feet to 1 acre and Intermittent Streams</u> <u>(feet)</u>	<u>Greater than 1 acre</u> <u>(feet)</u>
<u>Local distribution utility pole, fence, flagpole, signs or drainage structure</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Functionally water-dependent uses</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Roads and Driveways</u>			
<u>Traveled way of road or driveway of 18 feet or less in width¹</u>	<u>0</u>	<u>10 from toe of slope</u>	<u>10 from toe of slope</u>
<u>Traveled way of road or driveway greater than 18 feet in width¹</u>	<u>0</u>	<u>30 or 10 from toe of slope, whichever is greater</u>	<u>30 or 10 from toe of slope, whichever is greater</u>
<u>Parking Areas</u>			
<u>Parking areas for one- and two-family residential uses</u>	<u>0</u>	<u>10</u>	<u>20</u>
<u>1 to 5 stall parking area</u>	<u>0</u>	<u>30</u>	<u>50</u>

<u>Table 16.5.30</u>			
<u>Minimum Setbacks from Wetlands and Water Bodies*</u>			
<u>Structure/Activity</u>	<u>Total Size of Wetland and/or Water Body</u>		
	<u>Less than 501 square feet (feet)</u>	<u>501 square feet to 1 acre and Intermittent Streams (feet)</u>	<u>Greater than 1 acre (feet)</u>
<u>6 to 20 stall parking area incorporating BMPs for stormwater management²</u>	<u>0</u>	<u>40</u>	<u>75</u>
<u>6 to 20 stall parking area without incorporating BMPs for stormwater management²</u>	<u>0</u>	<u>75</u>	<u>100</u>
<u>21 or more stall parking area³ incorporating BMPs for stormwater management</u>	<u>0</u>	<u>50</u>	<u>75</u>
<u>Patios, Decks, Accessory Buildings</u>			
<u>Patio or deck area no larger than 500 square feet in size</u>	<u>0</u>	<u>30</u>	<u>50</u>
<u>Detached residential storage shed no larger than 120 square feet in size</u>	<u>0</u>	<u>30</u>	<u>50</u>
<u>Other Buildings and Structures</u>			
<u>Building or structure (including patio or deck area larger than 500 square feet in size)</u>	<u>0</u>	<u>50</u>	<u>100</u>
<u>Activities and structures permitted within regulated wetlands</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Subsurface Sewage Disposal</u>			
<u>Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD</u>	<u>0</u>	<u>50</u>	<u>100</u>

<u>Table 16.5.30</u>			
<u>Minimum Setbacks from Wetlands and Water Bodies*</u>			
	<u>Total Size of Wetland and/or Water Body</u>		
<u>Structure/Activity</u>	<u>Less than 501 square feet (feet)</u>	<u>501 square feet to 1 acre and Intermittent Streams (feet)</u>	<u>Greater than 1 acre (feet)</u>
<u>Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more</u>	<u>0</u>	<u>100</u>	<u>100</u>
<u>Recreational Uses and Structures</u>			
<u>Low-intensity recreation</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Recreational facility or structure excluding a golf course</u>	<u>0</u>	<u>50</u>	<u>100</u>
<u>Topsoil Removal</u>			
<u>Removal of more than 10 cubic yards of topsoil except for approved projects</u>	<u>0</u>	<u>50</u>	<u>100</u>
<u>Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan</u>	<u>0</u>	<u>25</u>	<u>25</u>
<u>Special Uses</u>			
<u>Junkyard¹</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>Bulk salt storage not in an enclosed structure¹</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>Gravel and mineral extraction or processing¹</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>Storage of hazardous chemicals or special wastes other than amounts normally associated with individual</u>	<u>0</u>	<u>100</u>	<u>150</u>

<u>Table 16.5.30</u>			
<u>Minimum Setbacks from Wetlands and Water Bodies*</u>			
<u>Structure/Activity</u>	<u>Total Size of Wetland and/or Water Body</u>		
	<u>Less than 501 square feet (feet)</u>	<u>501 square feet to 1 acre and Intermittent Streams (feet)</u>	<u>Greater than 1 acre (feet)</u>
<u>households/farms¹</u>			
<u>Commercial painting, wood preserving or furniture stripping¹</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>Laundromats, auto wash, printing, dry-cleaning, photographic processing, if not connected to a sanitary sewer⁴</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>Metal plating, finishing, polishing¹</u>	<u>0</u>	<u>100</u>	<u>150</u>
<u>NOTES:</u>			
<u>*</u>	<u>All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.</u>		
<u>1</u>	<u>The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.</u>		
<u>2</u>	<u>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.</u>		
<u>3</u>	<u>Parking areas with 21 or more stalls must incorporate BMPs.</u>		
<u>4</u>	<u>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 L13.</u>		

3007 16.5.30 Wireless Communication Services Facilities

3008 A. Purpose. This article is designed and intended to balance the interests of the residents of
3009 the Town, telecommunications providers, and telecommunications customers in the siting
3010 of wireless communication services facilities (WCSF) within the Town. These standards
3011 are also intended:

3012 (1) To avoid or minimize the adverse impacts of such facilities on visual, environmental,
3013 historically significant areas, health and safety, and property value;

3014 (2) To require the use of alternative structures for the purposes of co-location of carriers and
3015 minimize the total number of towers located within the Town;

3016 (3) To permit the construction of new towers only where all other opportunities have been
3017 exhausted;

3018 (4) To require the users of WCSF and antenna structures to configure them in a way that
3019 minimizes the need for additional WCSF in the Town;

3020 (5) To provide for the removal of WCSF and associated development which are no longer being
3021 used for telecommunications purposes;

3022 (6) These regulations are not intended to place any restrictions on privately operated and
3023 licensed amateur radio operators as per FCC regulations.

3024 B. Location, height and setback requirements.

3025 (1) New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of
3026 Dennett Road with Planning Board approval conforming to the performance standards and
3027 dimensional requirements. Shared use of preexisting accessory-use towers and alternative
3028 tower structures in all zones is permitted with Town Planner's approval, provided the tower
3029 or structure height is not increased. Location on existing structures in a manner that
3030 camouflages or conceals the presence of antennas or towers, also referred by the industry as
3031 "stealth," is permitted with Town Planner's approval in all districts except the Resource
3032 Conservation, Shoreland and Resource Protection Overlay Zones. The Town Planner may
3033 request Planning Board review of any proposed siting of a WCSF facility.

3034 (2) Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for
3035 those towers expressly satisfying all co-location requirements for four or more carriers,
3036 which may be constructed to a maximum height of 199 feet.

3037 (3) Setbacks.

3038 (a). All telecommunications towers must be set back from the lot lines a distance equal to at
3039 least 125% of the tower height.

3040 (b). Tower, guyed wires and accessory facilities must meet the minimum zoning district
3041 setback requirements.

- 3042 C. Aesthetics, landscaping, buffers and fencing.
- 3043 (1) Towers and antennas are to have a neutral finish or be painted a neutral color as approved so
3044 as to reduce visual impact.
- 3045 (2) All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except for
3046 the access road. Access roads are to be constructed in a nonlinear manner so as not to
3047 provide a direct view corridor to the support structures. The Planning Board/Town Planner
3048 may require additional plantings in the buffer area to enhance the quality and effectiveness
3049 of the buffer area to serve as a visual screen. The size and quantity of plantings is subject to
3050 Planning Board/Town Planner approval.
- 3051 (3) At a WCSF, the design of the buildings and related structures must, to the extent possible,
3052 use materials, colors, textures, screenings and landscaping that will blend the facilities to be
3053 compatible with the natural setting and built environment. The building and related
3054 structures must be planned in a manner to accept equipment of co-locators. Underground
3055 utilities must be used to serve the WCSF.
- 3056 (4) Towers may not be artificially lighted.
- 3057 (5) Road access to the telecommunications structure is to be the minimum size necessary to
3058 allow safe access.
- 3059 (6) The base of a telecommunications tower may not be located in wetland, floodplain,
3060 Resource Conservation, Shoreland and Resource Protection Overlay Zones.
- 3061 (7) A security fence to be approved by the Planning Board/Town Planner of not fewer than
3062 eight feet in height from the finished grade is to be provided around the tower and painted a
3063 neutral color as approved to minimize visual impacts. Access to the tower is to be through a
3064 gate that can be secured.
- 3065 D. Investigation of existing alternative towers, sites and structures.
3066 Applicants must identify all existing and proposed towers, including their heights, located
3067 in the Town and within two miles beyond Town boundaries. Applicants must provide
3068 evidence of the lack of antenna space on all such towers and identify alternative tower
3069 structures and sites which have been investigated as an alternative to constructing a new
3070 tower. Applicant must address the pros and cons of utilizing co-location and other
3071 alternative tower structures with respect to their application and demonstrate that they
3072 cannot provide adequate communication service utilizing such existing towers or
3073 structures.
- 3074 E. Co-location.
- 3075 (1) The applicant and owner must allow other future wireless service carriers, including
3076 providing space at no charge to public agencies (including but not limited to police, fire,
3077 ambulance, communications and highway if requested at the time of review by the Planning
3078 Board), using functionally equivalent personal wireless technology to co-locate antennas,
3079 equipment and facilities on a telecommunications tower and site, unless satisfactory

3080 evidence is presented and the Planning Board/Town Planner concurs that technical
3081 constraints prohibit co-location. Applicant and other wireless service carriers must provide a
3082 mechanism for the construction and maintenance of shared facilities and infrastructure and
3083 for reasonable sharing of cost in accordance with industry standards. (A reasonable charge
3084 for shared use is based on generally accepted accounting principles.

3085 (2) This charge may include, but not be limited to, a pro rata share of the cost of site selection,
3086 planning, project administration, land costs, site design, construction and maintenance,
3087 financing, return of equity, depreciation and all of the costs of adapting the tower or
3088 equipment to accommodate a shared user without causing electromagnetic interference, all
3089 being pertinent to the southern Maine market area.)

3090 (3) To ensure co-location, the Planning Board/Town Planner may require co-location on a tower
3091 so as to prevent the need for new carriers to build new towers, may deny an application for a
3092 telecommunications facility because of inadequate provisions and/or arrangements for co-
3093 location, and may require an existing tower to be extended in height (provided that a
3094 structural analysis indicates that such extension is structurally feasible and safe) in order to
3095 provide for co-location.

3096 F. Performance guarantees.

3097 No building permit may be issued until the applicant has filed a performance guarantee
3098 and approved by the Town Manager equal to 125% of the cost of completing the
3099 following improvements:

3100 (1) The construction of any drainage systems involving piping, culverts, or retention or
3101 detention facilities;

3102 (2) The construction of erosion and sedimentation control measures or landscaping required to
3103 meet the standards of this article; and

3104 (3) Other site improvements required by the Board/Town Planner to meet the standards of this
3105 article.

3106 G. Removal of abandoned or unused facilities.

3107 (1) The owner of a telecommunications facility is required to remove the tower and associated
3108 facilities should it not be used for the use or uses approved for a period of 90 consecutive
3109 days. This period may be extended by the Planning Board/Town Planner if there are
3110 extenuating circumstances beyond the control of the applicant. An applicant for a permit
3111 under this article must post a performance guarantee approved by the Town Manager with
3112 the Town prior to obtaining a permit that is equal to 125% of the cost of removing the
3113 structure. The performance guarantee must be in effect for the life of the WCSF;

3114 (2) The performance guarantee covering such removal must be reviewed for renewal at a
3115 maximum term of five years, to account for cost adjustments. It must contain a mechanism,
3116 satisfactory to the Town, for review of the cost of removal of the structure every five years
3117 and a mechanism for increasing the amount of the guarantee should the revised cost estimate
3118 so necessitate.

3119 H. Annual permit renewal.
3120 To ensure compliance with the prescribed ordinances, all approvals will be subject to an
3121 annual permit renewal conducted by the Town Planner. The Town Planner at a minimum
3122 is to review the continued use of the facility; maintenance of the facility and site
3123 improvements; availability for co-location of new service; and review of bonding
3124 documents. The documents and permit renewal fee must be submitted to the Town
3125 Planner no later than October 1 of each year following the original approval.

3126 16.5.31 Marijuana Business

3127 A. General.

3128 (1) This section regulates Marijuana Businesses as defined uses within the Town of Kittery.
3129 The permitting standards outlined here must be adhered to for all Marijuana Businesses, in
3130 addition to other applicable standards in this and other ordinances or state law.

3131 B. Standards.

3132 Marijuana Businesses must meet the following standards:

3133 (1) Marijuana Businesses may not locate within 1,000 feet of a public or private school or a
3134 public recreation facility measured from the exterior wall of the Marijuana Business in a
3135 straight line to the property line of the protected use. This section does not prohibit the
3136 activity of a caregiver or other authorized individual from administering medical marijuana
3137 to a qualified patient who is located within one of these protected areas.

3138 (2) Marijuana Businesses may not have any odor of marijuana detectible beyond the area
3139 controlled by the business, whether that be a leased or owned area that is a portion or all of a
3140 recorded parcel of land. Odors must be controlled by whatever best practices exist.

3141 (3) Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose
3142 of this section hoop houses or outdoor tunnels must not be considered as an indoor growing
3143 facility and are prohibited for marijuana cultivation by a Marijuana Business.

3144 (4) The design of any building containing a Marijuana Business must conform to the standards
3145 within this Title and the Town of Kittery Design Handbook.

3146 (5) The area of any Marijuana Business accessible to customers must be no less than 400 nor
3147 more than 2,000 square feet.

3148 (6) Parking must conform to Article IX.

3149 (7) Any building containing a Marijuana Business must be protected by fire suppression
3150 measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all
3151 applicable building codes.

3152 (8) The Owner of any Marijuana Business, at the time of application for a building permit, must
3153 provide an affidavit from a master electrician or electrical engineer certifying that the

3154 electrical components can meet the electrical load demands of the use.

3155 (9) Security.

3156 (a) The Licensed Premises must have video surveillance capable of covering the exterior and
3157 interior of the facility. The video surveillance system must be operated with continuous
3158 recording twenty-four hours per day, seven days per week and video retained for a minimum
3159 duration of thirty (30) days. Such records must be made available to law enforcement
3160 agencies when investigating a criminal complaint.

3161 (10) The Licensed Premises must have an approved wastewater discharge plan in accordance
3162 with this Title and Title 13.

3163 (11) The Licensed Premises must have exterior lighting that conforms with this Title and the
3164 Town of Kittery's Design Handbook. The Planning Board, at its discretion, may require
3165 motion sensors covering the full perimeter of the building(s).

3166

3167 16.5.32 Medical Marijuana Registered Caregiver Home Establishment

3168 A. General.

3169 (1) Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of
3170 registered caregivers operating within their jurisdiction. The regulation of registered
3171 caregivers as provided for herein is not intended to proscribe their operation, but rather to
3172 promote the health, safety and welfare of the Town of Kittery by ensuring that a registered
3173 caregiver home establishment is compatible with both the area it is situated and the
3174 community as a whole.

3175 (2) A Medical Marijuana Registered Caregiver Home Establishment may not conduct activities
3176 that would qualify the use as a Medical Marijuana Registered Dispensary, Adult Use
3177 Marijuana Store, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
3178 Facility or Marijuana Testing Facility.

3179 (3) Any Medical Marijuana Registered Caregiver legally operating with Town approval as a
3180 Home Occupation as of the Effective Date of this Section, but otherwise not meeting the
3181 definition of a Medical Marijuana Registered Caregiver Home Establishment, may continue
3182 to operate provided it has a valid Medical Marijuana Registered Caregiver Home
3183 Establishment license from the Town and any applicable State License, and is maintained in
3184 accordance with this Title. Such operations may not be built, used or occupied in any way
3185 that constitutes a material difference from any representations in either the approved
3186 application, Findings of Fact, or approval conditions for the Major Home Occupation. If
3187 majority ownership of such an operation is transferred to any other person(s), the business
3188 must be brought into conformance with the definition and standards applicable to a Medical
3189 Marijuana Registered Caregiver Home Establishment, or may be permitted and licensed as
3190 any other type of Marijuana Business allowed on the property.

3191 B. Permit Required.

3192 (1) An applicant seeking Planning Board approval for a Medical Marijuana Registered
3193 Caregiver Home Establishment must submit a complete application with the following
3194 furnished documents:

3195 (a) Proof of property ownership or lease agreement in the Town of Kittery;

3196 (b) Proof of residency in Town of Kittery as determined by voter registration, vehicle
3197 registration or other documentation deemed acceptable to the Town;

3198 (c) All relevant State of Maine license information demonstrating the applicant as a valid
3199 registered caregiver;

3200 (d) A site plan that depicts all proposed outdoor growing areas. The Planning Board may
3201 require a site plan designed by a licensed surveyor or civil engineer registered in the State of
3202 Maine.

3203 (e) A floor plan of the building showing the existing and proposed layout and square footage.

3204 (f) Narrative describing the nature of the registered caregiver operation.

3205 (2) An application will be approved or approved with conditions if the Planning Board makes a
3206 positive finding based on the information presented that the proposed Medical Marijuana
3207 Registered Caregiver Home Establishment demonstrates compliance with §16.5.33.C

3208 C. Standards

3209 (1) Medical Marijuana Registered Caregiver Home Establishment must meet the following
3210 standards, except that a Medical Marijuana Registered Caregiver legally operating with
3211 Town approval as a Major Home Occupation as of the Effective Date of this Section is not
3212 required to meet these standards to the extent the Major Home Occupation application, as
3213 approved, specifically allowed activities, uses or development that are not in conformance
3214 with these standards.

3215 (2) Manufacturing of medical marijuana products may occur only in zoning districts where a
3216 Marijuana Manufacturing Facility is permitted.

3217 (3) A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property
3218 of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of
3219 primary residence will be determined by voter registration, vehicle registration, property tax
3220 bill and/or other documentation acceptable to the Town.

3221 (4) The Registered Caregiver must provide documentation demonstrating ownership of the
3222 dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical
3223 Marijuana Registered Caregiver Home Establishment.

3224 (5) A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use

3225 of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the
3226 total floor area available within the dwelling unit.

3227 (6) A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see
3228 patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C
3229 §2423-A.

3230 (7) Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and
3231 must be by appointment only.

3232 (8) A Medical Marijuana Registered Caregiver Home Establishment may not have more than
3233 three (3) employees.

3234 (9) There must be adequate parking on the lot to accommodate the property's residents in
3235 accordance with this Title and zone-specific standards of this Title; provided that at a
3236 minimum the site must include two parking spots plus one spot for each employees.

3237 (10) A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive
3238 odors such that they are not detectable by reasonable means at the property lines. Odors
3239 must be controlled by whatever best practices exist.

3240 (11) A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a
3241 cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants,
3242 and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.

3243 (12) The installation and displaying of signage advertising the presence of a Medical Marijuana
3244 Registered Caregiver Home Establishment on a lot is prohibited.

3245

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3247

16.6 Master Site Development Plan

General

Master Site Development Plans are intended to show an overall development scheme for a large property so that the Planning Board can ensure that development of large sites, with potential town-wide or regional impacts, proceeds in an orderly sequence with coordinated phasing. Further, a master site development plan intends to be a framework for a conceptual, integrated design and infrastructure plan for the development of a 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 proposed master development boundary rather than to individual lots, tracts and parcels.

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.

16.6.1 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.

16.6.2 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 Review

(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 development of the parcel(s).

(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 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

- 43 Plan.
- 44 (3) Written Submission Requirements
- 45 (a) A project narrative, describing the nature of the proposed project along with an anticipated
- 46 timeframes for project phases and overall project buildout.
- 47 (b) In the event the development site is not comprised of a single parcel, the master site development
- 48 plan must detail the manner in which multiple parcels will be consolidated into a single parcel
- 49 and subsequently subdivided, if necessary, to facilitate the completion of the plan.
- 50 (4) Decisions.
- 51 (a) The Planning Board must determine whether the Sketch Plan proposal complies with the
- 52 standards contained within Title 16 and must, where it deems necessary, make specific
- 53 suggestions in writing to be incorporated by the applicant in subsequent submissions.
- 54 (b) If the concept is approved, inform the applicant in writing.
- 55
- 56 (5) Preliminary Master Site Development Plan
- 57 (a) A Preliminary Master Site Development Plan shall be submitted with its corresponding
- 58 development plan in accordance with 16.7 Site Plan Review and 16.8 Subdivision.
- 59

60 C. Final Master Site Development Plan

- 61 (1) Process
- 62 (a) The Planning Board may approve the Final Master Site Development Plan as submitted, return
- 63 the Final Development Master Plan for additional information or revision, or deny the Final
- 64 Development Master Plan.
- 65 (b) The Final Master Site Development Plan becomes the plan with which subsequent submittals
- 66 must conform. The Planning Board must sign and date the Final Master Site Development to
- 67 indicate approval by the Board.
- 68 (c) The approved Master Site Development Plan remains valid as set forth in this chapter but may be
- 69 amended and extended as set forth in this chapter.
- 70 (2) Plan Requirements
- 71 The Final Master Site Development Plan must include the following elements:
- 72 (a) land use,
- 73 (b) public sites, environmental design,
- 74 (c) vehicular, pedestrian and
- 75 (d) bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this
- 76 title.
- 77 (e) The Planning Board may waive one or more elements of the plan, if they are determined
- 78 inapplicable.
- 79 (3) Written Submission Requirements
- 80 (a) A project narrative describing the project, including updates and changes proposed from the
- 81 Sketch Plan to the Final Plan.

82 16.6.3 Performance Standards and Approval Criteria

83 A. Outside agency approvals.

- 84 (1) Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state
- 85 or federal agencies must be sought for the entire Master Site Development Plan, not individual
- 86 phases.

87 B. Infrastructure.

88 (1) Improvements within the right-of-way, including streetlights, sidewalks, streets, and guardrails shall
89 be consistent in construction details, design and materials throughout the Master Site Development
90 Plan.

91 C. Stormwater.

92 (1) Each phase of the project shall include stormwater treatment adequate to treat that phase of the
93 project. It is acceptable to oversize stormwater infrastructure in early phases to treat later
94 development. It is not acceptable for proposed development to rely on later phase construction for
95 necessary stormwater treatment.

96 D. Traffic.

97 (1) New streets in the Master Site Development Plan will include provisions for adequate turnarounds
98 between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be
99 removed if the street is extended in future phases.

100 16.6.4 Decisions

101 A. The Planning Board shall approve, approve with conditions, or deny a Master Site Development Plan
102 application based on the applicable review standards. An approval, including any approval of waivers
103 from Performance Standards, establishes the general parameters to be adhered to for the development,
104 including the supporting documentation for floor area and/or residential density, general types of uses,
105 building coverage, generalize open space plans and infrastructure systems.

106 (1) A Master Site Development Plan approval shall not be construed as final authorization of the
107 development. Approval shall confer pending proceeding status upon the development with the
108 effect of maintaining the applicability of regulations in effect at the time of approval for as long as
109 the Master Site Development Plan remains valid, including permissible extensions, if granted.

110 (2) Final approved Master Site Development Plan signing. The Planning Board must sign and date the
111 plan to indicate that it is the Master Site Development Plan approved by the Board.

112 B. A Master Site Development Plan and each subsequent development plan thereof has final approval
113 only when the Planning Board has indicated approval by formal action and the plan has been properly
114 signed by a majority of the Planning Board members or by the Chair only, if so voted by the Planning
115 Board.

116 16.6.5 Post-Approval Activities

117 A. Recording of master planned property survey.

118 (1) The owner must record the signed Master Site Development Plan at the York County Registry of
119 Deeds after Planning Board approval.

120 B. Land division applications.

121 (1) After approval of the Master Site Development Plan and recording of the master site development
122 plan property survey, the owner may initiate land division applications.

123 (2) The Code Enforcement Officer may issue permits only after the Master Site Development Plan
124 property survey has been recorded and all other applicable state and local approvals have been
125 obtained.

126

127

128

16.7 Site Plan Review

16.7.1 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 multifamily construction 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.

16.7.2 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 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 five (5) year period. The applicability of this section does not include the construction of

43 streets that are reviewed as part of a Subdivision application.

44 (10) Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments.

45 B. Other development review

46 Unless subject to a shoreland development plan review or Right of Way Plan per § 16.7.3.A,
47 the following do not require Planning Board approval:

48 (1) Single and duplex family dwellings.

49 (2) Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning
50 Board review as a subdivision.

51 (3) Business use as provided in § 16.4.26.C.(13)

52

53 (4) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the
54 plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing
55 would result in a safe and orderly development of the plan.

56 (a) The applicant may file a section of the approved plan with the municipal officials and
57 the York County Registry of Deeds if said section constitutes at least 25% of the total
58 number of lots, or for plans including buildings, 25% of the gross area, contained in
59 the approved plan. In all circumstances, plan approval of the remaining sections of
60 the plan will remain in effect for three years unless the applicant requests and the
61 Planning Board grants extensions of time equivalent to the requirements for approved
62 plans in § 16.7.12.

63 (b) Phasing is subject to any conditions deemed necessary to assure a reasonable mixture
64 of uses is completed within each separate phase of the plan.

65 (c) Where projects are to be constructed in phases, phasing of stormwater management,
66 water mains and streets are part of the review process.

67 (d) Portions of both the developed and undeveloped site impacted by interim
68 infrastructure conditions such as unlooped water systems, stormwater runoff from
69 unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be
70 clearly defined and shown on the plans.

71 (e) The Planning Board may permit construction of phases out of order only when the
72 storm drainage plan and the water plan, etc., have been reviewed, and it has been
73 demonstrated that the impact on both the developed and undeveloped sections is
74 negligible.

75

76 16.7.3 Other Potential Reviews

77 A. Shoreland development review.

78 (1) All development in the Shoreland, Resource Protection, and Commercial
79 Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or
80 replacement of an existing use or structure, or renewal of a discontinued nonconforming
81 use, must be reviewed and approved as provided in § 16.9.1 and elsewhere in this title, and
82 tracked as a shoreland development for reporting purposes.

83 (2) All development in the Shoreland, Resource Protection, and Commercial
84 Fisheries/Maritime Uses Overlay Zones must be approved by the Planning Board except

85 for the following:

- 86 (a) Proposed development of principal and accessory structures in compliance with
87 § 16.9.1.B.(1), when not subject to Planning Board review as explicitly required
88 elsewhere in this title. Such proposed development must be reviewed and approved
89 by the Code Enforcement Officer (CEO) prior to issuing a building permit. The total
90 devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be
91 calculated by the applicant and verified by the CEO and recorded in the Town's
92 property records. Any development proposed in the Resource Protection and
93 Shoreland - Stream Protection Area Overlay Zones must be approved by the Planning
94 Board.
- 95 (b) Piers, docks, wharves, bridges and other structures and uses extending over or below
96 the highest annual tide (HAT) elevation, subject to review and approval by the Port
97 Authority as outlined in Chapter 16.9.1, Marine-related development.
- 98 (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.
- 99 (d) Clearing of vegetation for activities other than timber harvesting. These are subject to
100 review and approval by the Shoreland Resource Officer or Code Enforcement
101 Officer.

102 **16.7.4 Review and Approval Authority**

103 A. Application Classification. The review and approval authority for Site Plans shall depend on
104 the classification of the project.

- 105 (1) Major Site Plan. The Planning Board is authorized to review and act on all Site Plans for
106 Major Site Plan applications. In considering Site Plans under this section, the Planning
107 Board may act to approve, disapprove, or approve with project with such conditions as are
108 authorized by this section.
- 109 (2) Minor Site Plan. The Kittery Director of Planning and Development authorized to review
110 all Site Plans for Minor Site Plan applications and may approve, disapprove, or approve the
111 project with such conditions as are authorized by this section. This administrative review
112 will be made in consultation with the Town Planner and Code Enforcement Officer. In
113 addition, the Director may reclassify a Minor Site Plan as a Major Site Plan, due to the
114 scope or anticipated impacts of a project, and forward it to the Planning Board with
115 recommendations for Planning Board action.

116 B. Technical Review Committee Established. The Technical Review Committee is to provide
117 advisory comments on all Site Plan applications. Membership will consist of Town
118 department heads and senior staff. The Technical Review Committee will meet on an as
119 needed basis, dependent upon the timing Site Plan application submissions.

120 **16.7.5 Classification of Projects**

121 A. The Town Planner shall classify each project as a Major or Minor Site Plan. Minor Site
122 Plans are smaller scale projects for which a minor review process is adequate to protect the
123 Town's interest. Major Site Plans are larger, more complex projects for which a more
124 detailed review process and additional information are necessary. The following review
125 thresholds shall be used by the Town Planner in classifying each project. The Town Planner
126 may, due to the scope or anticipated impacts of a project, classify any project as a Major Site

127 Plan.

128 (1) Minor Site Plans shall include those projects involving:

129 (a) The cumulative construction or addition above one thousand (1,000) square feet and
130 no more than five thousand (5,000) square feet of gross nonresidential floor area.

131 (b) Any individual or cumulative construction or addition between one thousand (1,000)
132 square feet and five thousand (5,000) square feet of gross nonresidential floor area
133 within an approved subdivision.

134 (c) The establishment of a new nonresidential use even if no buildings or structures are
135 proposed, that involves the Development of more than twenty-five thousand (25,000)
136 square feet but less than one (1) acre of land.

137 (2) Major Site Plans shall include projects involving:

138 (a) The individual or cumulative construction or addition above five thousand (5,000)
139 square feet of gross nonresidential floor area on a lot that is not part of an approved
140 subdivision,

141 (b) The individual or cumulative Development of one (1) acre or more land, unless the
142 Development is part of a Site Plan application in an approved subdivision,

143 (c) Any mixed-use project that contains residential and non-residential uses,

144 (d) Projects that involve Wireless Communication System Facilities (WCSF),

145 (e) Projects that require any waiver from performance standards.

146 (f) Projects that also require subdivision or special exception approval, or

147 (g) Other projects requiring review which are not classified as a minor development.

148

149 **16.7.6 Application and Review Fees**

150 A. Review fee(s); reimbursements.

151 (1) All applications for plan approval for properties which come under this title must be
152 accompanied by a fee as determined by the Town Council.

153 (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of
154 the proposed plan and advertising of any public hearing regarding a development.

155 B. Independent peer review.

156 (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the
157 Code Enforcement Officer, may require an independent consultant or specialist engaged by
158 the Town, at the applicant's expense, to:

159 (a) Determine compliance with all requirements of this title related to public health,
160 safety and welfare and the abatement of nuisances; or

161 (b) Assist with the technical review of applications submitted for new or amended
162 development.

163 C. When peer review is required of the applicant, sufficient funds, based on a written estimate
164 by the required consultant, must be deposited in an applicant's service account per Chapter
165 3.3, prior to commencing said review and continuing with the review of the development
166 plan application.

167 **16.7.7 Applicant attendance at review meeting(s).**

168 The applicant or duly authorized representative must attend all Board meetings for which the
169 applicant's application has been placed on the agenda. Relief may be given from this
170 requirement by the Board Chairperson.

171 **16.7.8 Waivers**

172 A. Waiver authorization.

173 Upon written request, the Planning Board may waive or modify certain required
174 improvements, due to special circumstances of a particular plan, if the applicant demonstrates
175 that the interest of public health, safety, the natural environment, and general welfare are not
176 harmed, or if those improvements are inappropriate because of inadequacy or lack of
177 connecting facilities adjacent or in proximity to the proposed development, subject to
178 appropriate conditions as determined by the Planning Board, and provided the waivers do not
179 have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

180 B. Only waivers from submission requirements may be considered for Minor Site Plans, and not
181 wavers from performance standards. Projects seeking such waivers must be classified as
182 Major Site Plan applications to be reviewed by the Planning Board.

183 C. Objectives secured.

184 In granting modifications or waivers, the Planning Board must require such conditions as
185 will, in its judgment, secure substantially the objectives of the requirements so waived or
186 modified. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for
187 Decisions when reviewing waiver or modification requests.

188 **16.7.9 Other Requirements**

189 A. Burden of proof.

190 In all instances, the burden of proof is upon the applicant proposing the development.

191 B. Site walk determination.

192 (1) The Planning Board should make a determination on whether a site walk would be
193 beneficial in order to become fully informed about the site and in a knowledgeable position
194 to prescribe contour intervals to be employed on topographic maps and grading plans for
195 the development, the applicant must arrange a joint inspection of the site with the Planning
196 Board.

197 (2) If a site inspection is required, the applicant must stake out property corners, entrance
198 locations, and building corners, along with other site features to help orient the Board and
199 members of the public.

200 (3) The applicant must provide each Board member with a copy of the plan on an 11"x17"
201 sheet at the site walk.

202 C. Safe use.

203 The land/water area to be developed must be of such character that it can be used without
204 danger to health or peril from fire, flood, soil failure or other hazard.

205 **16.7.10 Review Process and Submission Requirements**

206 A. Pre-Application and Conference

207 (1) Process. Pre-Application Conference. Applicants for Site Plan review are encouraged to
208 schedule a Pre-Application conference with the Town Planner. The purpose of this meeting
209 is to familiarize the applicant with the review procedures and submission requirements, and
210 approval criteria, and to familiarize the Planner with the nature of the project.

211 (a) Such review shall not cause the plan to be a pending application or proceeding under
212 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

213 (b) To request a Pre-Application conference the applicant shall submit, at a minimum, a
214 brief narrative describing the project, the location of the project on a US Geologic
215 Survey (USGS) topographic map, a rough drawing of the proposal for the subject
216 property, and a copy of the Tax Map showing the development parcel.

217 B. Sketch Plan Review

218 (1) Major Site Plan applicants may choose to submit a development sketch plan with design
219 concept, at their discretion. The purpose of Sketch Plan Review with the Planning Board is
220 a chance for the applicant to ask questions and get feedback and guidance from the Board
221 before proceeding with an advance site plan design, and for the Board to provide guidance
222 on submission requirements.

223 Any person requiring Site Plan review must submit an application on forms prescribed by
224 the Planning Board. No more than one application/plan for a piece of property may be
225 under review before the Planning Board.

226 (a) A completed application must be submitted to the Town Planner no later than 21 days
227 prior to the meeting date for the item to be included on the agenda.

228 [1] Refer to current Planning Department application checklist for required
229 number of paper copies.

230 [2] One electronic submission in PDF format of the complete submission
231 including all forms, plans, and documentation.

232 (2) Planning Board review. The Planning Board must, within 65 days of Sketch Plan
233 submission, act upon the Sketch Plan as follows:

234 (a) The Planning Board must determine whether the Sketch Plan proposal complies with
235 the standards contained herein.

236 (b) Where it deems necessary, make specific suggestions in writing to be incorporated by
237 the applicant in subsequent submissions.

238 (c) The Planning Board should determine as to whether or not an on-site walk will be
239 required.

240 (d) The applicant should provide an indication as to whether or not waivers from the
241 submission requirements or performance standards will be part of the next phase of
242 review.

243 (e) Any plan may be continued for a total period not to exceed 90 calendar days for good
244 and sufficient reason (i.e., for revisions to be made, studies completed, or additional
245 information submitted) and acceptable to both the applicant and the Planning Board.
246 Such plan is automatically scheduled for the agenda of the next regular Planning
247 Board meeting after the 90th day and action completed in accordance with the
248 requirements and timing contained in this title, whether the applicant has
249 accomplished the purposes for which continued or not.

250 [1] The action to table by the Planning Board must be an action to temporarily
251 suspend action and not to suppress a vote on the plan.

252 (3) Plan Requirements

253 (a) The Sketch Plan must be submitted to the Planning Board at the time of, or prior to,
254 the on-site inspection.

255 (b) The Sketch Plan must show in simple form on a topographic map the proposed site,
256 subdivision, landscape architectural or architectural design concept, including streets,
257 lots, structures and other features, in relation to existing conditions and municipal
258 land use zone(s) regulations.

259 (c) The sketch may be a freehand penciled sketch and must include the data listed below.

260 (4) Written Submission Requirements

261 (a) Any person requiring development review must submit an application on forms
262 prescribed by the Planning Board, together with a development plan and such
263 submission contents as may be required in § 16.7.10.C. A complete application
264 consists of all the required elements. No more than one application/plan for a piece of
265 property may be under review at a time. No more than one approved Final Plan for a
266 piece of property may exist.

267 (b) General project information must describe or outline the existing conditions of the
268 site, including:

269 [1] Covenants;

270 [2] Available community facilities; and

271 [3] Utilities.

272 (c) Proposed development, such as:

273 [1] Number of residential or business lots and/or dwelling units;

274 [2] Typical lot width and depth;

275 [3] Price range;

276 [4] Business areas;

277 [5] Playgrounds, park areas and other public areas;

278 [6] Protective covenants;

279 [7] Utilities; and

280 [8] Street improvements.

281 C. Preliminary Plan Review

282 (1) General Process

283 (a) Within six months after Planning Board acceptance of a Sketch Plan, if applicable,
284 the applicant must submit an application for preliminary Site Plan approval in the
285 form prescribed herein.

286 (b) Preliminary Plan application filing and completeness review. A determination as to
287 whether the Town Planner validates an application is based on a review of the
288 application in accordance with the submission contents checklist filed with the plan,
289 which indicates all elements required under § 16.7.10.C and § 16.7.10.D have been
290 received, or written request for any waivers of submission requirements or

291 performance standards is included. The application must be accompanied by a plan
292 and the required fee, together with a certification the applicant has notified abutters
293 by mail of the filing of the plan application for approval.

294 (c) Receipt and scheduling review. Upon validation, the Town Planner must place the
295 application on the Planning Board's agenda for Planning Board completeness review
296 and vote to find the Preliminary Plan application complete and, upon Planning Board
297 approval, issue a dated notice to the applicant, which is thereafter the official time of
298 submission.

299 (d) Site inspection. In the course of the review of the plan, the Planner must, and the
300 Planning Board may at its discretion, make a physical inspection and may make
301 photographic record of the existing conditions on the site.

302 (e) Advisory opinions. At any time during review, the Planner may request an advisory
303 opinion from the Planning Board, Conservation Commission or Port Authority on
304 issues related to the application. Where applications are for land within wetland
305 setbacks or the Resource Protection Overlay Zone, the Conservation Commission
306 must be invited to review and offer recommendations from an environmental
307 protection perspective. The Planner also must make recommendation on the necessity
308 for independent review.

309 (f) Planner analysis. The Planner must analyze the application and forward comments
310 and recommendations to the applicant and the Planning Board.

311 (g) A completed application must be submitted to the Town Planner no later than 21 days
312 prior to the meeting date for the item to be included on the agenda. The submission
313 must include on the plan or attached thereto, the requirements of subsection (4) Plan
314 Requirements and subsection (5) Additional Requirements, unless upon the
315 applicant's written request, the Planning Board, by formal action, waives or defers
316 any requirement(s) for submission.

317 [1] Refer to current Planning Department application checklist for required number of
318 paper copies.

319 [2] One electronic submission in PDF format of the complete submission including
320 all forms, plans, and documentation.

321 (2) Public hearing

322 (a) Scheduling

323 [1] A Major Site Plan application must be scheduled for review and public hearing
324 once the Preliminary Plan application has been found complete by the Planning
325 Board.

326 (a) Public notice.

327 [1] The Town Planner must place a public notice of such public hearing in a
328 newspaper of general circulation in the Town at least seven and not more than 14
329 days prior to the scheduled hearing date; said notice must also be posted in at least
330 three prominent public locations in Town at least 10 days prior to the hearing;
331 and, in the case of a plan located within 500 feet of the Towns of Eliot or York,
332 Maine, must be forwarded to the Southern Maine Planning and Development
333 Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior
334 to the hearing.

335 (b) Abutter notice.

336 [1] The Town Planner must cause written notice of the public hearing to be sent by
337 postage paid, first-class mail (cost to be paid by the applicant) to all owners of
338 abutting property, as herein defined (within 150 feet of the property), and by
339 regular mail to the Code Enforcement Officer, the Commissioner of Public
340 Works, and where applicable, the Port Authority or Conservation Commission, at
341 least seven days prior to the scheduled date. Failure of the parties to receive said
342 notice does not invalidate any Board action.

343 [2] Abutter notice must follow applicability as described in §16.5.2 Abutter Notice.

344 [3] For a wireless communication system facility (WCSF) plan application, the Town
345 Planner must cause written notice of the hearing sent by postage paid, first-class
346 mail, provided by the applicant, at least seven days prior to the hearing to all
347 owners of abutting property and property located within 1,000 feet of any
348 property line of the property for which the permit is requested. Notice must also
349 be given to any town located within 1,000 feet of the proposed
350 telecommunications facility. The applicant must provide this notification and
351 must present proof of such notification to the Town Planner. The notification
352 must include: the name of the applicant, location of the property, a brief
353 description of the project, and a plot plan identifying the proposed site layout in
354 relation to nearby streets and properties.

355 (c) Public Hearing Procedure

356 [1] The Planning Board may receive oral and documentary evidence, but must
357 exclude evidence which it considers irrelevant, immaterial or unduly repetitious.

358 [2] The Chairperson of the Planning Board must determine the order of presentation
359 by parties to the hearing. Each party must have the right to proceed without
360 interruption, except that rulings by the Chairperson prevail. The applicant's
361 presentation must proceed in accordance with the checklist provided.

362 [3] Any party may be represented by agent or attorney.

363 [4] The Town Planner, in consultation with other Town officials as may have an
364 interest in the application, must present into evidence a written summary of
365 findings and recommendations.

366 [5] The Planning Board may continue the hearing to another time and location,
367 including the site of the development, as it deems necessary.

368 (3) Planning Board review schedule and decision on Preliminary Plan application.

369 (a) Within 35 days of a Public Hearing, the Planning Board must approve the plan,
370 approve the plan with conditions, disapprove the plan, postpone action on the plan, or
371 continue the review to another time/location.

372 (b) Continuation or tabling of a review beyond the thirty-five-day period for Site Plan
373 applications must be for good and sufficient reason and be acceptable to both the
374 applicant and the Planning Board.

375 (c) Any plan may be continued for a total period not to exceed 90 calendar days for good
376 and sufficient reason (i.e., for revisions to be made, studies completed or additional
377 information submitted) and acceptable to both the applicant and the Planning Board.
378 Such plan is automatically scheduled for the agenda of the next regular Planning

379 Board meeting after the 90th day and action completed in accordance with the
380 requirements and timing contained in this title, whether the applicant has
381 accomplished the purposes for which continued or not.

382 (d) The action to table by the Planning Board must be an action to temporarily suspend
383 action and not to suppress a vote on the plan.

384 (e) Failure to act within thirty-five-days constitutes disapproval of the plan, in which case
385 the applicant may resubmit the plan without payment of an additional application fee.
386 Conditions of approval may include, but are not limited to, type of vegetation,
387 increased setbacks and yard space, specifications for sewage and water supply
388 facilities, buffers and screens, period of maintenance sureties, deed restrictions,
389 locations of piers, docks, parking or signs, type or style of construction, and the
390 amount of all guarantees which may be required.

391 (f) The decision of the Planning Board plus any conditions imposed must be noted on
392 three copies of the Preliminary Plan. One copy must be returned to the applicant, one
393 retained by the Planning Board and one forwarded to the municipal officials.

394 (4) Plan Requirements

395 (a) Plan sheets drawn on a reproducible medium and must measure no less than 11 inches
396 by 17 inches and no larger than 24 inches by 36 inches;

397 (b) With scale of the drawings no greater than one inch equals 30 feet for developments
398 less than 10 acres, and one inch equals 50 feet for all others;

399 (c) Code block in the lower right-hand corner. The block must contain:

400 [1] Name(s) and address(es) of the applicant and owner;

401 [2] Name of the project;

402 [3] Name and address of the preparer of the plan, with professional seal, if applicable;

403 [4] Date of plan preparation/revision, and a unique ID number for the plan and any
404 revisions;

405 (d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in
406 the manner recommended by the State Board of Registration for Land Surveyors;

407 (e) An arrow showing true North and the magnetic declination, a graphic scale, and
408 signature blocks for the owner(s) and members of the Planning Board;

409 (f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of
410 any property line of the development;

411 (g) Vicinity map and aerial photograph showing the property in relation to surrounding
412 properties, roads, geographic, natural resource (wetland, etc.), historic sites,
413 applicable comprehensive plan features such as proposed park locations, land uses,
414 zones, and other features within 500 feet from any boundary of the proposed
415 development;

416 (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be
417 disturbed and amount of street frontage;

418 (i) Names and addresses of all owners of record of property abutting the development,
419 including those across a street;

420 (j) Existing Development Area Conditions, including but not limited to:

- 421 [1] Location and description of all structures, including signs, existing on the site,
422 together with accesses located within 100 feet of the property line;
- 423 [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife
424 habitat areas, forest cover, and outcroppings;
- 425 [3] Utilities existing, including power, water, sewer, holding tanks, bridges, culverts
426 and drainageways.
- 427 (k) Proposed development area conditions including, but not limited to:
- 428 [1] Structures: their location and description, including signs, to be placed on the
429 site, floor plans and elevations of principal structures as well as detail of all
430 structures, showing building materials and colors, and accesses located within
431 100 feet of the property line.
- 432 [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts
433 and drainageways;
- 434 [3] Sewage facilities type and placement. Test pit locations, at least two of which
435 must meet the State of Maine Plumbing Code requirements, must be shown;
- 436 [4] Domestic water source;
- 437 [5] Parks, open space, or conservation easement locations;
- 438 [6] Lot lines, interior and exterior, right-of-way, and street alignments;
- 439 [7] Road and other paved ways plans, profiles and typical sections including all
440 relevant data;
- 441 [8] Setbacks existing and proposed;
- 442 [9] Machinery permanently installed locations likely to cause appreciable noise at
443 the lot lines;
- 444 [10] Raw, finished or waste materials to be stored outside the buildings, and any
445 stored material of a toxic or hazardous nature;
- 446 [11] Topographic contours of existing contours and finished grade elevations within
447 the development;
- 448 [12] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other
449 artificial features locations and dimensions proposed;
- 450 [13] Temporary marker locations adequate to enable the Planning Board to readily
451 locate and appraise the layout of the development;
- 452 [14] Land proposed to be dedicated to public use and the conditions of such
453 dedication;
- 454 (l) Natural features or site elements to be preserved. Written Submission Requirements
455 Legal interest documents showing legal interest of the applicant in the property to be
456 developed. Such documents must contain the description upon which the survey was
457 based;
- 458 (m) Property encumbrances currently affecting the property, as well as any proposed
459 encumbrances;
- 460 (n) Water District approval letter, if public water is used, indicating there is adequate
461 supply and pressure to be provided to the development;
- 462 (o) Erosion and sedimentation control plan endorsed by the York County Soil and Water

- 463 Conservation District or the Town's engineering consultant;
464 (p) Stormwater management preliminary plan for stormwater and other surface water
465 drainage prepared by a registered professional engineer including the general location
466 of stormwater and other surface water drainage areas;
467 (q) Soil survey for York County covering the development. Where the soil survey shows
468 soils with severe restrictions for development, a high intensity Class "A" soil survey
469 must be provided;
470 (r) Vehicular traffic report estimating the amount and type of vehicular traffic that will
471 be generated by the development on a daily basis and for peak hours;
472 (s) Traffic impact analysis in accordance with § 16.5.27.E for developments involving 40
473 or more parking spaces or which are projected to generate more than 400 vehicle trips
474 per day;
475 (t) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to
476 be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
477 (u) Town Sewage Department or community system authority letter, when sewage
478 disposal is to be through a public or community system, approving the connection and
479 its location;
480 (v) Letters of evaluation of the development by the Chief of Police, Fire Chief,
481 Commissioner of Public Works, and, for residential applications, the superintendent
482 of schools, must be collected and provided by the Town Planner.
483 (w) Additional submissions as may be required by other sections of this title such as for
484 clustered development, mobile home parks, or junkyards must be provided.
485 (5) Additional requirements. In its consideration of an application/plan, the Planning Board
486 may at any point in the review require the applicant to submit additional materials, studies,
487 analyses, and agreement proposals as it may deem necessary for complete understanding of
488 the application. Such materials may include:
489 (a) Traffic impact analysis, for projects that are not otherwise required to submit a traffic
490 impact analysis by submission requirement C(4)(s), above.
491 (b) Environmental analysis. An analysis of the effects that the development may have
492 upon surrounding lands and resources, including intensive study of groundwater,
493 ecosystems, or pollution control systems;
494 (c) Hydrologic analysis. An analysis of the effects that the development may have on
495 groundwater must be conducted in accordance with § 16.7.11.J. This analysis is
496 always required for mobile home park proposals.
497 (6) Additional Submittal Content Required for Review of Wireless Communication Services
498 Facilities (WCSF).
499 (a) A visual impact analysis prepared by a landscape architect or other qualified
500 professional acceptable to the Town that quantifies the amount of visual impact on
501 properties located within 500 feet, within 2,500 feet and within two miles of the
502 WCSF. This analysis will include recommendations to mitigate adverse visual
503 impacts on such properties;
504 (b) An analysis prepared by a qualified professional acceptable to the Town that
505 describes why this site and structure is critical to the operation for which it is

506 proposed. The analysis must address, at a minimum: existing and proposed service
507 area; how this WCSF is integrated with other company operations, particularly other
508 structures in Kittery and surrounding communities; future expansion needs in the
509 area; the effect on company operations if this structure is not constructed in this
510 location; other sites evaluated for location of this structure and how such sites
511 compare to the proposed site; other options, if any, which could be used to deliver
512 similar services, particularly if the proposed equipment can be co-located (shared use)
513 on an existing structure; and an analysis to the projected life cycle of this structure
514 and location;

515 (c) Certification by a structural engineer that construction of the structure satisfies all
516 federal, state and local building code requirements as well as the requirement of
517 maximum permitted co-location at the site as approved by the Planning Board/Town
518 Planner;

519 (d) A plan note stating the payment of all required performance guarantees as a condition
520 of plan approval;

521 (e) Payment of the Planning Board application fees;

522 (f) And all other requirements per this chapter.

523 D. Final Plan Review

524 (1) Process, Major Site Plan

525 (a) Final Plan application. The applicant must, within six months after approval of a
526 Preliminary Plan, file with the Planning Board an application for approval of the Final
527 Plan in the form prescribed herein.

528 (b) Failure to submit Final Plan application. If the Final Plan is not submitted to the
529 Planning Board within six months after the approval of the Preliminary Plan, the
530 Planning Board may refuse to act on the Final Plan and require resubmission of the
531 Preliminary Plan. Any plan resubmitted must comply with all application
532 requirements, including payment of fees.

533 (c) A completed application must be submitted to the Town Planner no later than 21 days
534 prior to the meeting date for the item to be included on the agenda. The submission
535 must include on the plan or attached thereto, the requirements of subsection (3) Final
536 Plan Requirements, unless upon the applicant's written request, the Planning Board,
537 by formal action, waives or defers any requirement(s) for submission.

538 [1] Refer to current Planning Department application checklist for required number of
539 paper copies.

540 [2] One electronic submission in PDF format of the complete submission including
541 all forms, plans, and documentation.

542 [3] GIS data for all property corners and site plan elements.

543 (d) Application/plan review expiration.

544 [1] Uncounted time. When an approved plan is required to be reviewed/approved by
545 another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency
546 or that a plan is continued by the Planning Board in accordance with
547 § 16.7.10.C(3) from time of submission to time of decision inclusive, verifiable
548 by recorded documentation, is not counted as part of the cumulative time periods

549 described in this section.

550 [2] Requests for extension. The Planning Board may grant extensions to expiration
551 dates upon written request by the developer, on a case-by-case basis.

552 (2) Process, Minor Site Plan

553 (a) The Final Plan application may be submitted concurrently with Preliminary Plan
554 submission requirements to the Director of Planning and Development for
555 administrative review and decision.

556 (3) Final Plan Requirements

557 A complete Final Plan application must fulfill all the requirements of a Preliminary Plan as
558 indicated in § 16.7.10.C of this section and must show the following items, unless the
559 Planning Board, by formal action, upon the applicant's written request, waives or defers
560 any requirement(s) for submission. If no changes occurred to the Preliminary Plan, it also
561 may be considered to be the Final Plan.

562 (a) Preliminary Plan information, including vicinity map and any amendments thereto
563 suggested or required by the Planning Board or other required reviewing agency.

564 (b) Street names and lines, pedestrianways, lots, easements and areas to be reserved for
565 or dedicated to public use.

566 (c) Street length of all straight lines, the deflection angles, radii, lengths of curves and
567 central angles of all curves, tangent distances and tangent bearings.

568 (d) Lots and blocks within a subdivision, numbered in accordance with local practice.

569 (e) Markers/permanent reference monuments: Their location, source references and,
570 where required, constructed in accordance with specifications herein.

571 (f) Structures: their location and description, including signs, to be placed on the site,
572 floor plans and elevations of principal structures as well as detail of all structures,
573 showing building materials and colors, and accesses located within 100 feet of the
574 property line.

575 (g) Outdoor lighting and signage plan if the application involves the construction of more
576 than 5,000 square feet of nonresidential floor area; or the creation of more than
577 20,000 square feet of impervious area; or the creation of three or more dwelling units
578 in a building — prepared by a qualified lighting professional, showing at least the
579 following at the same scale as the site plan:

580 [1] All buildings, parking areas, driveways, service areas, pedestrian areas,
581 landscaping and proposed exterior lighting fixtures and snow storage;

582 [2] All proposed lighting fixture specifications and illustrations, including
583 photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of
584 all lamps (bulbs), and other descriptive information on the fixtures;

585 [3] Mounting height of all exterior lighting fixtures;

586 [4] Lighting analyses and luminance level diagrams or photometric point-by-point
587 diagrams on a twenty-foot grid, showing that the proposed installation conforms
588 to the lighting level standards of the ordinance codified in this section together
589 with statistical summaries documenting the average luminance, maximum
590 luminance, minimum luminance, average-to-minimum uniformity ratio, and
591 maximum-to-minimum uniformity ratio for each parking area, drive, canopy and

- 592 sales or storage area;
- 593 [5] Drawings of all relevant building elevations, showing the fixtures, the portions of
- 594 the walls to be illuminated, the luminance levels of the walls, and the aiming
- 595 points for any remote light fixtures; and
- 596 [6] A narrative that describes the hierarchy of site lighting and how the lighting will
- 597 be used to provides safety, security and aesthetic effects.
- 598 (h) Machinery in permanently installed locations likely to cause appreciable noise at the
- 599 lot lines.
- 600 (i) Materials (raw, finished or waste) storage areas, their types and location, and any
- 601 stored toxic or hazardous materials, their types and locations.
- 602 (j) Fences, retaining walls and other artificial features, locations, and dimensions
- 603 proposed.
- 604 (k) Landscaping plan, including location, size and type of plant material.
- 605 (l) Stormwater management plan for stormwater and other surface water drainage
- 606 prepared by a registered professional engineer, including the location of stormwater
- 607 and other surface water drainage area; a post-construction stormwater management
- 608 plan that defines maintenance responsibilities, responsible parties, shared costs, and
- 609 schedule for maintenance; a draft maintenance agreement for stormwater
- 610 management facilities; and, where applicable, draft documents creating a
- 611 homeowners' association referencing the maintenance responsibilities. Where
- 612 applicable, the maintenance agreement must be included in the document of
- 613 covenants, homeowners' documents and/or as riders to the individual deed and
- 614 recorded with the York County Registry of Deeds.
- 615 (4) Written Submission Requirements
- 616 (a) Municipal impact analysis of the relationship of the revenues to the Town from the
- 617 development and the costs of additional publicly funded resources, including:
- 618 [1] Review for impacts. A list of the construction items that will be completed by the
- 619 developer prior to the sale of lots.
- 620 [2] Municipal construction and maintenance items. A list of construction and
- 621 maintenance items that must be borne by the municipality, which must include,
- 622 but not be limited to:
- 623 [a] Schools, including busing;
- 624 [b] Road maintenance and snow removal;
- 625 [c] Police and fire protection;
- 626 [d] Solid waste disposal;
- 627 [e] Recreation facilities;
- 628 [f] Runoff water disposal drainageways and/or storm sewer enlargement with
- 629 sediment traps.
- 630 [3] Municipal costs and revenues. Cost estimates to the Town for the above services
- 631 and the expected tax revenue of the development.
- 632 (b) Open space land cession offers. Written offers of cession to the municipality of all
- 633 public open space shown on the plan, and copies of agreements or other documents

- 634 showing the manner in which space(s), title to which is reserved by the subdivider,
635 are to be maintained.
- 636 (c) Open space land cession offers acknowledgement by Town. Written evidence that the
637 municipal officers are satisfied with the legal sufficiency of the documents referred to
638 in § 16.7.10.D(4)b. Such written evidence does not constitute an acceptance by the
639 municipality of any public open space referred to in § 16.7.10.D(4)b.
- 640 (d) Maintenance plan and agreement defining maintenance responsibilities, responsible
641 parties, shared costs and schedule. Where applicable, a maintenance agreement must
642 be included in the document of covenants, homeowners' documents and/or as riders
643 to the individual deed.
- 644 (e) Estimated costs. Specify the estimated total cost of the development and itemize the
645 estimated major expenses. The itemization of major costs should include, but not be
646 limited to, the costs of the following activities: roads, sewers, structures, water
647 supply, erosion control, pollution abatement and landscaping.
- 648 (f) The applicant shall demonstrate they have sent written notice of their filing for Minor
649 Site Plan review by postage paid, first-class mail (cost to be paid by the applicant) to
650 all owners of abutting property, as herein defined (within 150 feet of the property).
- 651 (5) Findings of Fact.
- 652 (a) After considering all submissions, evidence and testimony in accordance with the
653 requirements of all applicable state and the Town Code, the Planning Board or
654 Director of Planning and Development must make a finding of facts for each and
655 every proposed phase of development, including the development master plan and
656 each subsequent development plan, and take formal action as required in this title.
- 657 (b) Findings of fact. Action by the Planning Board must be based upon findings of fact
658 which certify or waive compliance with all the required standards of this title and
659 which certify the development meets the following requirements:
- 660 [1] Development conforms to local ordinances. The proposed development conforms
661 to a duly adopted Comprehensive Plan as per adopted provisions in the Town
662 Code, zoning ordinance, subdivision regulation or ordinance, development plan or
663 land use plan, if any. In making this determination, the municipal reviewing
664 authority may interpret these ordinances and plans.
- 665 [2] Water supply sufficient. The proposed development has sufficient water available
666 for the reasonably foreseeable needs of the development.
- 667 [3] Sewage disposal adequate. The proposed development will provide for adequate
668 sewage waste disposal and will not cause an unreasonable burden on municipal
669 services, if they are utilized.
- 670 [4] Stormwater managed. The proposed development will provide for adequate
671 stormwater management.
- 672 [5] Traffic managed. The proposed development will:
- 673 [a] Not cause unreasonable highway or public road congestion or unsafe
674 conditions with respect to the use of the highways or public roads existing or
675 proposed; and
- 676 [b] Provide adequate traffic circulation, both on site and off site.

- 677 [6] Parking and Loading. Provisions have been made for safe internal vehicular
678 circulation, loading and service areas, and parking associated with the proposed
679 development.
- 680 [7] Utilities. The size, type, and locations of all public utilities and private utilities to
681 serve the proposed development will be installed per accepted engineering
682 practices.
- 683 [8] Erosion controlled. The proposed development will not cause unreasonable soil
684 erosion or a reduction in the land's capacity to hold water so that a dangerous or
685 unhealthy condition results.
- 686 [9] Groundwater protected. The proposed development will not, alone or in
687 conjunction with existing activities, adversely affect the quality or quantity of
688 groundwater.
- 689 [10] Freshwater wetlands identified. All freshwater wetlands within the project area
690 have been identified on any maps submitted as part of the application, regardless
691 of the size of these wetlands.
- 692 [11] River, stream or brook identified. Any river, stream or brook within or abutting
693 the proposed project area has been identified on any maps submitted as part of
694 the application. For purposes of this section, "river, stream or brook" has the
695 same meaning as in 38 M.R.S. § 480-B, subsection 9. Municipal solid waste
696 disposal available. The proposed development will not cause an unreasonable
697 burden on the municipality's ability to dispose of solid waste, if municipal
698 services are to be used.
- 699 [12] Water body quality and shoreline protected. Whenever situated entirely or
700 partially within 250 feet of any wetland, the proposed development will not
701 adversely affect the quality of that body of water or unreasonably affect the
702 shoreline of that body of water. Flood areas identified and development
703 conditioned. All flood-prone areas within the project area have been identified on
704 maps submitted as part of the application. Water and air pollution minimized.
705 The proposed development will not result in undue water or air pollution. In
706 making this determination, the following must be considered:
- 707 [a] Elevation of the land above sea level and its relation to the floodplains;
708 [b] Nature of soils and subsoils and their ability to adequately support waste
709 disposal;
- 710 [c] Slope of the land and its effect on effluents;
711 [d] Availability of streams for disposal of effluents;
712 [e] Applicable state and local health and water resource rules and regulations; and
713 [f] Safe transportation, disposal and storage of hazardous materials.
- 714 [13] Aesthetic, cultural and natural values protected. The proposed development will
715 not have an undue adverse effect on the scenic or natural beauty of the area,
716 aesthetics, historic sites, significant wildlife habitat identified by the Department
717 of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable
718 natural areas, or any public rights for physical or visual access to the shoreline.
- 719 [14] Environmental Considerations. The proposed development will not result in

- 720 undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic
721 matter, odors, or electromagnetic interference.
- 722 [15] Utilization of the site. The proposed development does reflect the natural
723 capabilities of the site to support development.
- 724 [16] Developer financially and technically capable. Developer is financially and
725 technically capable to meet the standards of this section.
- 726 (c) For wireless communication system facility (WCSF). In development, the WCSF:
- 727 [1] Tower or other structure height does not exceed that which is essential for its
728 intended use and public safety;
- 729 [2] Proximity of tower to residential development or zones is acceptable;
- 730 [3] Nature of uses on adjacent and nearby properties is compatible;
- 731 [4] Surrounding topography is protected;
- 732 [5] Surrounding tree coverage and foliage is protected;
- 733 [6] Design of the tower, antenna or facility with particular reference to design
734 characteristics effectively eliminating or significantly reducing visual
735 obtrusiveness is minimized;
- 736 [7] Proposed ingress and egress to the site is adequate;
- 737 [8] Co-location with another existing WCSF has been thoroughly pursued and is not
738 feasible;
- 739 [9] Visual impacts on viewsheds, ridgelines and other impacts caused by tower
740 location, tree and foliage clearing and placement of structures and associated
741 development is minimized;
- 742 [10] Will not unreasonably interfere with the view of or from any public park, natural
743 scenic vista, and historic building or major view corridor and the Kittery
744 waterfront and harbor;
- 745 [11] Is not constructed in such a manner as to result in needless height, mass and guy-
746 wire supports, with documentation having been provided and reviewed regarding
747 the design capacity and/or the remaining co-location capacity of the
748 tower/facility; and
- 749 [12] “Stealth” technology has been pursued and is not a viable option.
- 750 (d) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
751 Zones, the proposed use will:
- 752 [1] Maintain safe and healthful conditions;
- 753 [2] Not result in water pollution, erosion or sedimentation to surface waters;
- 754 [3] Adequately provide for the disposal of all wastewater;
- 755 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
756 wildlife habitat;
- 757 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
758 coastal waters;
- 759 [6] Protect archaeological and historic resources as designated in the comprehensive
760 plan;

- 761 [7] Not adversely affect existing commercial fishing or maritime activities in a
 762 commercial fisheries/maritime activities district;
- 763 [8] Avoid problems associated with floodplain development and use; and
 764 [9] Is in conformance with the provisions of this title.
- 765 (e) For a right-of-way plan. The proposed right-of-way:
 766 [1] Does not create any nonconforming lots or buildings; and
 767 [2] Could reasonably permit the right of passage for an automobile.
- 768 (f) For special exception use – special exception use permitted. If a special exception use
 769 is requested, the special exception use will:
- 770 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties
 771 in adjacent use zones;
- 772 [2] Not prevent the orderly and reasonable use of permitted or legally established
 773 uses in the zone wherein the proposed use is to be located, or of permitted or
 774 legally established uses in adjacent use zones; and
- 775 [3] Not adversely affect the safety, the health, and the welfare of the Town.
 776 [4] Be in harmony with and promote the general purposes and intent of this title.
- 777 (6) Final Plan approval and recording.
- 778 (a) Agreement form. An approval by the Planning Board or Director of Planning and
 779 Development must take the form of an agreement between the Town and the
 780 applicant, incorporating as elements the application, the Planning Board’s findings of
 781 fact, and such conditions as the Planning Board may impose upon approval.
- 782 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
 783 Town Manager and Code Enforcement Officer.
- 784 (c) Updated GIS information. The applicant shall provide revised GIS data with any
 785 changes made during the review process for Major Site Plans, if necessary.
- 786 (d) Approved Final Plan signing. A plan has final approval only when the Planning
 787 Board has indicated approval by formal action and the plan has been properly signed
 788 by a majority of the Planning Board members or by the Chair only, if so voted by the
 789 Planning Board.
- 790 (e) Approved Final Plan recording. An approved plan involving the division of land,
 791 easements, or property boundary modification must be recorded by the York County
 792 Registry of Deeds.

16.7.11 Performance Standards and Approval Criteria

A. Water Supply

- 795 (1) The development shall be provided with a system of water supply that provides each use
 796 with an adequate supply of water.
- 797 (2) If the project is to be served by a public water supply, the applicant shall secure and submit
 798 a written statement from the Kittery Water District that the proposed water supply system
 799 conforms with its design and construction standards, will not result in an undue burden on
 800 the source of distribution system, and will be installed in a manner adequate to provide
 801 needed domestic and fire protection flows.

802 B. Sewage Disposal803 (1) Sewers.

804 (a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required,
805 provided said sewer, located within an abutting public way, is within 100 feet of the
806 property line as measured along the said public way. Individual dwellings and
807 structures in approved and recorded developments where public sewer becomes
808 available as described in this subsection must connect per the requirements of Title
809 13, Chapter 13.1.

810 (b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is
811 required for a commercial or industrial development or a residential subdivision,
812 where public sewer, within an abutting public way, is within 1,000 feet of the
813 property line as measured along said public way. In such an event, the developer shall
814 connect to public sewer per the Town's Superintendent of Sewer Services (SSS)
815 specifications and in accordance with Title 13. The developer shall provide written
816 certification to the Planning Board from the SSS that the proposed addition to public
817 sewer is within the capacity of the collection and wastewater treatment system.

818 (c) Sewer mains, service lines and related improvements must be installed at the
819 developer's expense. Service lines must extend to each lot's boundary line.
820 Connections to public sewer must be installed in accordance with this article and
821 Chapter 13.1, Sewer Service System, of the Kittery Town Code.

822 (d) Proposal and construction drawings must be approved in writing by the Town's SSS.
823 All required approvals must be secured before the start of Final Plan review.

824 (e) When public sewer connection pursuant to Subsection b above is not feasible as
825 determined by the Planning Board or Director of Planning and Development, the
826 applicable review authority may allow individual or common subsurface wastewater
827 disposal systems in accordance with § 16.7.11.B(2). To determine feasibility, the
828 developer shall submit information that considers the unique physical circumstances
829 of the property and sewer connection alternatives to conventional
830 construction/installation techniques, such as, but not limited to, horizontal/directional
831 boring and low-pressure sewer. The developer's information must be accompanied by
832 findings and recommendations of the Town Peer Review Engineer. In determining
833 feasibility, the Board may not base its decision solely on additional costs associated
834 with a sewer connection. The intent of this subsection is not to avoid the requirements
835 of Chapter 13.1, Sewer Service System, of the Kittery Town Code.

836 (2) Subsurface wastewater disposal systems.

837 (a) The developer shall submit plans for subsurface wastewater disposal designed by a
838 Maine licensed site evaluator in full compliance with the requirements of the State of
839 Maine Plumbing Code, Subsurface Wastewater Disposal Rules, and this title.
840 Subsurface wastewater disposal systems (SWDS) must be constructed according to
841 the approved plan.

842 (b) All first-time subsurface wastewater disposal systems must be installed in
843 conformance with State of Maine Subsurface Wastewater Disposal Rules and this
844 title. The following also apply:

845 [1] The minimum setback distance for a first-time subsurface disposal system may

- 846 not be reduced by variance.
- 847 [2] Clearing or removal of woody vegetation necessary to site a first-time system, and
848 any associated fill extensions may not extend closer than is allowed in Table
849 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface
850 sewage disposal.
- 851 (c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal
852 uses:
- 853 [1] Where no expansion is proposed, the SWDS must comply with § 16.7.11.B(2)
854 and Table 16.5.30 to the extent practicable and otherwise are allowed per the
855 Maine Subsurface Wastewater Disposal Rules; or
- 856 [2] Where expansion is proposed, the SWDS must comply with § 16.7.11.B(2) and
857 Table 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.
858 NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of
859 the Maine Subsurface Wastewater Disposal Rules.
- 860 (d) Subsurface wastewater disposal systems on unimproved lots created after April 26,
861 1990. Where public sewer connection is not feasible, the developer must submit
862 evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit
863 data and other information as required by the State of Maine Subsurface Wastewater
864 Disposal Rules and this title. In addition:
- 865 [1] On lots with a limiting factor identified as being within 24 inches of the surface, a
866 second site with suitable soils must be shown as a reserve area for future
867 replacement should the primary site fail. Such reserve area is to be shown on the
868 plan; not be built upon; and, must comply with all the setback requirements of the
869 Subsurface Wastewater Disposal Rules and this title.
- 870 [2] In no instance may a primary or reserve disposal area be permitted on soils or on a
871 lot requiring a first-time system variance request per the State of Maine
872 Subsurface Wastewater Disposal Rules.
- 873 [3] Test pits must be of sufficient numbers (a minimum of two) and so located at
874 representative points within each disposal area (primary and reserve sites) to
875 ensure that the proposed disposal system can be located on soils and slopes that
876 meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and
877 the State Plumbing Code. All passing and failing test pits must be shown on the
878 plan.
- 879 (e) The developer shall install advanced pretreatment to subsurface wastewater disposal
880 systems that are located inside or within 100 feet of areas that include a sand and
881 gravel aquifer as indicated on the Maine Department of Agriculture, Conservation
882 and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- 883 (3) Holding tanks.
- 884 (a) Holding tanks are not allowed for a first-time residential use.
- 885 (4) Sanitary facilities/restrooms.
- 886 (a) Any development containing a retail use or a food service use, or a combination
887 thereof, exceeding 10,000 square feet must provide public toilet facilities in
888 accordance with Subsections (b), (c) and (d) of this section.

889 (b) Public toilet facilities are to consist of at least one separate toilet for each sex; be
890 clearly marked; maintained in a sanitary condition and in good repair. Lavatory
891 facilities must be located within or immediately adjacent to all toilet rooms or
892 vestibules. There may be no charge for their use.

893 (c) Where a retail development exceeds 60,000 square feet, each toilet facility must
894 contain a minimum of two water closets.

895 (d) Requirements for handicapped accessibility to sanitary facilities are pursuant to
896 applicable state standards.

897 C. Stormwater and Surface Drainage

898 (1) Adequate provision must be made for drainage of all stormwater generated with the
899 development and any drained groundwater through a management system of natural and
900 constructed features. Where possible, existing natural runoff control features, such as
901 berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage
902 infiltration of storm waters. Otherwise, drainage may be accomplished by a management
903 system of constructed features such as swales, culverts, underdrains and storm drains.

904 (2) To ensure proper functioning, stormwater runoff control systems must be maintained in
905 good working order per § 16.7.11.D, Post-construction stormwater management.

906 (3) Where a development is traversed by a stream, river or surface water drainageway, or
907 where the Planning Board or Director of Planning and Development determines that
908 surface runoff should be controlled, easements and or drainage rights-of-way must be
909 provided which conform substantially to the lines of existing natural drainage paths. The
910 minimum width of the drainage easements or rights-of-way is 30 feet.

911 (a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum
912 trench width at the pipe crown must be the outside diameter of the pipe plus two feet.
913 The pipe must be bedded in a fine granular material, containing no stones larger than
914 three inches, lumps of clay, or organic matter, reaching a minimum of six inches
915 below the bottom of the pipe extending to six inches above the top of the pipe.

916 (b) Except for normal thinning and landscaping, existing vegetation must be left intact to
917 prevent soil erosion.

918 (4) When proposed development does not require Maine Department of Environmental
919 (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

920 (a) All components of the stormwater management system must be designed to limit
921 peak discharge to predevelopment levels for the two-year and twenty-five-year,
922 twenty-four-hour duration, frequencies, based on the rainfall data for Portsmouth,
923 NH. When the development discharges directly to a major water body, peak discharge
924 may be increased from predevelopment levels, provided downstream drainage
925 structures are suitably sized.

926 (b) The stormwater management system must be designed to accommodate upstream
927 drainage, taking into account existing conditions and approved or planned
928 developments not yet built and must include a surplus design capacity factor of 25%
929 for potential increases in upstream runoff.

930 (c) Downstream drainage requirements must be studied to determine the effect of the
931 proposed development. The storm drainage must not overload existing or future

932 planned storm drainage systems downstream from the development. The developer is
933 responsible for financing any improvements to existing drainage systems required to
934 handle the increased storm flows.

935 [1] Wherever the storm drainage system is not within the right-of-way of a public
936 street, perpetual easements must be provided to the Town allowing maintenance
937 and improvement to the system.

938 [2] All sediment and erosion control measures must be designed in accordance with
939 MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

940 [3] Catch basins in streets and roads must be installed where necessary and located at
941 the curbline. In parking lots and other areas, catch basins must be located where
942 necessary to ensure proper drainage.

943 [4] Where soils require a subsurface drainage system, the drains must be installed and
944 maintained separately from the stormwater drainage system.

945 [5] Where the Board has required a stormwater management and erosion control plan
946 and MDEP approval under Chapters 500 and 502 is not required, said plan must
947 be endorsed by the York County Soil and Water Conservation District.

948 [6] Drainage easements for existing or proposed drainageways located outside a
949 public way must be maintained and/or improved in accordance with § 16.7.11.D,
950 Post-construction stormwater management.

951 D. Post-construction stormwater management.

952 (1) Purposes. This section is enacted to provide for the health, safety and general welfare of the
953 citizens of Kittery through monitoring and enforcement of compliance with post-
954 construction stormwater management plans in order to comply with minimum control
955 measures requirements of the federal Clean Water Act, of federal regulations and of
956 Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section
957 seeks to ensure that post-construction stormwater management plans are followed and
958 stormwater management facilities, including but not limited to any parking areas, catch
959 basins, drainage swales, detention basins and ponds, pipes and related structures that are
960 part of the storm drainage system, are properly maintained and pose no threat to public
961 safety.

962 (2) Authority. The Maine Department of Environmental Protection, through its dissemination
963 of the General Permit for the Discharge of Stormwater from Small Municipal Separate
964 Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small
965 municipal separate storm sewer system ("small MS4"); under this general permit, listing as
966 a regulated small MS4 requires enactment of this section as part of the Town's stormwater
967 management program in order to satisfy the minimum control measures required by Part IV
968 D 5 ("Post-construction stormwater management in new development and
969 redevelopment").

970 (3) Applicability.

971 (a) In general. This section applies to all new development or redevelopment (any
972 construction activity on premises already improved that alters stormwater drainage
973 patterns) including one acre or more of disturbed area, or activity with less than one
974 acre of total land area that is part of a subdivision, if the subdivision will ultimately
975 disturb an area equal to or greater than one acre.

976 (b) Exception. This section does not apply to new development or redevelopment on a
977 lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has
978 received approval of its post-construction stormwater management plan and
979 stormwater management facilities under the Town's subdivision or other zoning,
980 planning or other land use ordinances; said lot, tract or parcel will not require
981 additional review under this section but must comply with the post-construction
982 stormwater management plan for that approved subdivision.

983 (c) Post-construction stormwater management plan approval.

984 [1] General requirement. Notwithstanding any ordinance provision to the contrary,
985 and except as provided in § 16.7.11.D.(3)(b), Exception, no applicant for a
986 building permit, Subdivision approval, Site Plan approval or other zoning,
987 planning or other land use approval for new development or redevelopment to
988 which this section is applicable will receive such permit or approval for that new
989 development or redevelopment unless the applicant also receives approval for its
990 post-construction stormwater management plan and stormwater management
991 facilities.

992 [2] Notice of BMP discharge to Town's MS4. At the time of application for a
993 building permit, subdivision approval, Site Plan approval or other zoning,
994 planning or other land use approval for new development or redevelopment to
995 which this section is applicable, the applicant must notify the Town Planner if its
996 post-construction stormwater management plan includes any BMP(s) that will
997 discharge to the Town's MS4 and must include in this notification a listing of
998 which BMP(s) will so discharge.

999 [3] Engineering and administrative fees. At the time of application, the applicant
1000 must pay an amount to the Town estimated to be sufficient to pay the engineering
1001 review costs and administrative costs incurred by the Town in review of the post-
1002 construction stormwater management plan. The Town will deduct from this
1003 amount the engineering and administrative costs incurred by the Town based
1004 upon the hours of engineering review time and prevailing hourly rate for
1005 reimbursement of the Town's administrative costs. Any remaining engineering
1006 and administrative review costs owed by the applicant must be paid in full by the
1007 applicant prior to the issuance of any temporary or permanent certificate of
1008 occupancy, and any unused balance remaining at that time will be refunded to the
1009 applicant.

1010 (d) Post-construction stormwater management plan compliance.

1011 [1] General requirements. Any person owning, operating, leasing or having control
1012 over stormwater management facilities required by a post-construction
1013 stormwater management plan approved under the Town's Subdivision, Site Plan
1014 or other zoning, planning or other land use ordinances must demonstrate
1015 compliance with that plan as follows:

1016 [a] That person or a qualified post-construction stormwater inspector hired by that
1017 person must, at least annually, inspect the stormwater management facilities in
1018 accordance with all municipal and state inspection, cleaning and maintenance
1019 requirements of the approved post-construction stormwater management plan;

1020 [b] If the stormwater management facilities require maintenance to function as

1021 intended by the approved post-construction stormwater management plan, that
1022 person must take corrective action(s) to address the deficiency or deficiencies;
1023 and

1024 [c] That person or a qualified post-construction stormwater inspector hired by that
1025 person must, on or by July 1 of each year, provide a completed and signed
1026 certification to the Code Enforcement Officer in a form provided by the
1027 Town, certifying that the person has inspected the stormwater management
1028 facilities and that they are adequately maintained and functioning as intended
1029 by the approved post-construction stormwater management plan or that they
1030 require maintenance or repair, describing any required maintenance and any
1031 deficiencies found during inspection of the stormwater management facilities,
1032 and if the stormwater management facilities require maintenance or repair of
1033 deficiencies in order to function as intended by the approved post-construction
1034 stormwater management plan, the person must provide a record of the
1035 required maintenance or deficiency and corrective action(s) taken.

1036 [2] Right of entry. In order to determine compliance with this section and with the
1037 post-construction stormwater management plan, the Code Enforcement Officer
1038 may enter upon property at reasonable hours with the consent of the owner,
1039 occupant or agent to inspect the stormwater management facilities.

1040 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must
1041 include the following in its annual report to the Maine Department of Environmental
1042 Protection:

1043 [1] Cumulative number of sites that have stormwater management facilities
1044 discharging into its MS4;

1045 [2] Summary of the number of sites that have stormwater management facilities
1046 discharging into its MS4 that were reported to the Town;

1047 [3] Number of sites with documented functioning stormwater management facilities;
1048 and

1049 [4] Number of sites that require routine maintenance in order to continue the original
1050 line and grade, the hydraulic capacity, and the original purpose of improvements;
1051 or remedial action to ensure that stormwater management facilities are
1052 functioning as intended.

1053 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions
1054 of this section and take appropriate actions to seek the correction of violations.
1055 Enforcement of the post-construction stormwater management regulations are
1056 conducted in accordance with Chapter 16.7.11.D.

1057 (2). Storm drainage construction standards.

1058 (a) Materials:

1059 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
1060 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with
1061 a safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints
1062 are to be of the rubber gasket type, meeting ASTM Designation C443-70, or of an
1063 approved performed plastic jointing material such as "Ramnek." Perforated
1064 concrete pipe must conform to the requirements of AASHTO M175 for the

- 1065 appropriate diameters.
- 1066 [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of
- 1067 AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO
- 1068 Designation M196 for aluminum alloy pipe for sectional dimensions and type of
- 1069 bituminous coating. Pipe gauge is to be as required to meet the soil and traffic
- 1070 loads with a deflection of not more than 5%.
- 1071 [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding
- 1072 requirements.
- 1073 [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
- 1074 [5] Catch basins are to be precast concrete truncated cone section construction,
- 1075 meeting the requirements of ASTM Designation C478, or precast concrete
- 1076 manhole block construction, meeting the requirements of ASTM C139, radial
- 1077 type. Castings are to be square cast iron sized for the particular inlet condition
- 1078 with the gratings perpendicular to the curblin. Bases may be cast-in-place 3,000
- 1079 psi twenty-eight-day strength concrete or may be of precast concrete, placed on a
- 1080 compacted foundation of uniform density. Metal frames and traps must be set in a
- 1081 full mortar bed with tops and are to conform to the requirements of AASHTO
- 1082 M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings
- 1083 or AASHTO M183 (ASTM A283, Grade B or better) for structure steel.
- 1084 (b) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless
- 1085 specific approval for curvilinear drain is obtained in writing from the Commissioner
- 1086 of Public Works.
- 1087 (c) Manholes are to be provided at all changes in vertical or horizontal alignment and at
- 1088 all junctions. On straight runs, manholes are to be placed at a maximum of three-
- 1089 hundred-foot intervals.
- 1090 (d) Upon completion, each catch basin or manhole must be cleared of all accumulation of
- 1091 silt, debris or other foreign matter and kept clean until final acceptance.

1092 E. Vehicular Traffic

- 1093 (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have
- 1094 adequate capacity to accommodate the additional traffic generated by the development.
- 1095 Intersections on arterial streets within a half (0.5) mile of any entrance road which are
- 1096 functioning at a Level of Service of D or better prior to the development shall function at a
- 1097 minimum at Level of Service D after development. If any such intersection is functioning
- 1098 at a Level of Service E or lower prior to the development, the project shall not reduce the
- 1099 current level of service. This requirement may be waived by the Planning Board if the
- 1100 project is located within a growth area designated in the Town's adopted Comprehensive
- 1101 Plan and the Board determines that the project will not have an unnecessary adverse impact
- 1102 on traffic flow or safety.
- 1103 (a) A development not meeting this requirement may be approved if the applicant
- 1104 demonstrates that:
- 1105 [1] A public agency has committed funds to construct the improvements necessary to
- 1106 bring the level of access to this standard, or
- 1107 [2] The applicant will assume financial responsibility for the improvements necessary

- 1108 to bring the level of service to this standard and will assure the completion of the
1109 improvements with a financial guarantee acceptable to the municipality.
- 1110 (2). Traffic Impact Study. When required by the Planning Board or Director of Planning and
1111 Development, a Traffic Impact Study will include the following elements related to the
1112 project and surrounding street network.
- 1113 (a) An executive summary outlining the study findings and recommendations.
- 1114 (b) A physical description of the project site and study area encompassed by the report
1115 with a diagram of the site and its relationship to existing and proposed development
1116 sites within the study area.
- 1117 (c) A complete description of the proposed uses for the project site (in cases where
1118 specific uses have not been identified, the highest traffic generators within the
1119 category best fitting the proposed development must be used to estimate traffic
1120 generators).
- 1121 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any
1122 proposals for the development of vacant parcels or redevelopment of parcels within
1123 the study area of which the municipality makes the applicant aware, must be included
1124 in the description.
- 1125 (e) Street geometry and existing traffic control devices on all major streets and
1126 intersections affected by the anticipated traffic generated.
- 1127 (f) Trip generation must be calculated for the proposed project and other proposed new
1128 projects and redevelopment projects within the study area using the most recent data
1129 available from the Institute of Transportation Engineers' (ITE) Trip Generation
1130 Guide, and/or actual field data collected from a comparable trip generator (i.e.,
1131 comparable in size, location and setting). This data will be presented in a summary
1132 table such that assumptions on trip generation and rates arrived at by the engineer are
1133 fully understandable to the Planning Board.
- 1134 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site
1135 during the appropriate peak hour(s) must be described and diagrammed.
- 1136 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated
1137 by the proposed project, must be described and diagrammed.
- 1138 (i) Existing traffic conditions in the study area will be identified and analyzed based
1139 upon actual field counts and/or recent available machine counts.
- 1140 (j) Existing traffic conditions in the study area will be described and diagrammed,
1141 specifically AADT, appropriate peak design hour(s), traffic volumes, street and
1142 intersection capacities, and levels of service.
- 1143 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1144 available for the most current three years and described including link and node
1145 critical rate factors (CRF).
- 1146 (l) Future traffic conditions on the street system will be estimated based on existing
1147 volumes, projected traffic growth in the general study area, projected traffic from
1148 approved development, and traffic generated by the proposed project, specifically
1149 AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection
1150 capacity, street and intersection levels of service will be analyzed. When other
1151 projects are being proposed within the impact area of the project, the Planning Board

- 1152 may require these projects to be incorporated into the analysis.
- 1153 (m) When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1154 CRF, levels of service or operating capacity on study area streets and intersections, a
1155 description of proposed improvements to remedy identified deficiencies must be
1156 included.
- 1157 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1158 (o) If a development that requires a traffic impact study is within 500 feet of York or
1159 Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236
1160 or on their intersections located in York or Eliot, Maine, the applicant must provide
1161 evidence that a copy of the impact study has been given to the impacted
1162 municipality's chief administrative officer;
- 1163 (3). Access to the Site. Vehicular access to and from the development shall be safe and
1164 convenient.
- 1165 (a) Any driveway or proposed street shall be designed so as to provide the minimum
1166 sight distance according to the Maine Department of Transportation standards.
- 1167 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
1168 turning movements and traffic flows.
- 1169 (c) The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty
1170 (50) feet, from the intersection.
- 1171 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
1172 Level of Service of D following development if the project will generate one
1173 thousand (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1174 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
1175 from the lot shall be provided from the street where there is less potential for traffic
1176 congestion and for traffic and pedestrians hazards. Access from other streets may be
1177 allowed if it is safe and does not promote shortcutting through the site.
- 1178 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
1179 avoid traffic congestion, the applicant shall be responsible for providing turning
1180 lanes, traffic directional islands, and traffic controls within public streets.
- 1181 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of
1182 entering vehicles on any public street.
- 1183 (h) The following criteria shall be used to limit the number of driveways serving a
1184 proposed project:
- 1185 [1] No use which generates less than one hundred (100) vehicle trips per day shall
1186 have more than one (1) two-way driveway onto a single roadway. Such driveway
1187 shall be no greater than forty (40) feet wide.
- 1188 [2] No use which generates one hundred (100) or more vehicle trips per day shall
1189 have more than two (2) points of entry from and two (2) points of egress to a
1190 single roadway. The combined width of all accessways shall not exceed sixty (60)
1191 feet.
- 1192 [3] The Planning Board or Technical Review Committee may limit a development to
1193 one (1) point of ingress/egress onto US Route 1, Route 236 and US Route 1
1194 Bypass.

- 1195 (4). Accessway Location and Spacing. Accessways shall meet the following standards:
1196 (a) Private entrances/exits shall be located at least fifty (50) feet from the closest
1197 unsignalized intersection and one hundred fifty (150) feet from the closest signalized
1198 intersection, as measured from the point of tangency for the corner to the point of
1199 tangency for the accessway. This requirement may be reduced if the shape of the site
1200 does not allow conformance with this standard.
- 1201 (b) Private accessways in or out of a development shall be separated by a minimum of
1202 seventy-five (75) feet where possible.
- 1203 (c) Accessways shall be aligned with accessways on the opposite side of a public street to
1204 the greatest extent possible.
- 1205 (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement
1206 of passenger, service, and emergency vehicles through the site.
- 1207 (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear
1208 route for such vehicles with appropriate geometric design to allow turning and
1209 backing for a minimum of SU-30 vehicles.
- 1210 [1] If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for
1211 such vehicles with appropriate geometric design shall allow for turning and
1212 backing for a minimum of WB-50 vehicles.
- 1213 (b) Clear routes of access shall be provided and maintained for emergency vehicles to
1214 and around buildings and shall be posted with appropriate signage (fire lane - no
1215 parking).
- 1216 (c) The layout and design of parking areas shall provide for safe and convenient
1217 circulation of vehicles throughout the lot.
- 1218 (d) All roadways shall be designed as follows:
- 1219 [1] To harmonize with the topographic and natural features of the site insofar as
1220 practical by minimizing filling, grading, excavation, or other similar activities
1221 which result in unstable soil conditions and soil erosion,
- 1222 [2] By fitting the development to the natural contour of the land and avoiding
1223 substantial areas of excessive grade and tree removal, and by retaining existing
1224 vegetation during construction,
- 1225 [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all
1226 season emergency access, snow storage, and delivery and collection services.
- 1227 (e) Nonresidential projects that include drive-through services shall be designed and have
1228 sufficient stacking capacity to avoid the queuing of vehicles on any public street.

1229 F. Parking and Loading

1230 (1) General standards.

- 1231 (a) All development, special exceptions and changes in use must comply with the
1232 performance standards herein and, where applicable, those contained in § 16.5.27 of
1233 this chapter. The Planning Board may impose additional reasonable requirements,
1234 which may include off-site improvements, based on the following considerations:
- 1235 [1] Sight distances along public rights-of-way;
- 1236 [2] The existence and impact upon adjacent access points and intersections;

- 1237 [3] Turning movements of vehicles entering and leaving the public streets;
- 1238 [4] Snow removal; and
- 1239 [5] General condition and capacity of public streets serving the facility.
- 1240 (b) Such requirements are intended to maintain traffic safety and an acceptable level of
- 1241 service throughout the impact area of the facility.
- 1242 (c) In front of areas zoned and designed for commercial use, or where a change of zoning
- 1243 to one which permits commercial use is contemplated, the street right-of-way and/or
- 1244 pavement width must be increased by such amount on each side as may be deemed
- 1245 necessary to assure the free flow of through traffic without interference by parked or
- 1246 parking vehicles, and to provide adequate and safe parking space for such commercial
- 1247 or business district.
- 1248 (d) The Town reserves the right to designate in conjunction with the Maine State
- 1249 Department of Transportation all ingress and egress points to the public highway and
- 1250 to select areas for the grouping and placement of signs and traffic directions.
- 1251 (e) All traffic flow in parking areas is to be clearly marked with signs and/or surface
- 1252 directions at all times.
- 1253 (f) Off-street parking must be constructed in accordance with Table 2 of this chapter, set
- 1254 out at the end of § 16.7.11.F, Parking Loading and Traffic.

1255 (6). Corner clearances.

1256 For purposes of traffic safety in all zoning districts, no building or structure other than
 1257 public utility structures and traffic control devices may be erected, and no vegetation other
 1258 than shade trees may be maintained above a height of two feet above the plane through the
 1259 curb grades of intersection streets within a triangle, two sides of which are the edges of the
 1260 traveled public ways for 20 feet measured from their point of intersection or, in the case of
 1261 rounded street corners, the point of intersection of their tangents. The Town is not
 1262 responsible for violations which lead to accidents. The Town will direct, however, a
 1263 continued program designed to identify intersections having traffic safety problems.

1264 (7). Off-street loading standards.

1265 (a) In those districts where off-street loading is required, the following minimum off-
 1266 street loading bays or loading berths must be provided and maintained in the case of
 1267 new construction, alterations and changes of use:

1268 [1] Office buildings, hospitals, long-term nursing care facilities, convalescent care
 1269 facilities, elder-care facilities, hotels and motels with a gross floor area of more
 1270 than 100,000 square feet: one bay.

1271 [2] Retail, wholesale, warehouse and industrial operations with a gross floor area of
 1272 more than 10,000 square feet:

<u>10,001 to 40,000 square feet</u>	<u>1 bay</u>
<u>40,001 to 100,000 square feet</u>	<u>2 bays</u>
<u>100,001 to 160,000 square feet</u>	<u>3 bays</u>
<u>160,001 to 240,000 square feet</u>	<u>4 bays</u>
<u>240,001 to 320,000 square feet</u>	<u>5 bays</u>
<u>320,001 to 400,000 square feet</u>	<u>6 bays</u>

Each 90,000 square feet over 400,000	1 additional bay
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- 1273 (b) Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be
 1274 located either within a building or outside and adjoining an opening in the building.
 1275 Every part of such loading bay is to be located completely off the street. In case of
 1276 trucks, trailers or other motor vehicles larger than the dimensions of the minimum
 1277 loading bay habitually serve the building in question, or so that said equipment can be
 1278 kept on site while awaiting loading or unloading, additional space is to be provided,
 1279 so that such vehicle parks or stands completely off the street.
- 1280 (c) The provisions of this section for off-street loading do not prohibit incidental curbside
 1281 business deliveries, dispatches or services, provided that they are in compliance with
 1282 all applicable state and local traffic regulations.
- 1283 (d) The Board of Appeals has full authority to waive the requirements of this section if it
 1284 is shown that appropriate parking and loading spaces will be maintained sufficient for
 1285 intended use.
- 1286 (8). Off-street parking standards.
- 1287 (a) Off-street parking, in addition to being a permitted use, is considered as an accessory
 1288 use when required or provided to serve conforming uses located in any district.
- 1289 (b) The following minimum off-street parking and loading requirements must be
 1290 provided and maintained in case of new construction, alterations and changes of use.
 1291 Such parking may be provided in the open air in design-dependent spaces
 1292 dimensioned as may be required to suit the particular use as indicated in Table 2 of
 1293 this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic, or in
 1294 garages.
- 1295 (c) All spaces must be accessible from lanes of adequate size and location as per Table 2
 1296 of this chapter, set out at the end of § 16.7.11.F, Parking Loading and Traffic. In
 1297 cases not specifically covered, the Town Board or officer with jurisdiction to
 1298 approve the application is authorized to determine the parking requirements and
 1299 projected development use intensity. Existing parking standards are to be used as a
 1300 guide where applicable to ensure that a sufficient number of parking spaces are
 1301 provided to accommodate the number and type of vehicles attracted to the
 1302 development during peak parking demand times.
- 1303 (d) When determination of the number of parking spaces required results in a
 1304 requirement of a fractional space, any fraction of 1/2 or less may be disregarded,
 1305 while a fraction in excess of 1/2 is counted as one parking space.
 1306

<u>Use</u>	<u>Parking Spaces Required</u>
<u>Automobile, truck and tractor repair and filling station</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work</u>
<u>Dwellings</u>	<ul style="list-style-type: none"> ▪ <u>2 vehicle spaces per each dwelling unit</u>

<u>Use</u>	<u>Parking Spaces Required</u>
<u>Age-Restricted Housing</u>	<ul style="list-style-type: none"> ▪ <u>1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms</u> ▪ <u>2 parking spaces for each dwelling unit with more than 2 bedrooms</u>
<u>Residential Care facilities</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space per dwelling unit</u> ▪ <u>0.65 parking spaces per residential care unit</u>
<u>Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room</u>
<u>Schools</u>	
<u>Nursery school and day-care facilities</u>	<ul style="list-style-type: none"> ▪ <u>1 space for every 100 square feet of gross floor area used as school area</u>
<u>Elementary and junior high schools</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment</u>
<u>Senior high schools</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment</u>
<u>Marinas and other water-oriented recreational facilities</u>	
<u>With launching facilities</u>	<ul style="list-style-type: none"> ▪ <u>3 parking spaces for every 2 slips or moorings, arranged for trailers</u>
<u>Without launching facilities</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each slip or mooring</u>
<u>Hospitals</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space per each three beds</u>
<u>Long-term nursing care facilities and convalescent care facilities</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each 4 beds</u>
<u>Theaters, auditoria, churches and arenas</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats</u>
<u>Mortuary chapels</u>	<ul style="list-style-type: none"> ▪ <u>5 parking spaces for each chapel</u>
<u>Retail stores and financial institutions</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each 175 square feet of gross floor area</u>
<u>Bowling alley</u>	<ul style="list-style-type: none"> ▪ <u>4 parking spaces for each bowling lane</u>
<u>Drive-in restaurants, snack bars and fast food outlets</u>	<ul style="list-style-type: none"> ▪ <u>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</u>

<u>Use</u>	<u>Parking Spaces Required</u>
<u>Restaurant</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15</u>
<u>Offices, professional and public buildings</u>	<ul style="list-style-type: none"> ▪ <u>2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area</u>
<u>Convenience stores or neighborhood grocery facilities</u>	<ul style="list-style-type: none"> ▪ <u>6 spaces in the rural residential zone; all other zones, 10 parking spaces</u>
<u>Mobile home</u>	<ul style="list-style-type: none"> ▪ <u>2 vehicle spaces per each mobile home</u>
<u>Transportation terminals</u>	<p><u>In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:</u></p> <ul style="list-style-type: none"> ▪ <u>1 parking space for each employee;</u> ▪ <u>1 parking space for each three seats of the terminal's major carrier vehicle; and</u> ▪ <u>1 parking space for each rented vehicle to be based on site</u>
<u>Warehouse and storage</u>	<ul style="list-style-type: none"> ▪ <u>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</u>
<u>Industry, manufacturing and business</u>	<ul style="list-style-type: none"> ▪ <u>1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade</u>
<u>Bus parking</u>	<ul style="list-style-type: none"> ▪ <u>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</u>

1307 (e) A parking area is allowed in the Resource Protection Overlay Zone only where no
 1308 reasonable alternative route or location is available outside the Resource Protection
 1309 Overlay Zone, in which case a permit or Site Plan or Subdivision plan approval is
 1310 required by the Planning Board.

1311 (f) A parking area must meet the wetland and water body setback requirements for
 1312 structures for the district in which such areas are located, per Table 16.5.30,

1313 Minimum Setback from Wetlands and Water Bodies; except, in the Commercial
 1314 Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet
 1315 from the normal high-water line or the upland edge of a wetland. The setback
 1316 requirement for a parking area serving public boat-launching facilities, in zones other
 1317 than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial
 1318 Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from
 1319 the normal high-water line or upland edge of a wetland if the Planning Board finds no
 1320 other reasonable alternative exists.

1321 (g) Parking landscaping is required for parking areas containing 10 or more parking
 1322 spaces and must have at least one tree per eight spaces. Such trees are to be located
 1323 either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches
 1324 in diameter, with no less than 25 square feet of unpaved soil or permeable surface
 1325 area per tree. At least 10% of the interior of any parking area having 25 or more
 1326 spaces is to be maintained with landscaping, including trees, in plots of at least five
 1327 feet in width.

1328 (h) Required off-street parking in all residential districts is to be located on the same lot
 1329 as the principal building or use, except that where it cannot reasonably be provided on
 1330 the same lot, the Board of Appeals may authorize residential off-street parking to be
 1331 located on another lot within 300 feet of the residential uses served, as measured
 1332 along lines of public access. Such parking areas must be held under the same
 1333 ownership or lease as the residential uses served, and evidence of such control or
 1334 lease is required. Leases obtained for this purpose must be reviewed by the Town
 1335 Attorney at the developer's expense and include requirement for notice to the Town
 1336 upon termination of lease. Approval for uses dependent on such lease is terminated
 1337 upon termination of the lease.

1338 (i) If parking spaces are provided for employees, customers or visitors, then accessible
 1339 parking spaces must be included in each such parking area in conformance with the
 1340 following table:

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<u>Total Parking in Lot</u>	<u>Required Minimum Number of Accessible Spaces</u>
<u>1 to 25</u>	<u>1</u>
<u>26 to 50</u>	<u>2</u>
<u>51 to 75</u>	<u>3</u>
<u>76 to 100</u>	<u>4</u>
<u>101 to 150</u>	<u>5</u>
<u>151 to 200</u>	<u>6</u>
<u>201 to 300</u>	<u>7</u>
<u>301 to 400</u>	<u>8</u>
<u>401 to 500</u>	<u>9</u>
<u>501 to 1,000</u>	<u>2% of total</u>
<u>1,001 and over</u>	<u>20 plus 1 for each 100 over 1,000</u>

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[1] 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.

[2] The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.

[3] 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 intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.

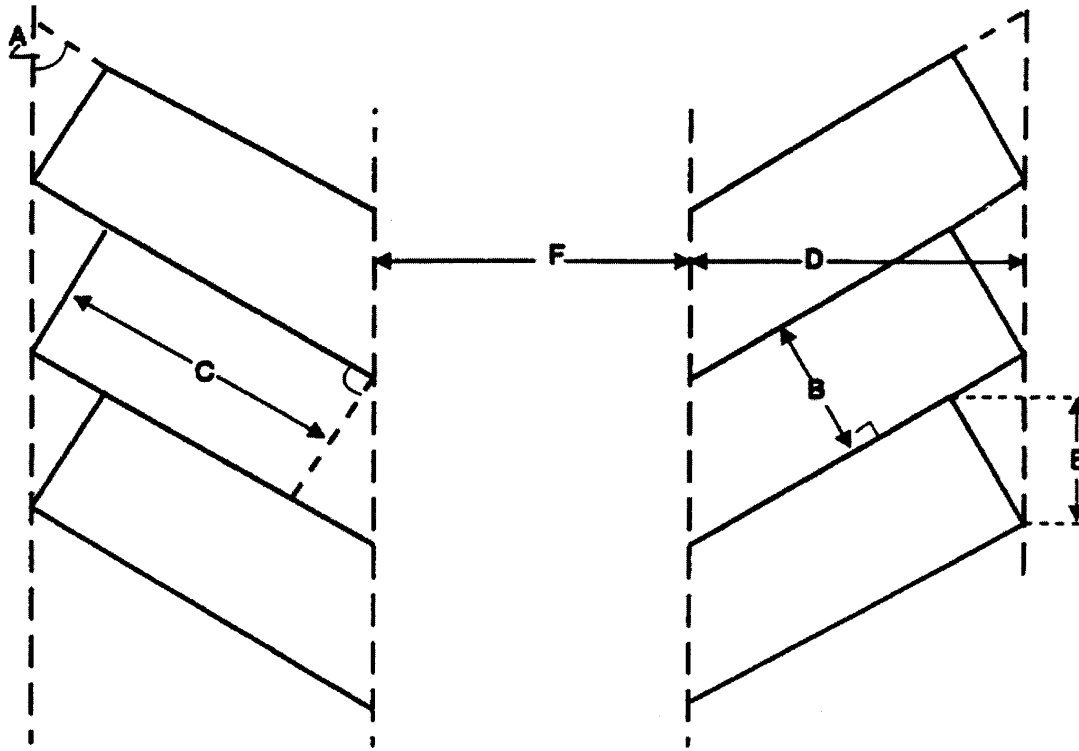
(m) Compact-size parking spaces, unless restricted for use by and located adjacent to a dwelling unit, must be located in one (1) or more continuous areas and cannot be intermixed with spaces designed for full size vehicles.

(n) Compact-size parking spaces shall be clearly designated by pavement marking and by direction sign in conformance with Table 16.7.11.F.(B)

<u>Table 16.7.11.F (A)</u> <u>Parking Space Design</u> <u>(minimum dimensions)</u> <u>(Dimensions in feet unless otherwise indicated.)</u>							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u> <u>(Aisle Width)</u>	
<u>To curb</u>	<u>Angle</u> <u>(degrees)</u>	<u>Stall</u> <u>Width</u>	<u>Stall</u> <u>Depth</u>	<u>Stall to</u> <u>Curb</u>	<u>Skew</u> <u>Width</u>	<u>One-Way</u> <u>Traffic</u>	<u>Two-Way</u> <u>Traffic</u>
<u>Parallel</u>	<u>0</u>	<u>9</u>	<u>22</u>	<u>9.0</u>	<u>22.0</u>	<u>13</u>	<u>19</u>
<u>Diagonal</u>	<u>30</u>	<u>9</u>	<u>19</u>	<u>17.3</u>	<u>18.0</u>	<u>11</u>	<u>20</u>
<u>Diagonal</u>	<u>45</u>	<u>9</u>	<u>19</u>	<u>19.8</u>	<u>12.9</u>	<u>13</u>	<u>21</u>

Table 16.7.11.F (A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u> (Aisle Width)	
<u>To curb</u>	<u>Angle</u> (degrees)	<u>Stall</u> <u>Width</u>	<u>Stall</u> <u>Depth</u>	<u>Stall to</u> <u>Curb</u>	<u>Skew</u> <u>Width</u>	<u>One-Way</u> <u>Traffic</u>	<u>Two-Way</u> <u>Traffic</u>
<u>Diagonal</u>	<u>60</u>	<u>9</u>	<u>19</u>	<u>21.0</u>	<u>10.5</u>	<u>18</u>	<u>23</u>
<u>Perpendicular</u>	<u>90</u>	<u>9</u>	<u>19</u>	<u>19.0</u>	<u>9.0</u>	<u>24</u>	<u>24</u>

Table 16.7.11.F(B) Compact Car Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u> (Aisle Width)	
<u>To curb</u>	<u>Angle</u> (degrees)	<u>Stall</u> <u>Width</u>	<u>Stall</u> <u>Depth</u>	<u>Stall to</u> <u>Curb</u>	<u>Skew</u> <u>Width</u>	<u>One-Way</u> <u>Traffic</u>	<u>Two-Way</u> <u>Traffic</u>
<u>Parallel</u>	<u>0</u>	<u>8</u>	<u>16</u>	<u>8.0</u>	<u>16.0</u>	<u>12</u>	<u>19</u>
<u>Diagonal</u>	<u>45</u>	<u>8</u>	<u>16</u>	<u>17.0</u>	<u>5.7</u>	<u>13</u>	<u>20</u>
<u>Diagonal</u>	<u>60</u>	<u>8</u>	<u>16</u>	<u>17.8</u>	<u>6.9</u>	<u>18</u>	<u>20</u>
<u>Perpendicular</u>	<u>90</u>	<u>8</u>	<u>16</u>	<u>16.0</u>	<u>8.0</u>	<u>22</u>	<u>22</u>



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1377 G. Utilities1378 (1) Approval.

1379 The size, type and location of public utilities, such as streetlights, electricity, telephone,
 1380 cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be
 1381 approved by the Board and installed in accordance with accepted engineering practice.

1382 (2). Underground installation.

1383 Utilities, where feasible, are to be installed underground. The Board must require the
 1384 developer to adopt a prudent avoidance approach when aboveground electrical installations
 1385 are approved.

1386 (1) Exterior Lighting General requirements.

1387 All new or revised exterior lighting, including the replacement or modification of existing
 1388 lighting fixtures that result in a change in the lighting characteristics of the fixture, must be
 1389 designed to provide only the minimum lighting necessary to ensure adequate vision, safety
 1390 and comfort and may not cause glare beyond the limits of the property boundaries. New
 1391 and replacement exterior lighting must conform to the current recommended practices of
 1392 the Illuminating Engineering Society of North America (IESNA) unless more restrictive
 1393 requirements are established by this article. Exterior lighting should also be consistent with
 1394 the Design Handbook. When the lamps or bulbs of existing lighting installations are
 1395 replaced, the replacements must conform to the requirements of IESNA and this article to
 1396 the extent reasonable.

1397 (2). Lighting fixtures.

- 1398 All new or replacement exterior lighting fixtures and installations for multifamily housing
1399 and nonresidential uses other than outdoor sports and recreational facilities that are located
1400 outside the right-of-way of a public street must meet the following standards:
- 1401 (a) Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period
1402 or historical fixtures meeting the provisions of Subsection (g) of this section.
- 1403 (b) Floodlighting or other directional lighting may be used for supplemental illumination
1404 of sales or storage areas, provided that the floodlights are installed no higher than 12
1405 feet above ground level, are aimed to avoid the source of the light being seen from
1406 adjacent streets or properties, and utilize lamps with an initial lumen rating not
1407 exceeding 39,000 lumens. The Town has the right to inspect the completed lighting
1408 installation and, if floodlights are used, to require that the floodlights be re-aimed or
1409 fitted with face louvers if necessary to control direct brightness or glare.
- 1410 (c) Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of
1411 8,500 lumens or less, wall-mounted building lights must include full-face shielding
1412 consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or
1413 refractors may not be visible from any part of the fixture except the bottom light-
1414 emitting surface.
- 1415 (d) Light fixtures located on or within canopies must be recessed into the ceiling of the
1416 canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures
1417 must limit the direction of light as required for a cutoff fixture. Refractors or diffusing
1418 panels that are dropped below the canopy ceiling surface are not permitted.
- 1419 (e) Light fixtures must be mounted at the lowest level that allows reasonable compliance
1420 with IESNA-recommended practices and the provisions of this article.
- 1421 [1] In approving new or modified lighting, the Planning Board may permit a
1422 maximum light fixture height for pole-mounted or mast-mounted light fixtures
1423 located between the building and the front lot line of not more than 15 feet, unless
1424 the applicant demonstrates that a higher height is necessary to allow reasonable
1425 compliance with the lighting standards and the Planning Board finds that no
1426 practicable alternative for lighting of the site exists.
- 1427 [2] The Planning Board may permit a maximum light fixture height for pole-mounted
1428 or mast-mounted light fixtures for other areas of the site of not more than 20 feet,
1429 unless the applicant demonstrates that a higher height is necessary to allow
1430 reasonable compliance with the lighting standards and the Planning Board finds
1431 that no practicable alternative for lighting of that area of the site exists.
- 1432 [3] The maximum light fixture height for building-mounted light fixtures is the
1433 equivalent of that allowed for a pole-mounted light illuminating the same area.
1434 See the Design Handbook for examples of acceptable lighting installations.
- 1435 (f) Lamps in exterior light fixtures must be incandescent, metal halide, high-pressure
1436 sodium, compact fluorescent or light-emitting diode (LED). This provision does not
1437 prohibit the use of fluorescent lamps in internally lighted signs where such signs are
1438 otherwise permitted, provided such signs meet the requirements of this article. See the
1439 Design Handbook for appropriate examples of signs. With the use of LED lighting,
1440 the applicant is required to demonstrate that standards within this article are met
1441 and/or meet comparable accepted standards for LED exterior lighting. Required
1442 photometric test reports for LED lighting must be based on the IESNA LM-79-08 test

- 1443 procedure.
- 1444 (g) Period or historical fixtures that do not meet the requirements of this section may be
1445 used as an alternative to cutoff fixtures, provided the maximum initial lumens
1446 generated by each fixture does not exceed 2,000. The maximum initial lumens for
1447 metal halide lamps may be increased to 8,500 if the lamp is internally recessed within
1448 the fixture or is shielded by internal louvers or refractors. The mounting height of
1449 period or historical fixtures may not exceed 12 feet above the adjacent ground. See
1450 the Design Handbook for examples.
- 1451 (h) State and national flags that are flown on flagpoles may be illuminated by ground-
1452 mounted lighting that shines vertically as long as exposed lamps, reflectors or
1453 refractors are not visible from any public street.
- 1454 (3). Illumination standards for nonresidential uses and multifamily housing.
1455 New or revised exterior lighting serving nonresidential uses and multifamily housing must
1456 conform to the following standards:
- 1457 (a) The illumination of access drives must provide for a uniformity ratio of not more than
1458 4:1 (ratio of average to minimum luminance). The illumination of parking lots and
1459 outdoor sales and service areas must provide for a uniformity ratio of not more than
1460 20:1 (ratio of maximum to minimum luminance).
- 1461 (b) The maximum illumination level within access drives, parking lots and sales and
1462 service areas may not exceed eight footcandles measured at the ground surface.
- 1463 (c) The maximum illumination level at the property line of a nonresidential or
1464 multifamily housing use with abutting properties in a residential district may not
1465 exceed 0.1 footcandle.
- 1466 (d) Areas directly under canopies must be illuminated so that the uniformity ratio (ratio
1467 of average to minimum luminance) will be not greater than 3:1 with an average
1468 illumination level at ground level of not more than 30 footcandles. Areas of access
1469 drives, parking lots, sales display areas, etc., which are adjacent to canopies must
1470 taper down in illumination level from the illumination level permitted under the
1471 canopy to the maximum illumination level permitted in Subsection (b) of this section
1472 for the access drive, parking lot or sales display area adjacent to the canopy within a
1473 horizontal distance equivalent to the height of the canopy.
- 1474 (e) The maximum illumination levels and uniformity ratios for areas other than parking
1475 lots, access drives and canopies must be consistent with IESNA-recommended
1476 practices and be compatible with the overall lighting of the project and be specifically
1477 approved by the Planning Board.
- 1478 (f) Illuminated signs must not produce glare and are otherwise governed by § 16.7.11.H
1479 of this chapter.
- 1480 (4). Illumination standards for outdoor sports and recreational facilities.
1481 New or revised exterior lighting serving sports fields and outdoor recreational facilities,
1482 including commercial recreational uses, must conform to the following standards:
- 1483 (a) Such fields and facilities may be illuminated for use during daylight hours and until
1484 10:00 p.m. unless the Planning Board specifically approves a later time based upon
1485 the applicant demonstrating that such later time is needed for the reasonable operation
1486 of the facility and will be compatible with and will not result in adverse impacts on

- 1487 neighboring properties. If a later hour is approved, the Planning Board may impose
1488 conditions on the approval, including provisions for the periodic review of the time
1489 limit.
- 1490 (b) The illumination levels and mounting heights of the lighting fixtures may not exceed
1491 the minimum necessary to provide reasonable illumination for the proposed use
1492 consistent with IESNA-recommended practices.
- 1493 (c) The maximum illumination level at the property line of the use with abutting
1494 properties in a residential district may not exceed 0.1 footcandle.
- 1495 (5). Illumination standards for single- and two-family residential uses.
1496 New or revised exterior lighting serving single- and two-family residential uses must be
1497 located and designed so that it does not result in excessive illumination levels on adjoining
1498 properties such as to amount to a public or private nuisance and must be compatible with
1499 the zone requirements in the neighborhood in which it is located. A maximum illumination
1500 level at the property line of more than 0.1 footcandle is considered to be excessive if the
1501 lighting level is in dispute. In the case of a major home occupation, the application must
1502 include a lighting plan meeting the requirements of § 16.7.10.D(3)(g)[1].

1503 H. Prevention of erosion

- 1504 (1) No person may perform any act or use the land in a manner which would cause substantial
1505 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
1506 the Town. This does not affect any extractive operations complying with the standards of
1507 performance specified elsewhere in this title.
- 1508 (a) When an excavation contractor, as defined in § 16.3, performs an activity that
1509 requires or results in more than one cubic yard of soil disturbance within the
1510 Shoreland or Resource Protection Overlay Zones, there must be a person responsible
1511 for management of erosion and sedimentation control practices on site, and that
1512 person must be certified in erosion control practices by the Maine Department of
1513 Environmental Protection. This person must be present at the site each day
1514 earthmoving activity occurs for a duration that is sufficient to ensure that proper
1515 erosion and sedimentation control practices are followed. This is required until
1516 erosion and sedimentation control measures have been installed, which will either
1517 stay in place permanently or stay in place until the area is sufficiently covered with
1518 vegetation necessary to prevent soil erosion. The name and certification number of
1519 the person who will oversee the activity causing or resulting in soil disturbance must
1520 be included on the permit application. Excavation contractors will have one year from
1521 the date of the adoption of this subsection to comply with certification requirements.
- 1522 (b) The above requirement of § 16.7.11.H(1)(a) does not apply to a property owner
1523 performing work themselves, or a person or firm engaged in agriculture or timber
1524 harvesting when best management practices for erosion and sedimentation control are
1525 used.
- 1526 (c) The above requirement of § 16.7.11.H(1)(a) only applies to regulated activities
1527 requiring local, state or federal permits and/or Planning Board approval.
- 1528 (6). All development must generally comply with the provisions of the "Environmental Quality
1529 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water
1530 Conservation Commission.

- 1531 (a) The developer must:
- 1532 [1] Select a site with the right soil properties, including natural drainage and
- 1533 topography, for the intended use;
- 1534 [2] Utilize for open space uses those areas with soil unsuitable for construction;
- 1535 [3] Preserve trees and other vegetation wherever possible;
- 1536 [4] Hold lot grading to a minimum by fitting the development to the natural contour
- 1537 of the land; avoid substantial areas of excessive grade;
- 1538 [5] Spread jute matting, straw or other suitable material during construction in critical
- 1539 areas subject to erosion;
- 1540 [6] Construct sediment basins to trap sediment from runoff waters during
- 1541 development; expose as small an area of subsoil as possible at any one time
- 1542 during development and for as short a period as possible;
- 1543 [7] Provide for disposing of increased runoff caused by changed land formation,
- 1544 paving and construction, and for avoiding sedimentation of runoff channels on or
- 1545 off the site;
- 1546 [8] Plant permanent and, where applicable, indigenous, vegetation and install
- 1547 structures as soon as possible for the purpose of soil stabilization and
- 1548 revegetation;
- 1549 (b) All logging or woodlot roads must be located, constructed and maintained in
- 1550 conformance with the erosion prevention provisions of "Permanent Logging Roads
- 1551 for Better Woodlot Management," published by the United States Department of
- 1552 Agriculture.
- 1553 (7). Where the Board has required a stormwater management and erosion control plan, said
- 1554 plan must be endorsed by the York County Soil and Water Conservation District or found
- 1555 satisfactory by the Town's Engineering Peer Reviewer.
- 1556 (8). All activities which involve filling, grading, excavation or other similar activities that
- 1557 potentially may result in unstable soil conditions, and which require a permit, must be
- 1558 made known in a written soil erosion and sedimentation control plan in accordance with the
- 1559 "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as
- 1560 amended. The plan must be submitted to the permitting authority for approval and must
- 1561 include, where applicable, provisions for:
- 1562 (a) Mulching and revegetation of disturbed soil;
- 1563 (b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or
- 1564 diversion ditches;
- 1565 (c) Permanent stabilization structures, such as retaining walls or riprap.
- 1566 (9). To create the least potential for erosion, development must be designed to fit with the
- 1567 topography and soil of the site. Areas of steep slopes where high cuts and fills may be
- 1568 required are to be avoided wherever possible, and natural contours must be followed as
- 1569 closely as possible.
- 1570 (10). Erosion and sedimentation control measures apply to all aspects of the proposed project
- 1571 involving land disturbance and must be in operation during all stages of the activity. The
- 1572 amount of exposed soil at every phase of construction must be minimized to reduce the
- 1573 potential for erosion.

1574 (11). Any exposed ground area must be temporarily or permanently stabilized in accordance
1575 with the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors,"
1576 2015, and as amended. All erosion control measures that are no longer necessary as
1577 determined by the CEO or Shoreland Resource Officer must be removed at the owner's
1578 expense.

1579 (12). Natural and man-made drainageways and drainage outlets must be protected from erosion
1580 from water flowing through them. Drainageways must be designed and constructed in order
1581 to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or
1582 lined with riprap.

1583 I. Water quality and wastewater pollution

1584 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
1585 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
1586 or substances, will impair designated uses or the water classification of the water body.

1587 (2). Wastewater to be discharged into Kittery Sewer Department sewers, should they be
1588 available, must be in such quantities and/or of such quality as to be compatible with
1589 standards established by the municipality or the Sewer Department.

1590 (3). To meet those standards, the municipality or Sewer Department may require that such
1591 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
1592 for the treatment processes.

1593 (4). The disposal of wastewater by means other than a public system must comply with the laws
1594 of the State of Maine and the Town concerning water pollution. Where a public sanitary
1595 sewer system is located within 200 feet of the property line as measured along a public
1596 way, the Town requires individual entrance into said sewer.

1597 (5). Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
1598 Department of Environmental Protection licenses, but no such off-site discharge will be
1599 allowed unless same is buried or not visible to a point below normal low water and is
1600 secured against damage and uncovering by the tides, erosion or other foreseeable action.

1601 (6). Flood prone areas must be identified on plan submissions, and based on the Federal
1602 Emergency Management Agency's Flood Boundary and Floodway Maps and Flood
1603 Insurance Rate Maps and information presented by the applicant.

1604 (7). If the proposed development, or any part of it, is in such an area, the applicant must
1605 determine the one-hundred-year flood elevation and flood hazard boundaries within the
1606 project area. The proposed plan must include a condition of plan approval requiring that
1607 principal structures in the development will be constructed with their lowest floor,
1608 including the basement, at least one foot above the one-hundred-year flood elevation.

1609 J. Air pollution

1610 All air pollution control shall comply with the minimum state requirements, and detailed
1611 plans shall be submitted to the State of Maine Department of Environmental Protection for
1612 approval before a building/regulated activity permit is granted. In any case, no objectionable
1613 odor, dust or smoke shall be detectable beyond the property line.

1614 K. Noise abatement

1615 (1) Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due

1616 to intermittence, beat frequency, shrillness or volume.
 1617 (2). The maximum permissible sound pressure level of any continuous, regular or frequent
 1618 source of sound produced by any activity regulated by this title shall be as established by
 1619 the time period and type of land use district listed below. Sound pressure levels shall be
 1620 measured at all major lot lines at a height of at least four feet above the ground surface.
 1621 Sound from any source controlled by this title shall not exceed the following limits at the
 1622 property line of the "receiver" premises.

1623

<u>Sound Pressure Level Limit Measured in dBs</u>		
<u>Districts</u>	<u>7:00 a.m. to 9:00 p.m.</u>	<u>9:00 p.m. to 7:00 a.m.</u>
<u>Industrial</u>	<u>65</u>	<u>60</u>
<u>Commercial and Business</u>	<u>60</u>	<u>50</u>
<u>Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection</u>	<u>55</u>	<u>45</u>

1624

1625 (a) Where the emitting and receiving premises are in different zones, the limits governing
 1626 the stricter zone shall apply to any regulated noise entering that zone.

1627 (b) The levels specified may be exceeded by 10 dB for a single period no longer than 15
 1628 minutes in any one day.

1629 (3). Noise shall be measured with a sound level meter meeting the standards of the American
 1630 National Standards Institute (ANSI S1.4-1961, American Standard Specification for
 1631 General Purpose Sound Level Meters). The instrument shall be set to the A-weighted
 1632 response scale and the meter to the slow response. Measurements shall be conducted in
 1633 accordance with ANSI S1.2-1962, American Standard Meter for the Physical
 1634 Measurements of Sound.

1635 (4). No person shall engage in, cause or permit to be engaged in construction activities
 1636 producing excessive noise on a site abutting any residential use between the hours of 9:00
 1637 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject
 1638 to the maximum permissible sound level specified for commercial districts for the periods
 1639 within which construction is to be completed pursuant to any applicable building/regulated
 1640 activity permit.

1641 (5). The following uses and activities shall be exempt from the sound pressure level
 1642 regulations:

1643 (a) Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.)
 1644 between the hours of 7:00 a.m. and 9:00 p.m.;

1645 (b) Timber harvesting (felling trees and removing logs from the woods);

1646 (c) Noise created by construction and maintenance activities between 7:00 a.m. and 9:00
 1647 p.m.;

1648 (d) The noises of safety signals, warning devices and emergency pressure relief valves
 1649 and any other public emergency activity; and

1650 (e) Traffic noise on existing public roads, railways or airports.

1651 (6). These noise regulations are enforceable by law enforcement officers and by the Code
1652 Enforcement Officer (who may measure noise levels, and who shall report documented
1653 violations to the police). For the purposes of enforcement, sounds exceeding the above
1654 limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S.
1655 § 501-A ("disorderly conduct").

1656 L. Radiation

1657 No dangerous radiation shall be detectable at the property line, in accordance with the
1658 applicable state and federal laws. In the case of electromagnetic pulses emanating from
1659 electrical service components, the Planning Board or Director of Planning and Development
1660 shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

1661 M. Utilization of the Site

1662 (1) The plan for the development shall reflect the natural capabilities of the site to support
1663 development. Buildings, lots, and support facilities shall be clustered in those portions of
1664 the site that have the most suitable conditions for development. Environmentally sensitive
1665 areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife
1666 habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique
1667 natural communities and natural areas, and sand and gravel aquifers shall be maintained
1668 and preserved to the maximum extent. Natural drainage areas shall also be preserved to the
1669 maximum extent. The development shall include appropriate measures for protecting these
1670 resources, including but not limited to, modification of the proposed design of the site,
1671 timing of construction, and limiting the extent of excavation.

1672 N. Storage of Materials

1673 (1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or
1674 collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse
1675 shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen
1676 hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential
1677 uses and users of public streets.

1678 (2). All dumpsters or similar large collection receptacles for trash or other wastes shall be
1679 located on level surfaces which are paved or graveled. The dumpster or receptacle shall be
1680 screened by fencing or landscaping.

1681 (3). Where a potential safety hazard to children is likely to arise, physical screening sufficient
1682 to deter small children from entering the premises shall be provided and maintained in
1683 good condition.

1684 O. Technical and Financial Capacity

1685 (1) Financial Capacity. The applicant shall have adequate financial resources to construct the
1686 proposed improvements and meet the criteria of the standards of these regulations. In
1687 making its determination the Planning Board shall consider all relevant evidence to the
1688 effect that the developer has the financial capacity to construct, operate, and maintain all
1689 aspects of the development.

1690 (2). Technical Capacity. The applicant shall retain qualified contractors and consultants to
1691 supervise, construct and inspect the required improvements in the proposed site plan.

1692 (a) In determining the applicant's technical ability the Planning Board shall consider the

1693 applicant's previous experience, the experience and training of the applicant's
1694 consultants and contractors, and the existence of violations of previous approvals
1695 granted to the applicant.

1696 16.7.12 Post-Approval

1697 A. Approved plan expiration.

- 1698 (1) A Site Plan approval will expire if work has not commenced within one year from the date
1699 of Planning Board or Director of Planning and Development approval. Where work has
1700 commenced within one year of such approval, the approval will expire if work is not
1701 complete within two years of the original date of approval.
- 1702 (2). Prior to expiration, the approval authority may, on a case-by-case basis, grant extensions to
1703 an approved plan expiration date upon written request by the developer for an inclusive
1704 period from the original approval date, not to exceed three years.
- 1705 (3). When a plan's approval expires, the applicant may reapply subject to the Town Code
1706 current at the time of reapplication.

1707 B. Inspection of required improvements.

- 1708 (1) A preconstruction meeting is required for an approved Site Plan. Prior to the
1709 commencement of any work associated with development approved in accordance with this
1710 title, the developer or duly authorized representative must provide a schedule of expected
1711 construction activities by phase to the inspecting official [the Code Enforcement Officer
1712 (CEO) or their representative or, when applicable, the Town's Peer Review Engineer], and
1713 coordinate a preconstruction meeting. Attendance at said meeting must at a minimum
1714 include authorized representation from the Town, the developer and their general
1715 contractor. Meeting minutes must be prepared by the Town's representative and distributed
1716 to all attendees and the Town Planner.
- 1717 (2). The developer or general contractor shall coordinate inspections with the inspecting official
1718 and provide written notice at least seven days prior to commencing each major phase of
1719 construction as outlined in the construction schedule. When all phases of work are
1720 complete, the general contractor shall request a final inspection from the inspecting official,
1721 who shall prepare a punch list of any outstanding items to be completed, within seven days
1722 of the final inspection. Once all outstanding items have been completed, the developer or
1723 the general contractor shall coordinate a final walk-through where the inspecting official
1724 determines if the construction has been completed in accordance with the approved plans.
1725 The inspecting official shall provide, in writing, to the developer or the general contractor
1726 within seven days of the final walk-through what, if any, construction is not complete or
1727 confirm that the development is complete and has been constructed according to the
1728 approved plans.
- 1729 (3). If the inspecting official finds, upon inspection of the required improvements, that any of
1730 the required improvements have not been constructed in accordance with the approved
1731 plans and specifications, the inspecting official must report, in writing, to the Town
1732 Planner, the developer or duly authorized representative of the developer, and, when
1733 applicable, the CEO. The Town Planner shall inform the Planning Board of any issues
1734 identified by the inspections. The Town shall take any steps necessary to preserve the
1735 municipality's rights.

1736 (4). Where applicable and in advance of any construction, the developer must deposit sufficient
1737 funds for said inspections in an applicant's service account per Chapter 3.3. The amount is
1738 based on a scope of services and fee prepared by the Town's Peer Review Engineer after
1739 review of the developer's construction estimate prepared by a professional engineer or a
1740 qualified contractor.

1741 (5). Stormwater and erosion control inspection.

1742 (a) During October to November of each year in which construction for grading, paving
1743 and landscaping occurs on a development site, the Town will, at the expense of the
1744 developer, cause the site to be inspected by a qualified individual. By December 1,
1745 the inspector must submit a site report to the Town Planner that describes the
1746 inspection findings and indicates whether stormwater and erosion control measures
1747 (both temporary and permanent) are in place and properly installed. The report must
1748 include a discussion and recommendation on any and all problem areas encountered.

1749 (b) After major construction activities have been completed on a development site, the
1750 developer must, on or by July 1 of each year, provide a completed and signed
1751 certification to the Code Enforcement Officer per § 16.7.11.D, Post-construction
1752 stormwater management.

1753 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
1754 erosion control materials, such as plastic erosion control fences and related stakes or
1755 other materials, to remain on the site but must remove the same within six months of
1756 the date such erosion control materials were installed, or the date when no longer
1757 required, whichever is later. When a violation is discovered, the Code Enforcement
1758 Officer will order compliance by written notice of violation to the owner of any land
1759 in any zone requesting removal of such violation within 30 days of the date of written
1760 notice. An extension of time to correct may be made by the Code Enforcement
1761 Officer for good and sufficient reason.

1762 C. Plan revisions after approval.

1763 No changes, erasures, modifications or revisions may be made to any Planning Board
1764 approved Final Plan, unless in accordance with the Planner's and CEO's powers and duties as
1765 found in § 16.2, or unless the plan has been resubmitted and the Planning Board specifically
1766 approves such modifications. In the event a Final Plan is recorded without complying with
1767 this requirement, the same is null and void, and the Planning Board must institute
1768 proceedings to have the plan stricken from Town records and the York County Registry of
1769 Deeds.

1770 (1) Field changes.

1771 (a) If at any time before or during the construction of the required improvements it
1772 appears to be necessary or desirable to modify the required improvements, the Code
1773 Enforcement Officer and Town Planner are authorized to approve minor plan
1774 amendments due to unforeseen field circumstances, such as encountering hidden
1775 outcrops of bedrock, natural springs, etc. The Code Enforcement Officer and Town
1776 Planner must issue any approval under this subsection in writing and transmit a copy
1777 of the approval to the Planning Board. Revised plans must be filed with the Town and
1778 recorded, where appropriate. The developer must provide the revised plan to the
1779 Town Planner, and it shall be recorded in the York County Register of Deeds when

1780 applicable.

1781 (2). Modifications to approved plan.

1782 (a) Minor modifications. Modifications to an approved plan that do not require review
1783 per § 16.7.2.A may be approved by the Code Enforcement Officer and Town Planner.
1784 Such approvals must be issued in writing to the developer with a copy to the Planning
1785 Board. The developer must provide the revised plan to the Town Planner, and it shall
1786 be recorded in the York County Register of Deeds, when applicable.

1787 (b) Major modifications. Major modifications (e.g., relocations of principal structures,
1788 rights-of-way or property boundaries; changes of grade by more than 1%) require
1789 Planning Board or Director of Planning and Development approval.

1790 D. Maintenance of improvements.

1791 E. The developer, or owner, is required to maintain all improvements and provide for snow
1792 removal on streets and pedestrianways/sidewalks unless and until the improvement has been
1793 accepted by the Town Council. Acceptance of Streets and Ways

1794 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
1795 dedicated for public travel prior to the enactment of this title must be laid out and accepted
1796 as a public street or way by the Town Council only upon the following conditions:

1797 (a) The owners must give the Town a deed to the property within the boundaries of the
1798 street at the time of acceptance by the Town.

1799 (b) A plan of said street or way must be recorded in the York County Registry of Deeds
1800 at the time of its acceptance.

1801 (c) A petition for laying out and acceptance of said street or way must be submitted to the
1802 Town Council upon a form prescribed by the Commissioner of Public Works. Said
1803 petition must be accompanied by a plan, profile and cross section of said street as
1804 follows:

1805 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
1806 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
1807 show the North point; the location and ownership of all adjoining lots of land;
1808 rights-of-way and easements; streetlights and electric lines; boundary monuments;
1809 waterways, topography and natural drainage courses with contour at not greater
1810 than two-foot intervals; all angles, bearings and radii necessary for the plotting of
1811 said street and lots and their reproduction on the ground; the distance to the
1812 nearest established street or way, together with the stations of their side lines;

1813 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch
1814 and a vertical scale of four feet to one inch. Said profile must show the profile of
1815 the side lines and center line of said street or way and the proposed grades thereof.
1816 Any buildings abutting the street or way must be shown on said profile;

1817 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
1818 inch and a vertical scale of one foot to one inch; and

1819 [4] The location and size of water and sewer mains and surface water drainage
1820 systems, as installed.

1821 (3). Such street or way must have been previously constructed in accordance with the standards
1822 and criteria established in § 16.5.27 of this chapter.

- 1823 (4). Acceptance of streets and ways required in public interest.
- 1824 (a) Notwithstanding the provisions of any other section hereof, the Town may at any time
- 1825 lay out and accept any street or way in the Town as a public street or way of said
- 1826 Town whenever the general public interest so requires. The cost of said street or way
- 1827 may be borne by the Town.
- 1828 (5). Easements.
- 1829 (a) The Board may require easements for sewerage, other utilities, drainage and stream
- 1830 protection. In general, easements may not be less than 20 feet in width. Wider
- 1831 easements may be required.
- 1832 (6). No street or way to be accepted until after report.
- 1833 (a) No street or way may be laid out and accepted by the Town Council until the
- 1834 Planning Board and the Public Works Commissioner have made a careful
- 1835 investigation thereof and reported to the Town Council their recommendations in
- 1836 writing with respect thereto.
- 1837 (b) Upon completion of construction of any street/road intended for proposal for
- 1838 acceptance as a Town way, a written certification that such way meets or exceeds the
- 1839 design and construction standards of this title, signed by a professional engineer
- 1840 registered by the State of Maine, prepared at the developer's expense, must be
- 1841 submitted to the Board. If underground utilities are laid in such way, the developer
- 1842 must also provide written certification from the servicing utility(ies), that such
- 1843 installation was in a manner acceptable to the utility. The Board is to review the
- 1844 proposal and forward a recommendation to the Town Council regarding acceptance.
- 1845 F. Recordkeeping in Shoreland and Resource Protection Overlay Zones.
- 1846 The Code Enforcement Officer is to keep a complete record of all essential transactions of
- 1847 development in the Shoreland and Resource Protection Overlay Zones, including
- 1848 applications submitted, permits granted or denied, variances granted or denied, revocation
- 1849 actions, revocation of permits, appeals, court actions, violations investigated, violations
- 1850 found, and fees collected. On a biennial basis, a summary of this record must be submitted to
- 1851 the Director of the Bureau of Land and Water Quality within the Department of
- 1852 Environmental Protection.
- 1853 G. Nonstormwater discharge.
- 1854 No person, except where exempted in § 16.5.19, may create, initiate, originate, or maintain a
- 1855 nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are
- 1856 prohibited notwithstanding the fact that the municipality may have approved the connections,
- 1857 drains or conveyances by which a person discharges unallowable nonstormwater discharges
- 1858 to the storm drainage system.
- 1859 H. Nuisances.
- 1860 Any violation of this title is deemed to be a nuisance.
- 1861

1 16.8 Subdivision Review

2 16.8.1 General

3 A. The purpose of this chapter is to assure the comfort, convenience, safety, health, and welfare
4 of the people, to protect the environment and to promote the development of an economically
5 sound and stable community. To that end, the Planning Board will evaluate proposed
6 subdivisions using the following criteria. The subdivision provisions set forth in these
7 regulations are intended to protect the public health and safety, promote the general welfare
8 of the community, and conserve the environment by assuring that nonresidential and
9 multifamily construction is designed and developed in a manner that assures that adequate
10 provisions are made for traffic safety and access; emergency access; water supply; sewage
11 disposal; management of storm water, erosion, and sedimentation; protection of groundwater;
12 protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection
13 of historic and archaeological resources; minimizing the adverse impacts on adjacent
14 properties; and fitting the project harmoniously into the fabric of the community.

15 16.8.2 Authority and Statutory Review Criteria

16 A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. §
17 4401 et seq., and all amendments thereto.

18 B. When reviewing any application for a subdivision, the Planning Board shall find that the
19 criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable
20 provisions of Title 16, Land Use and Development Code have been met, before granting
21 approval.

22 16.8.3 Preapproval development prohibited

23 The applicant or applicant's authorized agent must obtain final Planning Board approval
24 before:

25 A. Any contract or offer for the conveyance of the proposed development (or portion thereof)
26 has been made;

27 B. Any subdivision into three or more lots has been recorded in the York County Registry of
28 Deeds;

29 C. A building/regulated activity permit for any structure within the development is issued; or

30 D. Work on any improvements (including installation of roads or utilities or land clearing) has
31 begun.

32 16.8.4 Other Potential Reviews

33 A. Shoreland development review.

34 (6) All development in the Shoreland, Resource Protection, and Commercial
35 Fisheries/Maritime Uses Overlay Zones involving the use, expansion, change or
36 replacement of an existing use or structure, or renewal of a discontinued nonconforming

37 use, must be reviewed and approved as provided in § 16.4.30 and elsewhere in this title,
38 and tracked as a shoreland development for reporting purposes.

39 (7) All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime
40 Uses Overlay Zones must be approved by the Planning Board except for the following:

41 (a) Proposed development of principal and accessory structures in compliance with
42 § 16.9.1.B(1), when not subject to Planning Board review as explicitly required
43 elsewhere in this title. Such proposed development must be reviewed and approved by
44 the Code Enforcement Officer (CEO) prior to issuing a building permit. The total
45 devegetated area of the lot (that portion within the Shoreland Overlay Zone) must be
46 calculated by the applicant and verified by the CEO and recorded in the Town's property
47 records. Any development proposed in the Resource Protection and Shoreland - Stream
48 Protection Area Overlay Zones must be approved by the Planning Board.

49 (b) Piers, docks, wharves, bridges and other structures and uses extending over or below the
50 highest annual tide (HAT) elevation, subject to review and approval by the Port
51 Authority as outlined in Chapter 16.9.1, Marine-related development.

52 (c) Division of a conforming parcel that is not subject to subdivision as defined in § 16.3.

53 (d) Clearing of vegetation for activities other than timber harvesting. These are subject to
54 review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

55 (8) Establishment of new commercial or business entity in an existing facility, where intensity
56 of use is not significantly different.

57 16.8.5 Application and Review Fees

58 B. Review fee(s); reimbursements.

59 (1) All applications for plan approval for properties which come under this title must be
60 accompanied by a fee as determined by the Town Council.

61 (2) The applicant must reimburse the Town for all expenses incurred for notifying abutters of
62 the proposed plan and advertising of any public hearing regarding a development.

63 C. Independent peer review.

64 (1) The Planning Board or, after the Town Manager's approval, the Town Planner and the Code
65 Enforcement Officer, may require an independent consultant or specialist engaged by the
66 Town, at the applicant's expense, to:

67 (a) Determine compliance with all requirements of this title related to public health, safety
68 and welfare and the abatement of nuisances; or

69 (b) Assist with the technical review of applications submitted for new or amended
70 development.

71 (2) When peer review is required of the applicant, sufficient funds, based on a written estimate
72 by the required consultant, must be deposited in an applicant's service account per Chapter
73 3.3, prior to commencing said review and continuing with the review of the development
74 plan application.

75 16.8.6 Applicant attendance at review meeting(s)

76 A. The applicant or duly authorized representative must attend all Board meetings for which

77 the applicant's application has been placed on the agenda. Relief may be given from this
78 requirement by the Board Chairperson.

79 16.8.7 Waivers

80 A. Waiver authorization.

81 Upon written request, the Planning Board may waive or modify certain required
82 improvements, due to special circumstances of a particular plan, if the applicant
83 demonstrates that the interest of public health, safety, the natural environment, and general
84 welfare are not harmed, or if those improvements are inappropriate because of inadequacy
85 or lack of connecting facilities adjacent or in proximity to the proposed development,
86 subject to appropriate conditions as determined by the Planning Board, and provided the
87 waivers do not have the effect of nullifying the intent and purpose of the Comprehensive
88 Plan and Title 16.

89 B. Objectives secured.

90 In granting modifications or waivers, the Planning Board must require such conditions as
91 will, in its judgment, secure substantially the objectives of the requirements so waived or
92 modified. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for
93 Decisions when reviewing such waiver or modification requests.

94 (1) Any waivers granted must improve the ability of the project to take the property's pre-
95 development natural features into consideration. Natural features include but are not
96 limited to topography, location of water bodies, location of unique or valuable natural
97 resources, and relation to abutting properties or land uses.

98 16.8.8 Other Requirements

99 A. Burden of proof.

100 In all instances, the burden of proof is upon the applicant proposing the development.

101 B. Comprehensive Plan.

102 Any proposed development or use must be consistent with the Town Comprehensive Plan
103 guidance adopted into the provisions of this title.

104 C. Site inspection.

105 (1) So the Planning Board may be fully informed about the site and in a knowledgeable
106 position to prescribe contour intervals to be employed on topographic maps and grading
107 plans for the development, the applicant must arrange a joint inspection of the site with the
108 Planning Board.

109 D. Safe use.

110 (1) The land/water area to be developed must be of such character that it can be used without
111 danger to health or peril from fire, flood, soil failure or other hazard.

112 16.8.9 Review Process and Submission Requirements

113 A. Preapplication and Conference

114 (1) Process. The purpose of this meeting is to familiarize the applicant with the review

115 procedures and submission requirements, and approval criteria, and to familiarize the
116 Planner with the nature of the project.

117 (a) This meeting is optional for Minor Subdivisions, but required for Major Subdivisions.

118 (b) Such review shall not cause the plan to be a pending application or proceeding under
119 1M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.

120 (c) To request a preapplication conference the applicant shall submit, at a brief narrative
121 describing the project, the location of the project on a US Geologic Survey (USGS)
122 topographic map, and a copy of the Tax Map showing the development parcel.

123 B. Sketch Plan Review

124 (1) Review application form.

125 Any person requiring subdivision review must submit an application on forms prescribed
126 by the Planning Board, together with a development plan and such submission contents as
127 may be required in §16.8.9.B(3) and §16.8.9(B)(4). A complete application consists of all
128 the required elements. No more than one application/plan for a piece of property may be
129 under review before the Planning Board. No more than one approved final plan for a piece
130 of property may exist.

131 (2) Planning Board review and decision. The Planning Board must, within 30 days of sketch
132 plan submission, act upon the sketch plan as follows:

133 (a) The Planning Board must determine whether the sketch plan proposal complies with the
134 standards contained herein and must, where it deems necessary, make specific suggestions
135 in writing to be incorporated by the applicant in subsequent submissions.

136 [1] If the concept is approved, inform subdivision applicants in writing of the contour
137 interval which will be required for the plans; classify the sketch plan into one of two
138 categories defined herein, as a minor subdivision or a major subdivision, and
139 authorize submission of the next application stage. The next application stage for a
140 Minor Subdivision is a Final Plan application and the next application stage for a
141 Major Subdivision is a Preliminary Plan application.

142 [2] Any plan may be continued for a total period not to exceed 90 calendar days for good
143 and sufficient reason (i.e., for revisions to be made, studies completed, or additional
144 information submitted) and acceptable to both the applicant and the Planning Board.
145 Such plan is automatically scheduled for the agenda of the next regular Planning
146 Board meeting after the 90th day and action completed in accordance with the
147 requirements and timing contained in this title, whether the applicant has
148 accomplished the purposes for which continued or not.

149 [3] The action to table by the Planning Board must be an action to temporarily suspend
150 action and not to suppress a vote on the plan.

151 (3) Plan Requirements

152 (a) The sketch plan must show in simple form on a topographic map the proposed site,
153 subdivision, landscape architectural or architectural design concept, including streets, lots,
154 structures and other features, in relation to existing conditions and municipal land use
155 zone(s) regulations.

156 (b) The sketch may be a freehand penciled sketch and must include the data listed below.

157 (4) Written Submission Requirements

158 (a) General subdivision information must describe or outline the existing conditions of the
159 site, including:

160 [1] Covenants.

161 [2] High-intensity Class "A" soil survey and soil interpretation sheets.

162 [3] Available community facilities.

163 [4] Utilities.

164 (b) Proposed development, such as:

165 [1] Number of residential or business lots and/or dwelling units;

166 [2] Typical lot width and depth;

167 [3] Price range;

168 [4] Business areas;

169 [5] Playgrounds, park areas and other public areas;

170 [6] Protective covenants;

171 [7] Utilities; and

172 [8] Street improvements.

173 C. Preliminary Plan Review

174 (1) Applicability. Preliminary Plan Review only applies to Major Subdivision applications.

175 (2) General Process

176 (a) Preliminary plan application filing and completeness review. A determination as to
177 whether the Town Planner validates an application is based on a review of the application in
178 accordance with the submission contents checklist filed with the plan, which indicates all
179 elements required under §16.8.9.C(6) and §16.8.9.C(7) have been received, or written
180 request for waiver of submittal for any non received items is included. The application must
181 be accompanied by a plan and the required fee, together with a certification the applicant has
182 notified abutters by mail of the filing of the plan application for approval.

183 (b) Receipt and scheduling review. Upon validation, the Town Planner must place the
184 application on the Planning Board's agenda for Planning Board completeness review and
185 acceptance and, upon Planning Board acceptance, issue a dated receipt to the applicant,
186 which is thereafter the official time of submission.

187 (c) Site inspection. In the course of the review of the plan, the Planner must, and the
188 Planning Board may at its discretion, make a physical inspection and may make
189 photographic record of the existing conditions on the site.

190 (d) Advisory opinions. At any time during review, the Planner may request an advisory
191 opinion from the Planning Board, Conservation Commission or Port Authority on issues
192 related to the application. Where applications are for land within wetland setbacks or the
193 Resource Protection Overlay Zone, the Conservation Commission must be invited to review
194 and offer recommendations from an environmental protection perspective. The Planner also
195 must make recommendation on the necessity for independent review.

196 (e) Planner analysis. The Planner must analyze the application and forward comments to the
197 applicant and the Planning Board with a recommendation as to review category (e.g.,
198 minor/major subdivision).

199 (f) A completed application must be submitted to the Town Planner no later than 21 days
200 prior to the meeting date for the item to be included on the agenda. The submission must
201 include on the plan or attached thereto, the following items, unless upon the applicant's
202 written request, the Planning Board, by formal action, waives or defers any requirement(s)
203 for submission.

204 [1] Refer to current Planning Department application checklist for required number of
205 paper copies.

206 [2] One electronic submission in PDF format of the complete submission including all
207 forms, plans and documentation.

208 (g) Submission contents complete. Upon determination by the Planner that the preliminary
209 plan application is complete, the Planner must receive it, together with an application fee in
210 the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may
211 be deemed complete by the Planning Board until payment of the proper fees.

212 [1] the Planning Board makes a finding that the preliminary plan is complete in regard to
213 the submission requirements, it must determine if any studies/review or analysis is
214 required in accordance with §16.8.9.C(7)(1) and §16.8.9.C(8) and schedule the date
215 for a public hearing.

216 (3) Public hearing

217 (a) Scheduling

218 [1] In the case of an accepted subdivision plan application, such public hearing must be
219 scheduled no later than 30 days from the date of Planning Board acceptance. With the
220 concurrence of the applicant, this deadline may be modified.

221 [2] For all other development plan applications (i.e., right-of-way plan application and
222 development in the Shoreland Overlay Zone), at the Planning Board's discretion, a
223 public hearing may or may not be held.

224 (b) Public notice.

225 [1] The Town Planner must place a public notice of such public hearing in a newspaper
226 of general circulation in the Town at least seven and not more than 14 days prior to
227 the scheduled hearing date; said notice must also be posted in at least three prominent
228 public locations in Town at least 10 days prior to the hearing; and, in the case of a
229 plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded
230 to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot
231 or York, Maine, at least 10 days prior to the hearing.

232 [2] A subdivision public notice must be published at least two times in a newspaper of
233 general circulation in the Town. The date of the first notice must be at least seven
234 days before the scheduled public hearing date.

235 (c) Abutter notice.

236 [1] The Town Planner must cause written notice of the public hearing to be sent by
237 postage paid, first-class mail (cost to be paid by the applicant) to all owners of
238 abutting property, as herein defined (within 150 feet of the property), and by regular
239 mail to the Code Enforcement Officer, the Commissioner of Public Works, and where
240 applicable, the Port Authority or Conservation Commission, at least seven days prior
241 to the scheduled date. Failure of the parties to receive said notice does not invalidate
242 any Board action.

243 [2] As used herein, relates solely to the notification of property owners who must be
244 notified in writing when new development or redevelopment is proposed within 150
245 feet of their property boundary(ies). This notification must include intertidal land
246 below the normal high-water line, but not that land beyond 100 rods (1,650 feet)
247 distant from the normal high water line, or that land below the normal low-water line.
248 Where question exists regarding ownership of intertidal lands, consult Figure 1 in
249 16.5.2, entitled, "Formula for Determining Ownership of Intertidal Land as a Guide
250 for Identifying Abutters," attached to this chapter.

251 (d) Preliminary Plan Public Hearing Procedure

252 [1] The Planning Board may receive oral and documentary evidence, but must exclude
253 evidence which it considers irrelevant, immaterial or unduly repetitious.

254 [2] The Chairperson of the Planning Board must determine the order of presentation by
255 parties to the hearing. Each party must have the right to proceed without interruption,
256 except that rulings by the Chairperson prevail. The applicant's presentation must
257 proceed in accordance with the checklist provided.

258 [3] Any party may be represented by agent or attorney.

259 [4] The Town Planner, in consultation with the Code Enforcement Officer,
260 Commissioner of Public Works, and such other Town officials as may have an
261 interest in the application, must present into evidence a written summary of findings
262 and recommendations.

263 [5] The Planning Board may continue the hearing to another time and location, including
264 the site of the development, as it deems necessary.

265 (4) Planning Board Preliminary Plan review schedule.

266 (a) Within six months after approval/classification of a sketch plan by the Board, the
267 applicant must submit an application for approval of a subdivision Preliminary Plan in the
268 form prescribed herein.

269 (b) Within 30 days after acceptance by the Planning Board of a subdivision plan, the
270 Planning Board must approve the plan, approve the plan with conditions, disapprove the
271 plan, postpone action on the plan, or continue the review to another time/location.

272 (c) Continuation or tabling of a review beyond the thirty-day period for subdivision
273 applications must be for good and sufficient reason and be acceptable to both the applicant
274 and the Planning Board.

275 (d) Any plan may be continued for a total period not to exceed 90 calendar days for good and
276 sufficient reason (i.e., for revisions to be made, studies completed or additional information
277 submitted) and acceptable to both the applicant and the Planning Board. Such plan is
278 automatically scheduled for the agenda of the next regular Planning Board meeting after the
279 90th day and action completed in accordance with the requirements and timing contained in
280 this title, whether the applicant has accomplished the purposes for which it was continued or
281 not.

282 (e) The action to table by the Planning Board must be an action to temporarily suspend
283 action and not to suppress a vote on the plan.

284 (f) Failure of the Planning Board to act within the thirty-day period for an accepted
285 subdivision application constitutes disapproval of the plan, in which case the applicant may
286 resubmit the plan without payment of an additional application fee.

- 287 (g) Planning Board review and decision. The Planning Board must approve, approve with
288 conditions or deny the preliminary plan.
- 289 (h) Approval of a preliminary plan does not constitute approval of a final plan, but rather it is
290 be deemed an expression of approval of the design submitted on the preliminary plan as a
291 guide to the preparation of the final plan.
- 292 (i) Conditions of the Planning Board's approval may include, but are not limited to, type of
293 vegetation, increased setbacks and yard space, specifications for sewage and water supply
294 facilities, buffers and screens, period of maintenance sureties, deed restrictions, locations of
295 piers, docks, parking or signs, type or style of construction, and the amount of all guarantees
296 which may be required.
- 297 (j) Conditions required by the Planning Board at the preliminary plan review phase must
298 have been met before the final plan may be given final approval unless specifically waived,
299 upon written request by the applicant, by formal Planning Board action, wherein the
300 character and extent of such waivers which may have been requested are such that they may
301 be waived without jeopardy to the public health, safety and general welfare.
- 302 (k) The decision of the Planning Board plus any conditions imposed must be noted on three
303 copies of the preliminary plan. One copy must be returned to the applicant, one retained by
304 the Planning Board and one forwarded to the municipal officials.
- 305 (l) If the final plan is not submitted to the Planning Board within six months after
306 classification of the sketch plan, the Planning Board may refuse to act on the subdivision
307 preliminary plan and require resubmission of the sketch plan. All such plans resubmitted
308 must comply with all normal application requirements.
- 309 (5) Plan Requirements, Preliminary Plan
- 310 (a) Plan sheets drawn on a reproducible medium and must measure no no larger than 24
311 inches by 36 inches;
- 312 (b) With scale of the drawings no greater than one inch equals 30 feet for developments less
313 than 10 acres, and one inch equals 50 feet for all others;
- 314 (c) Code block in the lower right-hand corner. The block must contain:
- 315 [1] Name(s) and address(es) of the applicant and owner;
- 316 [2] Name of the project;
- 317 [3] Name and address of the preparer of the plan, with professional seal, if applicable;
- 318 [4] Date of plan preparation/revision, and a unique ID number for the plan and any
319 revisions;
- 320 (d) Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the
321 manner recommended by the State Board of Registration for Land Surveyors;
- 322 (e) An arrow showing true North and the magnetic declination, a graphic scale, and signature
323 blocks for the owner(s) and members of the Planning Board;
- 324 (f) Locus map showing the property in relation to surrounding roads, within 2,000 feet of
325 any property line of the development;
- 326 (g) Vicinity map and aerial photograph showing the property in relation to surrounding
327 properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable
328 comprehensive plan features such as proposed park locations, land uses, zones, and other
329 features within 500 feet from any boundary of the proposed development;

- 330 (h) Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed
331 and amount of street frontage;
- 332 (i) Names and addresses of all owners of record of property abutting the development,
333 including those across a street;
- 334 (j) Existing Development Area Conditions, including but not limited to:
- 335 [1] Location and description of all structures, including signs, existing on the site,
336 together with accesses located within 100 feet of the property line;
- 337 [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife
338 habitat areas, forest cover, and outcroppings;
- 339 (k) Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and
340 drainageways. Proposed development area conditions including, but not limited to:
- 341 [1] Structures; their location and description including signs, to be placed on the site,
342 floor plan of exterior walls and accesses located within 100 feet of the property line;
- 343 [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and
344 drainageways;
- 345 [3] Sewage facilities type and placement. Test pit locations, at least two of which must
346 meet the State of Maine Plumbing Code requirements, must be shown;
- 347 [4] Domestic water source;
- 348 [5] Parks, open space, or conservation easement locations;
- 349 [6] Lot lines, interior and exterior, right-of-way, and street alignments;
- 350 [7] Road and other paved ways plans, profiles and typical sections including all relevant
351 data;
- 352 [8] Setbacks existing and proposed;
- 353 [9] Machinery permanently installed locations likely to cause appreciable noise at the lot
354 lines;
- 355 [10] Topographic contours of existing contours and finished grade elevations within the
356 development;
- 357 [11] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other
358 artificial features locations and dimensions proposed;
- 359 [12] Temporary marker locations adequate to enable the Planning Board to readily locate
360 and appraise the layout of the development;
- 361 [13] Land proposed to be dedicated to public use and the conditions of such dedication;
- 362 [14] Natural features or site elements to be preserved.
- 363 (6) Written Submission Requirements, Preliminary Plan
- 364 (a) Legal interest documents showing legal interest of the applicant in the property to be
365 developed. Such documents must contain the description upon which the survey was based;
- 366 (b) Property encumbrances currently affecting the property, as well as any proposed
367 encumbrances;
- 368 (c) Water District approval letter, if public water is used, indicating there is adequate supply
369 and pressure to be provided to the development;
- 370 (d) Erosion and sedimentation control plan endorsed by the York County Soil and Water

- 371 Conservation District or the Town's engineering consultant;
372 (e) Stormwater management preliminary plan for stormwater and other surface water
373 drainage prepared by a registered professional engineer including the general location of
374 stormwater and other surface water drainage areas;
375 (f) Soil survey for York County covering the development. Where the soil survey shows
376 soils with severe restrictions for development, a high intensity Class "A" soil survey must be
377 provided;
378 (g) Vehicular traffic report estimating the amount and type of vehicular traffic that will be
379 generated by the development on a daily basis and for peak hours;
380 (h) Traffic impact analysis in accordance with § 16.8.9.C(8)(a) for developments involving
381 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per
382 day;
383 (i) Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be
384 accomplished by subsurface disposal, pits, prepared by a licensed site evaluator;
385 (j) Town Sewage Department or community system authority letter, when sewage disposal
386 is to be through a public or community system, approving the connection and its location;
387 (k) Letters of evaluation of the development by the Chief of Police, Fire Chief,
388 Commissioner of Public Works, Sewage Department, Kittery Water District and, for
389 residential applications, the superintendent of schools, must be collected and provided by the
390 Town Planner.
391 (l) Additional submissions as may be required by other sections of this title such as for
392 clustered development, mobile home parks, or junkyards must be provided.
393 (7) Additional requirements. In its consideration of an application/plan, the Planning Board
394 may at any point in the review require the applicant to submit additional materials, studies,
395 analyses, and agreement proposals as it may deem necessary for complete understanding of
396 the application. Such materials may include:
397 (a) Traffic impact analysis, including the following data:
398 [1] An executive summary outlining the study findings and recommendations.
399 [2] A physical description of the project site and study area encompassed by the report
400 with a diagram of the site and its relationship to existing and proposed development
401 sites within the study area.
402 [3] A complete description of the proposed uses for the project site (in cases where
403 specific uses have not been identified, the highest traffic generators within the
404 category best fitting the proposed development must be used to estimate traffic
405 generators).
406 [4] Existing land uses and zone(s) in the vicinity of the site must be described. Any
407 proposals for the development of vacant parcels or redevelopment of parcels within
408 the study area of which the municipality makes the applicant aware, must be included
409 in the description.
410 [5] Street geometry and existing traffic control devices on all major streets and
411 intersections affected by the anticipated traffic generated.
412 [6] Trip generation must be calculated for the proposed project and other proposed new
413 projects and redevelopment projects within the study area using the most recent data

414 available from the Institute of Transportation Engineers' (ITE) Trip Generation
415 Guide, and/or actual field data collected from a comparable trip generator (i.e.,
416 comparable in size, location and setting). This data will be presented in a summary
417 table such that assumptions on trip generation and rates arrived at by the engineer are
418 fully understandable to the Planning Board.

419 [7] The anticipated trip distribution of vehicles entering and exiting the proposed site
420 during the appropriate peak hour(s) must be described and diagrammed.

421 [8] Trip assignment, the anticipated utilization of study area streets by traffic generated
422 by the proposed project, must be described and diagrammed.

423 [9] Existing traffic conditions in the study area will be identified and analyzed based
424 upon actual field counts and/or recent available machine counts.

425 [10] Existing traffic conditions in the study area will be described and diagrammed,
426 specifically AADT, appropriate peak design hour(s), traffic volumes, street and
427 intersection capacities, and levels of service.

428 [11] Existing safety conditions must be evaluated based upon the traffic accident data
429 available for the most current three years and described including link and node
430 critical rate factors (CRF).

431 [12] Future traffic conditions on the street system will be estimated based on existing
432 volumes, projected traffic growth in the general study area, projected traffic from
433 approved development, and traffic generated by the proposed project, specifically
434 AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection
435 capacity, street and intersection levels of service will be analyzed. When other
436 projects are being proposed within the impact area of the project, the Planning Board
437 may require these projects to be incorporated into the analysis.

438 [13] When the analysis of the proposed project's impact on traffic indicates unsatisfactory
439 CRF, levels of service or operating capacity on study area streets and intersections, a
440 description of proposed improvements to remedy identified deficiencies must be
441 included.

442 [14] The base data collected and analyzed during the course of the traffic impact study.

443 [15] If a development that requires a traffic impact study is within 500 feet of York or
444 Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236
445 or on their intersections located in York or Eliot, Maine, the applicant must provide
446 evidence that a copy of the impact study has been given to the impacted
447 municipality's chief administrative officer;

448 (b) Environmental analysis. An analysis of the effects that the development may have upon
449 surrounding lands and resources, including intensive study of groundwater, ecosystems, or
450 pollution control systems;

451 D. Final Plan Review

452 (1) Process

453 (a) Final plan application. The applicant must, within six months after approval of a
454 preliminary plan, file with the Planning Board an application for approval of the final plan in
455 the form prescribed herein.

456 (b) Failure to submit final plan application. If the final plan is not submitted to the Planning

457 Board within six months after the approval of the preliminary plan, the Planning Board may
458 refuse to act on the final plan and require resubmission of the preliminary plan. Any plan
459 resubmitted must comply with all application requirements, including payment of fees.

460 (c) Within 30 days after the filing of a Final Subdivision plan, the Planning Board must
461 approve the plan, approve the plan with conditions, disapprove the plan, postpone action on
462 the plan, or continue the review to another time/location.

463 (d) Continuation or tabling of a review beyond the thirty-day period for subdivision
464 applications must be for good and sufficient reason and be acceptable to both the applicant
465 and the Planning Board.

466 (e) Any plan may be continued for a total period not to exceed 90 calendar days for good and
467 sufficient reason (i.e., for revisions to be made, studies completed or additional information
468 submitted) and acceptable to both the applicant and the Planning Board. Such plan is
469 automatically scheduled for the agenda of the next regular Planning Board meeting after the
470 90th day and action completed in accordance with the requirements and timing contained in
471 this title, whether the applicant has accomplished the purposes for which it was continued or
472 not.

473 (f) The action to table by the Planning Board must be an action to temporarily suspend
474 action and not to suppress a vote on the plan.

475 (g) Failure of the Planning Board to act within the thirty-day period for an accepted
476 subdivision application, and the thirty-five-day period for other Planning Board accepted
477 applications, constitutes disapproval of the plan, in which case the applicant may resubmit
478 the plan without payment of an additional application fee.

479 (h) Application/plan review expiration.

480 [1] Uncounted time. When an approved plan is required to be reviewed/approved by
481 another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or
482 that a plan is continued by the Planning Board in accordance with this section from
483 time of submission to time of decision inclusive, verifiable by recorded
484 documentation, is not counted as part of the cumulative time periods described in this
485 section.

486 [2] Requests for extension. The Planning Board may grant extensions to expiration dates
487 upon written request by the developer, on a case-by-case basis.

488 (i) A completed application must be submitted to the Town Planner no later than 21 days
489 prior to the meeting date for the item to be included on the agenda. The submission must
490 include on the plan or attached thereto, the following items, unless upon the applicant's
491 written request, the Planning Board, by formal action, waives or defers any requirement(s)
492 for submission.

493 [1] Refer to current Planning Department application checklist for required number of
494 paper copies.

495 [2] One electronic submission in PDF format of the complete submission including all
496 forms, plans and documentation.

497 (2) Final Plan Requirements

498 A complete final plan application must fulfill all the requirements of a preliminary plan as
499 indicated in § 16.8.9.C(6) through (8) and must show the following items, unless the Planning
500 Board, by formal action, upon the applicant's written request, waives or defers any

501 requirement(s) for submission. If no changes occurred to the preliminary plan, it also may be
502 considered to be the final plan.

503 (a) Preliminary plan information, including vicinity map and any amendments thereto
504 suggested or required by the Planning Board or other required reviewing agency.

505 (b) Street names and lines, pedestrian ways, lots, easements and areas to be reserved for or
506 dedicated to public use.

507 (c) Street length of all straight lines, the deflection angles, radii, lengths of curves and central
508 angles of all curves, tangent distances and tangent bearings.

509 (d) Lots and blocks within a subdivision, numbered in accordance with local practice.

510 (e) Markers/permanent reference monuments: Their location, source references and, where
511 required, constructed in accordance with specifications herein.

512 (f) Structures: their location and description, including signs, to be placed on the site, floor
513 plans and elevations of principal structures as well as detail of all structures, showing
514 building materials and colors, and accesses located within 100 feet of the property line.

515 (g) Outdoor lighting and signage plan if the application involves the construction of more
516 than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000
517 square feet of impervious area; or the creation of three or more dwelling units in a building
518 — prepared by a qualified lighting professional, showing at least the following at the same
519 scale as the site plan:

520 [1] All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping
521 and proposed exterior lighting fixtures;

522 [2] All proposed lighting fixture specifications and illustrations, including photometric
523 data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps
524 (bulbs), and other descriptive information on the fixtures;

525 [3] Mounting height of all exterior lighting fixtures;

526 [4] Lighting analyses and luminance level diagrams or photometric point-by-point
527 diagrams on a twenty-foot grid, showing that the proposed installation conforms to
528 the lighting level standards of the ordinance codified in this section together with
529 statistical summaries documenting the average luminance, maximum luminance,
530 minimum luminance, average-to-minimum uniformity ratio, and maximum-to-
531 minimum uniformity ratio for each parking area, drive, canopy and sales or storage
532 area;

533 [5] Drawings of all relevant building elevations, showing the fixtures, the portions of the
534 walls to be illuminated, the luminance levels of the walls, and the aiming points for
535 any remote light fixtures; and

536 [6] A narrative that describes the hierarchy of site lighting and how the lighting will be
537 used to provides safety, security and aesthetic effects.

538 (h) Machinery in permanently installed locations likely to cause appreciable noise at the lot
539 lines.

540 (i) Materials (raw, finished or waste) storage areas, their types and location, and any stored
541 toxic or hazardous materials, their types and locations.

542 (j) Fences, retaining walls and other artificial features, locations, and dimensions proposed.

543 (k) Landscaping plan, including location, size and type of plant material.

544 (l) Location of snow storage areas.
545 (m) Stormwater management plan for stormwater and other surface water drainage prepared
546 by a registered professional engineer, including the location of stormwater and other surface
547 water drainage area; a post-construction stormwater management plan that defines
548 maintenance responsibilities, responsible parties, shared costs, and schedule for
549 maintenance; a draft maintenance agreement for stormwater management facilities; and,
550 where applicable, draft documents creating a homeowners' association referencing the
551 maintenance responsibilities. Where applicable, the maintenance agreement must be
552 included in the document of covenants, homeowners' documents and/or as riders to the
553 individual deed and recorded with the York County Registry of Deeds.

554 (n) Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the
555 plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing
556 would result in a safe and orderly development of the plan.

557 [1] The applicant may file a section of the approved plan with the municipal officials and
558 the York County Registry of Deeds if said section constitutes at least 25% of the total
559 number of lots, or for plans including buildings, 25% of the gross area, contained in
560 the approved plan. In all circumstances, plan approval of the remaining sections of
561 the plan will remain in effect for three years unless the applicant requests and the
562 Planning Board grants extensions of time equivalent to the requirements for approved
563 plans in § 16.8.11.D.

564 [2] Phasing is subject to any conditions deemed necessary to assure a reasonable mixture
565 of uses is completed within each separate phase of the plan.

566 [3] Where projects are to be constructed in phases, phasing of stormwater management,
567 water mains and streets are part of the review process.

568 [4] Portions of both the developed and undeveloped site impacted by interim
569 infrastructure conditions such as unlooped water systems, stormwater runoff from
570 unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be
571 clearly defined and shown on the plans.

572 [5] The Planning Board may permit construction of phases out of order only when the
573 storm drainage plan and the water plan, etc., have been reviewed by the Planning
574 Department or peer review engineer, and it has been demonstrated that the impact on
575 both the developed and undeveloped sections is negligible.

576 (3) Written Submission Requirements

577 (a) Open space land cession offers. Written offers of cession to the municipality of all public
578 open space shown on the plan, and copies of agreements or other documents showing the
579 manner in which space(s), title to which is reserved by the subdivider, are to be maintained.

580 (b) Open space land cession offers acknowledgement by Town. Written evidence that the
581 municipal officers are satisfied with the legal sufficiency of the documents referred to in
582 § 16.8.9.D(3)(a) Such written evidence does not constitute an acceptance by the
583 municipality of any public open space referred to in § 16.8.9.D(3)(a).

584 (c) Performance guaranty and Town acceptance to secure completion of all improvements
585 required by the Planning Board, and written evidence the Town Manager is satisfied with
586 the sufficiency of such guaranty.

587 [1] Where improvements for the common use of lessees or the general public have been

588 approved, the Planning Board must require a performance guaranty of amount
589 sufficient to pay for said improvements as a part of the agreement.

590 [2] Process. Prior to the issue of a building permit, the applicant must, in an amount and
591 form acceptable to the Town Manager, file with the Municipal Treasurer an
592 instrument to cover the full cost of the required improvements. A period of one year
593 (or such other period as the Planning Board may determine appropriate, not to exceed
594 three years) is the guaranty time within which required improvements must be
595 completed. The performance guaranty must include an amount required for recreation
596 land or improvements, as specified.

597 (d) Maintenance plan and agreement defining maintenance responsibilities, responsible
598 parties, shared costs and schedule. Where applicable, a maintenance agreement must be
599 included in the document of covenants, homeowners' documents and/or as riders to the
600 individual deed.

601 (4) Findings of Fact.

602 (a) After considering all submissions, evidence and testimony in accordance with the
603 requirements of all applicable state and the Town Code, the Planning Board must make a
604 finding of facts for each and every proposed phase of development, including the
605 development master plan and each subsequent development plan, and take formal action as
606 required in this title.

607 (b) Findings of fact. Action by the Planning Board must be based upon findings of fact which
608 certify or waive compliance with all the required standards of this title and which certify the
609 development meets the following requirements:

610 [1] Development conforms to local ordinances. The proposed development conforms to a
611 duly adopted Comprehensive Plan as per adopted provisions in the Town Code,
612 zoning ordinance, subdivision regulation or ordinance, development plan or land use
613 plan, if any. In making this determination, the municipal reviewing authority may
614 interpret these ordinances and plans.

615 [2] Freshwater wetlands identified. All freshwater wetlands within the project area have
616 been identified on any maps submitted as part of the application, regardless of the
617 size of these wetlands.

618 [3] River, stream or brook identified. Any river, stream or brook within or abutting the
619 proposed project area has been identified on any maps submitted as part of the
620 application. For purposes of this section, "river, stream or brook" has the same
621 meaning as in 38 M.R.S. § 480-B, subsection 9.

622 [4] Water supply sufficient. The proposed development has sufficient water available for
623 the needs of the development.

624 [5] Municipal water supply available. The proposed development will not cause an
625 unreasonable burden on an existing water supply, if one is to be used.

626 [6] Sewage disposal adequate. The proposed development will provide for adequate
627 sewage waste disposal and will not cause an unreasonable burden on municipal
628 services, if they are utilized.

629 [7] Municipal solid waste disposal available. The proposed development will not cause
630 an unreasonable burden on the municipality's ability to dispose of solid waste, if
631 municipal services are to be used.

- 632 [8] Water body quality and shoreline protected. Whenever situated entirely or partially
633 within 250 feet of any wetland, the proposed development will not adversely affect
634 the quality of that body of water or unreasonably affect the shoreline of that body of
635 water.
- 636 [9] Groundwater protected. The proposed development will not, alone or in conjunction
637 with existing activities, adversely affect the quality or quantity of groundwater.
- 638 [10] Flood areas identified and development conditioned. All flood-prone areas within the
639 project area have been identified on maps submitted as part of the application, based
640 on the Federal Emergency Management Agency's Flood Boundary and Floodway
641 Maps and Flood Insurance Rate Maps and information presented by the applicant. If
642 the proposed development, or any part of it, is in such an area, the applicant must
643 determine the one-hundred-year flood elevation and flood hazard boundaries within
644 the project area. The proposed plan must include a condition of plan approval
645 requiring that principal structures in the development will be constructed with their
646 lowest floor, including the basement, at least one foot above the one-hundred-year
647 flood elevation.
- 648 [11] Stormwater managed. The proposed development will provide for adequate
649 stormwater management.
- 650 [12] Erosion controlled. The proposed development will not cause unreasonable soil
651 erosion or a reduction in the land's capacity to hold water so that a dangerous or
652 unhealthy condition results.
- 653 [13] Traffic managed. The proposed development will:
- 654 [a] Not cause unreasonable highway or public road congestion or unsafe
655 conditions with respect to the use of the highways or public roads existing or
656 proposed; and
- 657 [b] Provide adequate traffic circulation, both on site and off site.
- 658 [14] Water and air pollution minimized. The proposed development will not result in
659 undue water or air pollution. In making this determination, the following must be
660 considered:
- 661 [a] Elevation of the land above sea level and its relation to the floodplains;
662 [b] Nature of soils and subsoils and their ability to adequately support waste
663 disposal;
- 664 [c] Slope of the land and its effect on effluents;
665 [d] Availability of streams for disposal of effluents;
666 [e] Applicable state and local health and water resource rules and regulations; and
667 [f] Safe transportation, disposal and storage of hazardous materials.
- 668 [15] Aesthetic, cultural and natural values protected. The proposed development will not
669 have an undue adverse effect on the scenic or natural beauty of the area, aesthetics,
670 historic sites, significant wildlife habitat identified by the Department of Inland
671 Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or
672 any public rights for physical or visual access to the shoreline.
- 673 [16] Developer financially and technically capable. Developer is financially and
674 technically capable to meet the standards of this section.

- 675 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay
676 Zones, the proposed use will:
- 677 [1] Maintain safe and healthful conditions;
 - 678 [2] Not result in water pollution, erosion or sedimentation to surface waters;
 - 679 [3] Adequately provide for the disposal of all wastewater;
 - 680 [4] Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
681 wildlife habitat;
 - 682 [5] Conserve shore cover and visual, as well as actual, points of access to inland and
683 coastal waters;
 - 684 [6] Protect archaeological and historic resources as designated in the comprehensive
685 plan;
 - 686 [7] Not adversely affect existing commercial fishing or maritime activities in a
687 commercial fisheries/maritime activities district;
 - 688 [8] Avoid problems associated with floodplain development and use; and
 - 689 [9] Is in conformance with the provisions of this title.
- 690 (d) For a right-of-way plan. The proposed right-of-way:
- 691 [1] Does not create any nonconforming lots or buildings; and
 - 692 [2] Could reasonably permit the right of passage for an automobile.
- 693 (e) For special exception use – special exception use permitted. If a special exception use is
694 requested, the special exception use will:
- 695 [1] Not prevent the orderly and reasonable use of adjacent properties or of properties in
696 adjacent use zones;
 - 697 [2] Not prevent the orderly and reasonable use of permitted or legally established uses in
698 the zone wherein the proposed use is to be located, or of permitted or legally
699 established uses in adjacent use zones; and
 - 700 [3] Not adversely affect the safety, the health, and the welfare of the Town.
 - 701 [4] Be in harmony with and promote the general purposes and intent of this title.
- 702 (5) Final plan approval and recording.
- 703 (a) Agreement form. An approval by the Planning Board must take the form of an agreement
704 between the Town and the applicant, incorporating as elements the application, the Planning
705 Board's findings of fact, and such conditions as the Planning Board may impose upon
706 approval.
 - 707 (b) Agreement distribution. The Planning Board must send copies of the agreement to the
708 Town Manager and Code Enforcement Officer.
 - 709 (c) Approved final plan signing. A plan has final approval only when the Planning Board has
710 indicated approval by formal action and the plan has been properly signed by a majority of
711 the Planning Board members or by the Chair only, if so voted by the Planning Board.
 - 712 (d) Approved final plan recording. An approved plan involving the division of land,
713 easements, or property boundary modification must be recorded by the York County
714 Registry of Deeds. Two (2) paper copies of the recorded plan must be returned to the Town
715 Planner.

716 16.8.10 Performance Standards and Approval Criteria717 A. Monuments718 (1) Stone monuments.

719 (a) Stone monuments must be set at all street intersections and points of curvature, but not
720 more than 750 feet apart along street lines without curves or intersections.

721 (b) Stone monuments must be set at all corners and angle points of the development
722 boundaries where the interior angle of the boundaries is less than 135° or greater than 225°.

723 (c) Stone monuments must be a minimum of four inches square at the top and four feet in
724 length and set in the ground at final grade level. Drilled holes, ~~1~~2½ inch deep, are to serve
725 to locate the point or points described above.

726 (2) Other monumentation.

727 All other development boundary corners and angle points, as well as all lot boundary
728 corners and angle points are to be marked by suitable monumentation constructed of
729 reasonably permanent material and solidly embedded in the ground. All such
730 monumentation must be capable of being detected by commonly used magnetic or
731 electronic equipment and clearly show the registration number of the registered land
732 surveyor responsible for the survey.

733 (3) Impractical placement.

734 Where the placement of a required monument at its proper location is impractical, it is
735 permissible to set a reference monument close to that point on an adjacent property line.

736 B. Basic Subdivision Layout

737 (1) Calculation of Density: See “Net Residential Acreage” in 16.5 General Performance
738 Standards.

739 (2) Wherever possible, side lot lines shall be perpendicular to the street.

740 (3) The subdivision of tracts into parcels with more than twice the required minimum lot size
741 shall be laid out in such a manner as either to provide for or preclude future division. Deed
742 restrictions or notes on the plan shall either prohibit future divisions of the lots or specify
743 that any future division shall constitute a revision to the plan and shall require approval
744 from the Board, subject to the criteria of the subdivision statute, the standards of these
745 regulations and conditions placed on the original approval.

746 (4) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it
747 may not be combined with a lot on the other side of the public street to meet the minimum
748 lot size.

749 (5) Lot Numbering. Even numbers shall be assigned to lots on one side of the street, and odd
750 numbers on the opposite side. Where the proposed subdivision contains the extension of an
751 existing street or street approved by the Board, but not yet constructed, the lot numbers
752 shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the
753 E-911 Addressing Officer and the comments shall be considered by the Board.

754 C. Water Supply

755 (1) The development shall be provided with a system of water supply that provides each use
756 with an adequate supply of water.

757 (2) If the project is to be served by a public water supply, the applicant shall secure and submit

- 758 a written statement from the Kittery Water District that the proposed water supply system
759 conforms with its design and construction standards, will not result in an undue burden on
760 the source of distribution system, and will be installed in a manner adequate to provide
761 needed domestic and fire protection flows.
- 762 (3) Service required.
- 763 (a) A public water supply system with fire hydrants must be installed and approved in
764 writing by the servicing water department.
- 765 (b) If in the opinion of the Board service to each lot by a public water system is not feasible,
766 the Board may allow individual wells or a central water supply system approved in writing
767 by a civil engineer registered in the State of Maine.
- 768 (c) If the developer proposes a central water supply system, it must also be approved in
769 writing by the Maine Department of Human Services.
- 770 (d) Water supply system installations are at the expense of the developer.
- 771 (e) All required approvals of a water supply system must be secured before official
772 submission of the final plan.
- 773 (4) Quality and pressure.
- 774 The developer must demonstrate by actual test or by a signed affidavit from an authorized
775 representative of the servicing water company that water meeting the "Maine Rules
776 Relating to Drinking Water (10-144 C.M.R. 231)" can be supplied to the development at
777 the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for
778 firefighting purposes.
- 779 (5) Storage.
- 780 Storage must be provided as necessary to meet peak domestic demands and fire protection
781 needs.
- 782 (6) Adequacy.
- 783 The developer must demonstrate in the form of signed affidavits from the servicing water
784 company or by engineering reports prepared by a civil engineer registered in the State of
785 Maine that the proposed development will not result in an undue burden on the source,
786 treatment facilities or distribution system involved or provide adequate assurance that such
787 source, treatment facilities or distribution system will be modified to meet the expanded
788 needs. The cost of such improvements is to be borne by the developer.
- 789 (7) Water main size.
- 790 The minimum water main size permitted is to be as required by the Kittery Water District,
791 installed at the expense of the developer.
- 792 (8) Design and installation.
- 793 The water supply system must be designed and installed in accordance with requirements
794 of the Maine Department of Human Services.
- 795 (9) Dug wells.
- 796 Because they are difficult to maintain in a sanitary condition, dug wells must be prohibited
797 by deed restriction and a note on the plan, unless permitted by the Board only if it is not
798 economically or technically feasible to develop other groundwater sources. Such dug wells
799 permitted must be constructed so as to prevent infiltration of surface water into the well.
- 800 (10) Central water supplies.
- 801 If a central water supply system is provided by the developer, location and protection of the

802 source, and design, construction and operation of the distribution system and appurtenances
803 and treatment facilities must conform to the recommendations included in the “Manual for
804 Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969).”

805 (11) Hydrologic analysis.

806 The Board may require the developer to provide a detailed hydrologic analysis in
807 accordance with the requirements of § 16.8.10.M, Water Quality and Wastewater Pollution.

808 D. Sewage Disposal

809 (1) Sewers.

810 (a) As per Chapter 13.1, Sewer Service System, connection to public sewer is required,
811 provided said sewer, located within an abutting public way, is within 100 feet of the
812 property line as measured along the said public way. Individual dwellings and structures in
813 approved and recorded developments where public sewer becomes available as described in
814 this subsection must connect per the requirements of Title 13, Chapter 13.1.

815 (b) Notwithstanding the provision above and Chapter 13.1, connection to public sewer is
816 required for a commercial or industrial development or a residential subdivision, where
817 public sewer, within an abutting public way, is within 1,000 feet of the property line as
818 measured along said public way. In such an event, the developer shall connect to public
819 sewer per the Town’s Superintendent of Sewer Services (SSS) specifications and in
820 accordance with Title 13. The developer shall provide written certification to the Planning
821 Board from the SSS that the proposed addition to public sewer is within the capacity of the
822 collection and wastewater treatment system.

823 (c) Sewer mains, service lines and related improvements must be installed at the developer’s
824 expense. Service lines must extend to each lot’s boundary line. Connections to public sewer
825 must be installed in accordance with this article and Chapter 13.1, Sewer Service System, of
826 the Kittery Town Code.

827 (d) Proposal and construction drawings must be approved in writing by the Town’s SSS. All
828 required approvals must be secured before the start of final plan review.

829 (e) When public sewer connection pursuant to Subsection B above is not feasible as
830 determined by the Planning Board, the Board may allow individual or common subsurface
831 wastewater disposal systems in accordance with § 16.8.10.D(2), below. To determine
832 feasibility, the developer shall submit information that considers the unique physical
833 circumstances of the property and sewer connection alternatives to conventional
834 construction/installation techniques, such as, but not limited to, horizontal/directional boring
835 and low-pressure sewer. The developer’s information must be accompanied by findings and
836 recommendations of the Town Peer Review Engineer. In determining feasibility, the Board
837 may not base its decision solely on additional costs associated with a sewer connection. The
838 intent of this subsection is not to avoid the requirements of Chapter 13.1, Sewer Service
839 System, of the Kittery Town Code.

840 (2) Subsurface wastewater disposal systems.

841 (a) The developer shall submit plans for subsurface wastewater disposal designed by a Maine
842 licensed site evaluator in full compliance with the requirements of the State of Maine
843 Plumbing Code, Subsurface Wastewater Disposal Rules, and this title. Subsurface
844 wastewater disposal systems (SWDS) must be constructed according to the approved plan.

845 (b) All first-time subsurface wastewater disposal systems must be installed in conformance

846 with State of Maine Subsurface Wastewater Disposal Rules and this title. The following also
847 apply:

848 [1] The minimum setback distance for a first-time subsurface disposal system may not be
849 reduced by variance.

850 [2] Clearing or removal of woody vegetation necessary to site a first-time system, and
851 any associated fill extensions may not extend closer than is allowed in the table in §
852 16.5.30, Minimum Setbacks from Wetlands and Water Bodies, for subsurface sewage
853 disposal.

854 (c) Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

855 [1] Where no expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and
856 Table 16.5.30 to the extent practicable and otherwise are allowed per the Maine
857 Subsurface Wastewater Disposal Rules; or

858 [2] Where expansion is proposed, the SWDS must comply with § 16.8.10.D(2) and Table
859 16.5.30 in addition to the Maine Subsurface Wastewater Disposal Rules.

860 NOTE: For the purposes of this subsection, “expansion” is defined in Section 9 of
861 the Maine Subsurface Wastewater Disposal Rules.

862 (d) Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990.
863 Where public sewer connection is not feasible, the developer must submit evidence of soil
864 suitability for subsurface wastewater disposal systems, i.e., test pit data and other
865 information as required by the State of Maine Subsurface Wastewater Disposal Rules and
866 this title. In addition:

867 [1] On lots with a limiting factor identified as being within 24 inches of the surface, a
868 second site with suitable soils must be shown as a reserve area for future replacement
869 should the primary site fail. Such reserve area is to be shown on the plan; not be built
870 upon; and, must comply with all the setback requirements of the Subsurface
871 Wastewater Disposal Rules and this title.

872 [2] In no instance may a primary or reserve disposal area be permitted on soils or on a lot
873 requiring a first-time system variance request per the State of Maine Subsurface
874 Wastewater Disposal Rules.

875 [3] Test pits must be of sufficient numbers (a minimum of two) and so located at
876 representative points within each disposal area (primary and reserve sites) to ensure
877 that the proposed disposal system can be located on soils and slopes that meet the
878 criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State
879 Plumbing Code. All passing and failing test pits must be shown on the plan.

880 (e) The developer shall install advanced pretreatment to subsurface wastewater disposal
881 systems that are located inside or within 100 feet of areas that include a sand and gravel
882 aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry
883 (DACF) Geological Survey Maps or determined by Maine DACF staff.

884 (3) Holding tanks.

885 (a) Holding tanks are not allowed for a first-time residential use.

886 (4) (Reserved)

887 (5) Sanitary facilities/restrooms.

888 (a) Any development containing a retail use or a food service use, or a combination thereof,

889 exceeding 10,000 square feet must provide public toilet facilities in accordance with
890 Subsections b., c., and d. of this section.

891 (b) Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly
892 marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be
893 located within or immediately adjacent to all toilet rooms or vestibules. There may be no
894 charge for their use.

895 (c) Where a retail development exceeds 60,000 square feet, each toilet facility must contain a
896 minimum of two water closets.

897 (d) Requirements for handicapped accessibility to sanitary facilities are pursuant to
898 applicable state standards.

899 E. Stormwater and Surface Drainage

900 (1) Adequate provision must be made for drainage of all stormwater generated with the
901 development and any drained groundwater through a management system of natural and
902 constructed features. Where possible, existing natural runoff control features, such as
903 berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage
904 infiltration of storm waters. Otherwise, drainage may be accomplished by a management
905 system of constructed features such as swales, culverts, underdrains and storm drains.

906 (2) To ensure proper functioning, stormwater runoff control systems must be maintained in
907 good working order per § 16.8.10.F. Post-construction stormwater management.

908 (3) Where a development is traversed by a stream, river or surface water drainageway, or
909 where the Planning Board determines that surface runoff should be controlled, easements
910 and or drainage rights-of-way must be provided which conform substantially to the lines of
911 existing natural drainage paths. The minimum width of the drainage easements or rights-of-
912 way is 30 feet.

913 (a) The minimum pipe size for any storm drainage pipe must be 12 inches. Maximum trench
914 width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe
915 must be bedded in a fine granular material, containing no stones larger than three inches,
916 lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the
917 pipe extending to six inches above the top of the pipe.

918 (b) Except for normal thinning and landscaping, existing vegetation must be left intact to
919 prevent soil erosion.

920 (4) When proposed development does not require Maine Department of Environmental
921 (MDEP) approval under MDEP Chapters 500 and 502, the following applies:

922 (a) All components of the stormwater management system must be designed to limit peak
923 discharge to predevelopment levels for the two-year and twenty-five-year, twenty-four-hour
924 duration, frequencies, based on the rainfall data for Portsmouth, NH. When the development
925 discharges directly to a major water body, peak discharge may be increased from
926 predevelopment levels, provided downstream drainage structures are suitably sized.

927 (b) The stormwater management system must be designed to accommodate upstream
928 drainage, taking into account existing conditions and approved or planned developments not
929 yet built and must include a surplus design capacity factor of 25% for potential increases in
930 upstream runoff.

931 (c) Downstream drainage requirements must be studied to determine the effect of the
932 proposed development. The storm drainage must not overload existing or future planned

933 storm drainage systems downstream from the development. The developer is responsible for
934 financing any improvements to existing drainage systems required to handle the increased
935 storm flows.

936 [1] Wherever the storm drainage system is not within the right-of-way of a public street,
937 perpetual easements must be provided to the Town allowing maintenance and
938 improvement to the system.

939 [2] All sediment and erosion control measures must be designed in accordance with
940 MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.

941 [3] Catch basins in streets and roads must be installed where necessary and located at the
942 curbline. In parking lots and other areas, catch basins must be located where
943 necessary to ensure proper drainage.

944 [4] Where soils require a subsurface drainage system, the drains must be installed and
945 maintained separately from the stormwater drainage system.

946 [5] Where the Board has required a stormwater management and erosion control plan and
947 MDEP approval under Chapters 500 and 502 is not required, said plan must be
948 endorsed by the York County Soil and Water Conservation District.

949 [6] Drainage easements for existing or proposed drainageways located outside a public
950 way must be maintained and/or improved in accordance with § 16.8.10.F, Post-
951 construction stormwater management.

952 F. Post-construction stormwater management.

953 (1) Purposes. This section is enacted to provide for the health, safety and general welfare of the
954 citizens of Kittery through monitoring and enforcement of compliance with post-
955 construction stormwater management plans in order to comply with minimum control
956 measures requirements of the federal Clean Water Act, of federal regulations and of
957 Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section
958 seeks to ensure that post-construction stormwater management plans are followed and
959 stormwater management facilities, including but not limited to any parking areas, catch
960 basins, drainage swales, detention basins and ponds, pipes and related structures that are
961 part of the storm drainage system, are properly maintained and pose no threat to public
962 safety.

963 (2) Authority. The Maine Department of Environmental Protection, through its dissemination
964 of the General Permit for the Discharge of Stormwater from Small Municipal Separate
965 Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small
966 municipal separate storm sewer system ("small MS4"); under this general permit, listing as
967 a regulated small MS4 requires enactment of this section as part of the Town's stormwater
968 management program in order to satisfy the minimum control measures required by Part IV
969 D 5 ("Post-construction stormwater management in new development and redevelopment").

970 (3) Applicability.

971 (a) In general. This section applies to all new development or redevelopment (any
972 construction activity on premises already improved that alters stormwater drainage patterns)
973 including one acre or more of disturbed area, or activity with less than one acre of total land
974 area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or
975 greater than one acre.

976 (b) Exception. This section does not apply to new development or redevelopment on a lot,

977 tract or parcel where that lot, tract or parcel is part of a subdivision that has received
978 approval of its post-construction stormwater management plan and stormwater management
979 facilities under the Town's subdivision or other zoning, planning or other land use
980 ordinances; said lot, tract or parcel will not require additional review under this section but
981 must comply with the post-construction stormwater management plan for that approved
982 subdivision.

983 (c) Post-construction stormwater management plan approval.

984 [1] General requirement. Notwithstanding any ordinance provision to the contrary, and
985 except as provided in § 16.8.10.F(3)(b), Exception, no applicant for a building permit,
986 subdivision approval, site plan approval or other zoning, planning or other land use
987 approval for new development or redevelopment to which this section is applicable
988 will receive such permit or approval for that new development or redevelopment
989 unless the applicant also receives approval for its post-construction stormwater
990 management plan and stormwater management facilities.

991 [2] Notice of BMP discharge to Town's MS4. At the time of application for a building
992 permit, subdivision approval, site plan approval or other zoning, planning or other
993 land use approval for new development or redevelopment to which this section is
994 applicable, the applicant must notify the Town Planner if its post-construction
995 stormwater management plan includes any BMP(s) that will discharge to the Town's
996 MS4 and must include in this notification a listing of which BMP(s) will so
997 discharge.

998 [3] Engineering and administrative fees. At the time of application, the applicant must
999 pay an amount to the Town estimated to be sufficient to pay the engineering review
1000 costs and administrative costs incurred by the Town in review of the post-
1001 construction stormwater management plan. The Town will deduct from this amount
1002 the engineering and administrative costs incurred by the Town based upon the hours
1003 of engineering review time and prevailing hourly rate for reimbursement of the
1004 Town's administrative costs. Any remaining engineering and administrative review
1005 costs owed by the applicant must be paid in full by the applicant prior to the issuance
1006 of any temporary or permanent certificate of occupancy, and any unused balance
1007 remaining at that time will be refunded to the applicant.

1008 (d) Post-construction stormwater management plan compliance.

1009 [1] General requirements. Any person owning, operating, leasing or having control over
1010 stormwater management facilities required by a post-construction stormwater
1011 management plan approved under the Town's subdivision, site plan or other zoning,
1012 planning or other land use ordinances must demonstrate compliance with that plan as
1013 follows:

1014 [a] That person or a qualified post-construction stormwater inspector hired by that
1015 person must, at least annually, inspect the stormwater management facilities in
1016 accordance with all municipal and state inspection, cleaning and maintenance
1017 requirements of the approved post-construction stormwater management plan;

1018 [b] If the stormwater management facilities require maintenance to function as
1019 intended by the approved post-construction stormwater management plan, that
1020 person must take corrective action(s) to address the deficiency or deficiencies;
1021 and

- 1022 [c] That person or a qualified post-construction stormwater inspector hired by that
1023 person must, on or by July 1 of each year, provide a completed and signed
1024 certification to the Code Enforcement Officer in a form provided by the Town,
1025 certifying that the person has inspected the stormwater management facilities
1026 and that they are adequately maintained and functioning as intended by the
1027 approved post-construction stormwater management plan or that they require
1028 maintenance or repair, describing any required maintenance and any
1029 deficiencies found during inspection of the stormwater management facilities,
1030 and if the stormwater management facilities require maintenance or repair of
1031 deficiencies in order to function as intended by the approved post-construction
1032 stormwater management plan, the person must provide a record of the
1033 required maintenance or deficiency and corrective action(s) taken.
- 1034 [2] Right of entry. In order to determine compliance with this section and with the post-
1035 construction stormwater management plan, the Code Enforcement Officer may enter
1036 upon property at reasonable hours with the consent of the owner, occupant or agent to
1037 inspect the stormwater management facilities.
- 1038 (e) Annual report. Beginning July 1, 2009, and each year thereafter, the Town must include
1039 the following in its annual report to the Maine Department of Environmental Protection:
- 1040 [1] Cumulative number of sites that have stormwater management facilities discharging
1041 into its MS4;
- 1042 [2] Summary of the number of sites that have stormwater management facilities
1043 discharging into its MS4 that were reported to the Town;
- 1044 [3] Number of sites with documented functioning stormwater management facilities; and
- 1045 [4] Number of sites that require routine maintenance in order to continue the original line
1046 and grade, the hydraulic capacity, and the original purpose of improvements; or
1047 remedial action to ensure that stormwater management facilities are functioning as
1048 intended.
- 1049 (f) Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of
1050 this section and take appropriate actions to seek the correction of violations. Enforcement of
1051 the post-construction stormwater management regulations are conducted in accordance with
1052 Chapter 16.2.
- 1053 (4) Storm drainage construction standards.
- 1054 (a) Materials:
- 1055 [1] Reinforced concrete pipe must meet the requirements of ASTM Designation C-76
1056 (AASHTO M170). Pipe classes are required to meet the soil and traffic loads with a
1057 safety factor of 1.2 on the 0.01-inch crack strength with Class B bedding. Joints are to
1058 be of the rubber gasket type, meeting ASTM Designation C443-70, or of an approved
1059 performed plastic jointing material such as "Ramnek." Perforated concrete pipe must
1060 conform to the requirements of AASHTO M175 for the appropriate diameters.
- 1061 [2] Corrugated metal pipe must be bituminous-coated, meeting the requirements of
1062 AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO
1063 Designation M196 for aluminum alloy pipe for sectional dimensions and type of
1064 bituminous coating. Pipe gauge is to be as required to meet the soil and traffic loads
1065 with a deflection of not more than 5%.

- 1066 [3] SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
1067 [4] Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
1068 [5] Catch basins are to be precast concrete truncated cone section construction, meeting
1069 the requirements of ASTM Designation C478, or precast concrete manhole block
1070 construction, meeting the requirements of ASTM C139, radial type. Castings are to
1071 be square cast iron sized for the particular inlet condition with the gratings
1072 perpendicular to the curbline. Bases may be cast-in-place 3,000 psi twenty-eight-day
1073 strength concrete or may be of precast concrete, placed on a compacted foundation of
1074 uniform density. Metal frames and traps must be set in a full mortar bed with tops and
1075 are to conform to the requirements of AASHTO M103 for carbon steel casings,
1076 AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283,
1077 Grade B or better) for structure steel.
- 1078 (g) Drain inlet alignment is to be straight in both vertical and horizontal alignment unless
1079 specific approval for curvilinear drain is obtained in writing from the Commissioner of
1080 Public Works.
- 1081 (h) Manholes are to be provided at all changes in vertical or horizontal alignment and at all
1082 junctions. On straight runs, manholes are to be placed at a maximum of three-hundred-foot
1083 intervals.
- 1084 (i) Upon completion, each catch basin or manhole must be cleared of all accumulation of
1085 silt, debris or other foreign matter and kept clean until final acceptance.

1086 G. Vehicular Traffic

- 1087 (1) Adequacy of Road System. Vehicular access to the site shall be on roads which have
1088 adequate capacity to accommodate the additional traffic generated by the development.
1089 Intersections on arterial streets within a half (0.5) mile of any entrance road which are
1090 functioning at a Level of Service of D or better prior to the development shall function at a
1091 minimum at Level of Service D after development. If any such intersection is functioning at
1092 a Level of Service E or lower prior to the development, the project shall not reduce the
1093 current level of service. This requirement may be waived by the Planning Board if the
1094 project is located within a growth area designated in the Town's adopted Comprehensive
1095 Plan and the Board determines that the project will not have an unnecessary adverse impact
1096 on traffic flow or safety.
- 1097 (a) A development not meeting this requirement may be approved if the applicant
1098 demonstrates that:
- 1099 [1] A public agency has committed funds to construct the improvements necessary to
1100 bring the level of access to this standard, or
- 1101 [2] The applicant will assume financial responsibility for the improvements necessary to
1102 bring the level of service to this standard and will assure the completion of the
1103 improvements with a financial guarantee acceptable to the municipality.
- 1104 (2) Traffic Impact Study. When required by the Planning Board or Staff Review Committee, a
1105 Traffic Impact Study will include the following elements related to the project and
1106 surrounding street network.
- 1107 (a) An executive summary outlining the study findings and recommendations.
- 1108 (b) A physical description of the project site and study area encompassed by the report with a
1109 diagram of the site and its relationship to existing and proposed development sites within the

- 1110 study area.
- 1111 (c) A complete description of the proposed uses for the project site (in cases where specific
1112 uses have not been identified, the highest traffic generators within the category best fitting
1113 the proposed development must be used to estimate traffic generators).
- 1114 (d) Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals
1115 for the development of vacant parcels or redevelopment of parcels within the study area of
1116 which the municipality makes the applicant aware, must be included in the description.
- 1117 (e) Street geometry and existing traffic control devices on all major streets and intersections
1118 affected by the anticipated traffic generated.
- 1119 (f) Trip generation must be calculated for the proposed project and other proposed new
1120 projects and redevelopment projects within the study area using the most recent data
1121 available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide,
1122 and/or actual field data collected from a comparable trip generator (i.e., comparable in size,
1123 location and setting). This data will be presented in a summary table such that assumptions
1124 on trip generation and rates arrived at by the engineer are fully understandable to the
1125 Planning Board.
- 1126 (g) The anticipated trip distribution of vehicles entering and exiting the proposed site during
1127 the appropriate peak hour(s) must be described and diagrammed.
- 1128 (h) Trip assignment, the anticipated utilization of study area streets by traffic generated by
1129 the proposed project, must be described and diagrammed.
- 1130 (i) Existing traffic conditions in the study area will be identified and analyzed based upon
1131 actual field counts and/or recent available machine counts.
- 1132 (j) Existing traffic conditions in the study area will be described and diagrammed,
1133 specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection
1134 capacities, and levels of service.
- 1135 (k) Existing safety conditions must be evaluated based upon the traffic accident data
1136 available for the most current three years and described including link and node critical rate
1137 factors (CRF).
- 1138 (l) Future traffic conditions on the street system will be estimated based on existing
1139 volumes, projected traffic growth in the general study area, projected traffic from approved
1140 development, and traffic generated by the proposed project, specifically AADT traffic,
1141 appropriate peak hour(s) traffic volumes, street and intersection capacity, street and
1142 intersection levels of service will be analyzed. When other projects are being proposed
1143 within the impact area of the project, the Planning Board may require these projects to be
1144 incorporated into the analysis.
- 1145 (m)When the analysis of the proposed project's impact on traffic indicates unsatisfactory
1146 CRF, levels of service or operating capacity on study area streets and intersections, a
1147 description of proposed improvements to remedy identified deficiencies must be included.
- 1148 (n) The base data collected and analyzed during the course of the traffic impact study.
- 1149 (o) If a development that requires a traffic impact study is within 500 feet of York or Eliot,
1150 Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their
1151 intersections located in York or Eliot, Maine, the applicant must provide evidence that a
1152 copy of the impact study has been given to the impacted municipality's chief administrative
1153 officer;

- 1154 (3) Access to the Site. Vehicular access to and from the development shall be safe and
1155 convenient.
- 1156 (a) Any driveway or proposed street shall be designed so as to provide the minimum sight
1157 distance according to the Maine Department of Transportation standards.
- 1158 (b) Points of access and egress shall be located to avoid hazardous conflicts with existing
1159 turning movements and traffic flows.
- 1160 (c) The grade of any proposed drive shall be not more than ±3% for a minimum of fifty (50)
1161 feet, from the intersection.
- 1162 (d) The intersection of any access/egress drive or proposed street shall function: (a) at a
1163 Level of Service of D following development if the project will generate one thousand
1164 (1,000) or more vehicle trips per twenty-four (24) hour period.
- 1165 (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress
1166 from the lot shall be provided from the street where there is less potential for traffic
1167 congestion and for traffic and pedestrians hazards. Access from other streets may be allowed
1168 if it is safe and does not promote shortcutting through the site.
- 1169 (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to
1170 avoid traffic congestion, the applicant shall be responsible for providing turning lanes,
1171 traffic directional islands, and traffic controls within public streets.
- 1172 (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering
1173 vehicles on any public street.
- 1174 (h) The following criteria shall be used to limit the number of driveways serving a proposed
1175 project:
- 1176 [1] No use which generates less than one hundred (100) vehicle trips per day shall have
1177 more than one (1) two-way driveway onto a single roadway. Such driveway shall be
1178 no greater than forty (40) feet wide.
- 1179 [2] No use which generates one hundred (100) or more vehicle trips per day shall have
1180 more than two (2) points of entry from and two (2) points of egress to a single
1181 roadway. The combined width of all accessways shall not exceed sixty (60) feet.
- 1182 [3] The Planning Board or Technical Review Committee may limit a development to one
1183 (1) point of ingress/egress onto US Route 1, Route 236 , and US Route 1 Bypass.
- 1184 (4) Accessway Location and Spacing. Accessways shall meet the following standards:
- 1185 (a) Private entrances/exits shall be located at least fifty (50) feet from the closest
1186 unsignalized intersection and one hundred fifty (150) feet from the closest signalized
1187 intersection, as measured from the point of tangency for the corner to the point of tangency
1188 for the accessway. This requirement may be reduced if the shape of the site does not allow
1189 conformance with this standard.
- 1190 (b) Private accessways in or out of a development shall be separated by a minimum of
1191 seventy-five (75) feet where possible.
- 1192 (c) Accessways shall be aligned with accessways on the opposite side of a public street to the
1193 greatest extent possible.
- 1194 (5) Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of
1195 passenger, service, and emergency vehicles through the site.
- 1196 (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route

1197 for such vehicles with appropriate geometric design to allow turning and backing for a
1198 minimum of SU-30 vehicles.

1199 [1] If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for
1200 such vehicles with appropriate geometric design shall allow for turning and backing
1201 for a minimum of WB-50 vehicles.

1202 (b) Clear routes of access shall be provided and maintained for emergency vehicles to and
1203 around buildings and shall be posted with appropriate signage (fire lane - no parking).

1204 (c) The layout and design of parking areas shall provide for safe and convenient circulation
1205 of vehicles throughout the lot.

1206 (d) All roadways shall be designed as follows:

1207 [1] To harmonize with the topographic and natural features of the site insofar as practical
1208 by minimizing filling, grading, excavation, or other similar activities which result in
1209 unstable soil conditions and soil erosion,

1210 [2] By fitting the development to the natural contour of the land and avoiding substantial
1211 areas of excessive grade and tree removal, and by retaining existing vegetation during
1212 construction,

1213 [3] The road network shall provide for vehicular, pedestrian, and cyclist safety, all season
1214 emergency access, snow storage, and delivery and collection services.

1215 (e) Nonresidential projects that include drive-through services shall be designed and have
1216 sufficient stacking capacity to avoid the queuing of vehicles on any public street.

1217 H. Cluster Residential Development

1218 (1) Purpose.

1219 To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic,
1220 marine, cultural and historic resources, land use patterns and recreation and open space, this
1221 article is intended to encourage and allow new concepts and innovative approaches to
1222 housing/commercial development and environmental design so development will be a
1223 permanent and long-term asset to the Town, while in harmony with the natural features of
1224 the land, water and surrounding development. Objectives include:

1225 (a) Efficient use of the land and water, with small networks of utilities and streets;

1226 (b) Preservation of open space and creation of recreation areas;

1227 (c) Maintenance of rural character, preserving farmland, forests and rural viewsapes;

1228 (d) Preservation of areas with the highest ecological value;

1229 (e) Location of buildings and structures on those portions of the site most appropriate for
1230 development;

1231 (f) Creation of a network of contiguous open spaces or "greenways" by linking the common
1232 open spaces within the site and to open space on adjoining lands wherever possible;

1233 (g) Reduction of impacts on water resources by minimizing land disturbance and the creation
1234 of impervious surfaces and stormwater runoff;

1235 (h) Preservation of historic, archaeological, and cultural features; and

1236 (i) Minimization of residential development impact on the municipality, neighboring
1237 properties and the natural environment.

1238 (2) Permitted zones.

- 1239 (a) Cluster residential development is permitted in various zones as indicated in Chapter
1240 16.4, Land Use Zone Regulations.
- 1241 (3) Dimension standards modifications.
1242 Notwithstanding other provisions of this title relating to dimensional standards, the
1243 Planning Board, in reviewing and approving proposed residential development under this
1244 article, may modify certain dimensional standards limited to lot area, lot coverage, frontage
1245 and setback requirements to permit flexibility in approaches to site design in accordance
1246 with the standards of this title. The Board may allow subdivision or site development with
1247 the limited modified dimensional standards listed above where the Board determines the
1248 benefit of a cluster development is consistent with this title. Such modifications may not be
1249 construed as granting variances to relieve hardship.
- 1250 (4) Property ownership.
1251 Tracts or parcels of land involved in a development proposed under this article must be in
1252 single ownership; or must be the subject of an application filed jointly by the owners of all
1253 properties included; or must have an applicant with vested interest in all property included.
1254 Pursuant to the requirements of this article, mobile home parks or mobile homes on
1255 individual lots are not eligible for cluster residential development.
- 1256 (5) Application procedure.
1257 All development reviewed under this article is subject to the application procedures in
1258 §16.8, Subdivision Review, and the following:
- 1259 (a) In addition to the requirements of § 16.8, Subdivision Review, the following are required
1260 at submittal of the sketch plan:
- 1261 [1] Calculations and maps to illustrate:
- 1262 [a] Proposed dimensional modifications and the dimensional standards required in
1263 the zone in which the development will be located;
- 1264 [b] All land area identified in § 16.5.18, Net Residential Acreage;
- 1265 [c] Net residential density; and
- 1266 [d] Open space as defined in § 16.8.10.H(6)(e), of this article.
- 1267 [2] A map showing constraints to development, such as, but not limited to, wetlands,
1268 resource protection zones, shoreland zones, deer wintering areas, side slopes in excess
1269 of 33%, easements, rights-of-way, existing roads, driveway entrances and
1270 intersections, existing structures, and existing utilities.
- 1271 [3] A written statement describing the ways the proposed development furthers the
1272 purpose and objectives of this article, including natural features which will be
1273 preserved or enhanced. Natural features include, but are not limited to, moderate-to-
1274 high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-
1275 high-yield aquifers and important natural or historic sites worthy of preservation.
- 1276 [4] The location of each of the proposed building envelopes. Only developments having a
1277 total subdivision or site plan with building envelopes will be considered.
- 1278 (b) An applicant with a project that includes proposed public open space must obtain Town
1279 Council acceptance for the public land or easement following preliminary plan approval.
1280 Town Council acceptance is contingent upon receipt of final plan approval by the Planning
1281 Board.

- 1282 (6) Standards.
- 1283 (a) The purpose and intent of this title must be upheld for any reviews conducted under this
- 1284 article.
- 1285 (b) A cluster residential development must meet all requirements for a subdivision (and site
- 1286 plan where applicable) and all other applicable federal, state and local ordinances, except as
- 1287 modified by action of the Planning Board, where authorized.
- 1288 (c) Public or privately shared sewer and water must be provided unless it is demonstrated to
- 1289 the Planning Board's satisfaction that alternative methods used result in a development that
- 1290 is compatible with this section 16.8.10.H.
- 1291 (d) Unless a public or shared sewer collection and treatment system is provided, no lot may
- 1292 be smaller than 20,000 square feet per single-family residence and 8,000 square feet per
- 1293 bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, 12
- 1294 M.R.S. § 4807-A.
- 1295 (e) Open space requirements.
- 1296 [1] Open space must contain at least 50% of the total area of the property and no less
- 1297 than 30% of the total net residential acreage, as defined.
- 1298 [2] Total calculated open space must be designated as follows (see open space definitions
- 1299 in Chapter 16.3):
- 1300 [a] Open space, reserved;
- 1301 [b] Open space, common; and/or
- 1302 [c] Open space, public.
- 1303 [3] The use of any open space may be further limited or controlled by the Planning Board
- 1304 at the time of final approval, where necessary, to protect adjacent properties or uses.
- 1305 [4] Open space must be deeded in perpetuity for the recreational amenity and
- 1306 environmental enhancement of the development and be recorded as such. Such deed
- 1307 provisions may include deed/plan restrictions, private covenants, or arrangements to
- 1308 preserve the integrity of open spaces and their use as approved by the Planning
- 1309 Board.
- 1310 [5] Open space must also be for preserving large trees, tree groves, woods, ponds,
- 1311 streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the
- 1312 applicant's written statement. In the Mixed-Use Neighborhood (MU-N) Zone, open
- 1313 space may be both man-made and natural. Man-made open space must be for the
- 1314 development of recreational areas, pedestrian ways and aesthetics that serve to
- 1315 interconnect and unify the built and natural environments.
- 1316 [6] Open space should be in a contiguous form of unfragmented land to protect natural
- 1317 resources, including plant and wildlife habitats.
- 1318 [7] A portion of the open space should be in close proximity to other open spaces used
- 1319 for recreation (e.g., a common green, multipurpose athletic field, gardens, and
- 1320 playgrounds).
- 1321 (f) In the Mixed-Use Neighborhood (MU-N) Zone, the maximum building height is 40 feet.
- 1322 If the Planning Board finds that provisions for fire safety are adequate to allow buildings of
- 1323 greater height, then the Board may allow a building height of up to 60 feet as a part of the
- 1324 development plan review and approval process.

- 1325 (g) In cluster residential developments, no individual lot or dwelling unit may have direct
1326 vehicular access onto a public road existing at the time of development.
- 1327 (h) Where cluster residential development abuts a body of water, stream, or a significant
1328 wetland, then a usable portion of the shoreline, as well as reasonable access to such body,
1329 stream or wetland, must be a part of the commonly held land.
- 1330 (i) The developer must take into consideration the following points, and illustrate the
1331 treatment of buildings, structures, spaces, paths, roads, service and parking areas,
1332 recreational facilities, and any other features determined by the Planning Board to be a part
1333 of the proposed development.
- 1334 [1] Orientation. Buildings, view corridors and other improvements are to be designed so
1335 scenic vistas and natural features are integrated into the development. Buildings
1336 should be sited to consider natural light and ventilation.
- 1337 [2] Utility installation. All utilities are to be installed underground, wherever possible.
1338 The Planning Board must require the developer to adopt a prudent avoidance
1339 approach when permitting aboveground electrical service installations. Transformer
1340 boxes, pumping stations and meters must be located so as not to be unsightly or
1341 hazardous to the public.
- 1342 [3] Recreation. Facilities must be provided consistent with the development proposal.
1343 Active recreation requiring permanent equipment and/or modification of the site may
1344 not be located within the wetland setback areas or contiguous reserved open space
1345 areas.
- 1346 [4] Buffering. Planting, landscaping, form and siting of buildings and other
1347 improvements, or fencing and screening must be used to integrate the proposed
1348 development with the landscape and the character of any surrounding development.
- 1349 [5] Development setbacks. Setbacks from wetlands and water bodies must demonstrate
1350 compliance to Table 16.5.30. These setbacks must be permanently maintained as "no
1351 cut, no disturb" buffer areas. If the setback areas are not of substantial vegetation to
1352 provide a sufficient buffer, the Planning Board may require additional plantings.
- 1353 (j) The location of subsurface wastewater disposal systems and a reserve area, if required,
1354 must be shown on the plan. The reserve areas must be restricted so as not to be built upon.
1355 The report of a site evaluator, licensed by the State of Maine, must accompany the plan. If
1356 the subsurface disposal system is an engineered system, approval from the Maine
1357 Department of Human Services, Division of Health Engineering, and the Municipal
1358 Plumbing Inspector must be obtained prior to Planning Board approval.
- 1359 (7) Open space dedication and maintenance.
- 1360 (a) Prior to approval of the final plan by the Planning Board, documents for open space must
1361 be submitted to the Town for review by legal counsel. Subsequent to approval, there may be
1362 no further division of the open space; however, tracts or easements dedicated for public
1363 utilities, public access or structures accessory to noncommercial recreation, agriculture or
1364 conservation may be permitted within the open space.
- 1365 (b) The open space(s) must be shown on the development plan with appropriate notation on
1366 the face thereof to indicate that:
- 1367 [1] The open space must not be used for future building lots; and
1368 [2] A part or all of the open space may be dedicated for acceptance by the Town.

1369 (c) If any, or all, of the open space is to be reserved for ownership by the residents and/or by
 1370 commercial entities, the bylaws of the proposed homeowners' or similar governing
 1371 association for commercial owners (in the Mixed-Use Neighborhood Zone) and/or the
 1372 recorded covenants must specify maintenance responsibilities and be submitted to the
 1373 Planning Board prior to approval. See Subsection A above.

1374 (d) Association responsibilities.

1375 [1] Maintenance. The homeowners' association or similar association for commercial
 1376 owners is responsible for the maintenance of open space(s) and other common
 1377 facilities unless and until accepted by the Town. The stormwater management system
 1378 must be maintained in accordance with § 16.8.10.F, Post-construction stormwater
 1379 management. Associations must maintain adequate funds to defray these expenses.
 1380 The Planning Board shall require an initial capital fund for associations to be paid by
 1381 the developer to cover these expenses.

1382 [2] Inspection. Annually, by June 30, the developer or association must complete and
 1383 submit to the Code Enforcement Officer a maintenance compliance report, on a form
 1384 prepared by the Code Enforcement Officer, certifying compliance with any open
 1385 space use and protection requirements. Said report must be completed by a Maine
 1386 licensed civil engineer or certified soil scientist.

1387 (e) Transition of responsibility. The developer must maintain control of such open space(s)
 1388 and be responsible for maintenance until development, sufficient to support any and all
 1389 associations, residential or commercial, has taken place. Responsibility and authority must
 1390 be clearly defined and described in the recorded covenants, and such information must be
 1391 distributed to any and all associations in a timely manner so the transition of responsibilities
 1392 is seamless.

1393 (8) Predevelopment requirements.

1394 Prior to the beginning of site work, the applicant must file with the Town Planning
 1395 Department all required performance guarantees and inspection escrows in forms
 1396 acceptable to the Town Manager in accordance with § 16.8.11.F.

1397 I. Utilities

1398 (1) Approval.

1399 The size, type and location of public utilities, such as streetlights, electricity, telephone,
 1400 cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be
 1401 approved by the Board and installed in accordance with accepted engineering practice.

1402 (2) Underground installation.

1403 Utilities, where feasible, are to be installed underground. The Board must require the
 1404 developer to adopt a prudent avoidance approach when aboveground electrical installations
 1405 are approved.

1406 J. Subdivision Noise Pollution Buffer

1407 (1) Green strip.

1408 Subdivision design must minimize the possibility of noise pollution either from within or
 1409 without the development (from highway or industrial sources) by providing and
 1410 maintaining a green strip at least 20 feet wide between the abutting properties that are so
 1411 endangered.

1412 K. [SD1]Prevention of erosion

- 1413 (1) No person may perform any act or use the land in a manner which would cause substantial
1414 or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in
1415 the Town. This does not affect any extractive operations complying with the standards of
1416 performance specified elsewhere in this title.
- 1417 (a) When an excavation contractor, as defined in § 16.3, performs an activity that requires or
1418 results in more than one cubic yard of soil disturbance within the Shoreland or Resource
1419 Protection Overlay Zones, there must be a person responsible for management of erosion
1420 and sedimentation control practices on site, and that person must be certified in erosion
1421 control practices by the Maine Department of Environmental Protection. This person must
1422 be present at the site each day earthmoving activity occurs for a duration that is sufficient to
1423 ensure that proper erosion and sedimentation control practices are followed. This is required
1424 until erosion and sedimentation control measures have been installed, which will either stay
1425 in place permanently or stay in place until the area is sufficiently covered with vegetation
1426 necessary to prevent soil erosion. The name and certification number of the person who will
1427 oversee the activity causing or resulting in soil disturbance must be included on the permit
1428 application. Excavation contractors will have one year from the date of the adoption of this
1429 subsection to comply with certification requirements.
- 1430 (b) The above requirement of § 16.8.10.K(1)(a) does not apply to a property owner
1431 performing work themselves, or a person or firm engaged in agriculture or timber harvesting
1432 when best management practices for erosion and sedimentation control are used.
- 1433 (c) The above requirement of § 16.8.10.K(1)(a) only applies to regulated activities requiring
1434 local, state or federal permits and/or Planning Board approval.
- 1435 (2) All development must generally comply with the provisions of the "Environmental Quality
1436 Handbook, Erosion and Sediment Control," published by the Maine Soil and Water
1437 Conservation Commission.
- 1438 (a) The developer must:
- 1439 [1] Select a site with the right soil properties, including natural drainage and topography,
1440 for the intended use;
- 1441 [2] Utilize for open space uses those areas with soil unsuitable for construction;
- 1442 [3] Preserve trees and other vegetation wherever possible;
- 1443 [4] Hold lot grading to a minimum by fitting the development to the natural contour of
1444 the land; avoid substantial areas of excessive grade;
- 1445 [5] Spread jute matting, straw or other suitable material during construction in critical
1446 areas subject to erosion;
- 1447 [6] Construct sediment basins to trap sediment from runoff waters during development;
1448 expose as small an area of subsoil as possible at any one time during development
1449 and for as short a period as possible;
- 1450 [7] Provide for disposing of increased runoff caused by changed land formation, paving
1451 and construction, and for avoiding sedimentation of runoff channels on or off the site;
- 1452 [8] Plant permanent and, where applicable, indigenous, vegetation and install structures
1453 as soon as possible for the purpose of soil stabilization and revegetation;
- 1454 (b) All logging or woodlot roads must be located, constructed and maintained in
1455 conformance with the erosion prevention provisions of "Permanent Logging Roads for

- 1456 Better Woodlot Management," published by the United States Department of Agriculture.
- 1457 (3) Where the Board has required a stormwater management and erosion control plan, said plan
- 1458 must be endorsed by the York County Soil and Water Conservation District or found
- 1459 satisfactory by the Town's Engineering Peer Reviewer.
- 1460 (4) All activities which involve filling, grading, excavation or other similar activities that
- 1461 potentially may result in unstable soil conditions, and which require a permit, must be made
- 1462 known in a written soil erosion and sedimentation control plan in accordance with the
- 1463 "Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015, and as
- 1464 amended. The plan must be submitted to the permitting authority for approval and must
- 1465 include, where applicable, provisions for:
- 1466 (a) Mulching and revegetation of disturbed soil;
- 1467 (b) Temporary runoff control features, such as straw bales, silt fencing, filter socks or
- 1468 diversion ditches;
- 1469 (c) Permanent stabilization structures, such as retaining walls or riprap.
- 1470 (5) To create the least potential for erosion, development must be designed to fit with the
- 1471 topography and soil of the site. Areas of steep slopes where high cuts and fills may be
- 1472 required are to be avoided wherever possible, and natural contours must be followed as
- 1473 closely as possible.
- 1474 (6) Erosion and sedimentation control measures apply to all aspects of the proposed project
- 1475 involving land disturbance and must be in operation during all stages of the activity. The
- 1476 amount of exposed soil at every phase of construction must be minimized to reduce the
- 1477 potential for erosion.
- 1478 (7) Any exposed ground area must be temporarily or permanently stabilized in accordance with
- 1479 the ""Maine Erosion and Sediment Control Practices Field Guide for Contractors," 2015,
- 1480 and as amended. All erosion control measures that are no longer necessary as determined
- 1481 by the CEO or Shoreland Resource Officer must be removed at the owner's expense.
- 1482 (8) Natural and man-made drainageways and drainage outlets must be protected from erosion
- 1483 from water flowing through them. Drainageways must be designed and constructed in order
- 1484 to carry water from a twenty-five-year storm or greater and be stabilized with vegetation or
- 1485 lined with riprap.
- 1486 L. Soil suitability
- 1487 (1) The requirements and standards of the State of Maine Department of Environmental
- 1488 Protection, Department of Health and Welfare, the latest edition of the State Plumbing
- 1489 Code and this title must be met.
- 1490 (2) All land uses must be located on soils upon which the proposed uses or structures can be
- 1491 established or maintained without causing adverse environmental effects, including, but not
- 1492 limited to, severe erosion, mass soil movement, improper drainage, and water pollution to
- 1493 surface water and groundwater, whether during or after construction.
- 1494 (3) Any proposed development requires a soil report based on information from the Maine
- 1495 Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is
- 1496 required and the Soil Survey for York County or information from the Maine NRCS shows
- 1497 soils with severe restrictions for development, a Class A (high-intensity) soil survey must
- 1498 be provided by a soil scientist certified in the State of Maine. The survey must be based on
- 1499 the Maine Association of Professional Soil Scientists Standards for Soil Survey, revised

1500 3/2009, or subsequent revision. In addition to evaluating soil properties, the soil scientist
1501 shall analyze and document characteristics of surrounding land and water areas, maximum
1502 groundwater elevation, presence of ledge, drainage conditions and any other data deemed
1503 appropriate by the soil scientist or required by the Planning Board. The soil scientist shall
1504 include recommendations for the proposed use to counteract soil limitations where any
1505 exist. A Class A soil survey must include a written soil narrative report accompanied by a
1506 soil map that depicts soil delineations and symbols identified in the report. The soil map
1507 must be prepared at the same scale as that of the development plan, with wetlands and
1508 floodplain depicted on both.

1509 (4) Cluster residential, or mixed-use development and similar intensive land uses require a
1510 Class A (high-intensity) soil survey by a Maine-certified soil scientist.

1511 (5) Where non-clustered development is limited in scale and intensity, the developer may
1512 request the Class A (high-intensity) soil survey required by § 16.8.10.L(3) above be waived
1513 by the Planning Board. The Board may grant said waiver only after consideration by the
1514 Town's Peer Review Engineer of the developer's explanation as to why a Class A soil
1515 survey is not warranted. In the event a Class A soil survey is not required, the site's soil
1516 suitability must be sufficiently assessed for compliance with this title.

1517 M. Water quality and wastewater pollution.

1518 (1) No activity is allowed to deposit on or into the ground or discharge to any river, stream or
1519 brook, pond, or wetland any pollutant that, by itself or in combination with other activities
1520 or substances, will impair designated uses or the water classification of the water body.

1521 (2) Wastewater to be discharged into Kittery Sewer Department sewers, should they be
1522 available, must be in such quantities and/or of such quality as to be compatible with
1523 standards established by the municipality or the Sewer Department.

1524 (3) To meet those standards, the municipality or Sewer Department may require that such
1525 wastes undergo pretreatment or full treatment at the site in order to render them acceptable
1526 for the treatment processes.

1527 (4) The disposal of wastewater by means other than a public system must comply with the laws
1528 of the State of Maine and the Town concerning water pollution. Where a public sanitary
1529 sewer system is located within 200 feet of the property line as measured along a public
1530 way, the Town requires individual entrance into said sewer.

1531 (5) Discharge of sanitary wastes to any water body is subject to the issuance of Maine State
1532 Department of Environmental Protection licenses, but no such off-site discharge will be
1533 allowed unless same is buried or not visible to a point below normal low water and is
1534 secured against damage and uncovering by the tides, erosion or other foreseeable action.

1535 N. Floodplain areas.

1536 (1) Land along rivers, streams and ponds which is subject to flooding through storm or
1537 seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural
1538 or outdoor recreational use. The Code Enforcement Officer shall maintain a map showing
1539 the latest updated federal and state information of the known floodplain areas, and no
1540 building shall be constructed therein when there are undue flooding hazards, unless it can
1541 meet all requirements of § 16.5.11, Floodplain Management, relating to flood hazard permit
1542 and review procedure, of this title. Floodplain areas shall be considered as those areas
1543 within the one-hundred-year frequency floodplain, as identified by an authorized federal or

1544 state agency, or where such identification is not available, are located on floodplain soils
 1545 identified as described in the York County Soil Survey to comprise the following soil
 1546 types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl.

1547 O. Retention of Open Spaces and Natural or Historic Features

1548 (1) Tree clearing.

1549 Proposed development plans must, by notes on the final plan and deed restrictions, limit the
 1550 clearing of trees to those areas designated on the plans.

1551 (2) Clearing or removal of vegetation for uses other than timber harvesting in Resource
 1552 Protection or Shoreland Overlay Zone.

1553 (a) In a Resource Protection or Shoreland Overlay Zone, cutting of vegetation is prohibited
 1554 within the strip of land extending 100 feet, horizontal distance, inland from the normal high-
 1555 water line, except to remove safety hazards. Elsewhere in a Resource Protection or
 1556 Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is
 1557 necessary for uses expressly authorized in the Resource Protection or Shoreland Overlay
 1558 Zone.

1559 (b) Except in areas as described in § 16.8.10.O(1) and § 16.8.10.O(2).a, above and 100 feet,
 1560 horizontal distance, from any other water body, tributary stream or the upland edge of a
 1561 wetland, a buffer strip of vegetation must be preserved as follows:

1562 [1] Clearance of an opening greater than 250 square feet in the forest canopy, or other
 1563 existing woody vegetation if a forested canopy is not present, as measured from the
 1564 outer limits of the tree or shrub crown, is prohibited. However, a footpath not to
 1565 exceed six feet in width as measured between tree trunks and/or shrub stems is
 1566 allowed, provided that a cleared line of sight to the water through the buffer strip is
 1567 not created.

1568 [2] Selective cutting of trees within the buffer strip is allowed, provided a well-
 1569 distributed stand of trees and other natural vegetation is maintained. Adjacent to
 1570 water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is
 1571 defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-
 1572 foot rectangular area.

1573

<u>Diameter of Tree at 4 1/2 feet Above Ground Level</u>	<u>Points</u>
<u>(inches)</u>	
<u>2 to < 4</u>	<u>1</u>
<u>4 to < 8</u>	<u>2</u>
<u>8 to < 12</u>	<u>4</u>
<u>12 or greater</u>	<u>8</u>

1574 [a] The following governs in applying this point system:

1575 [i] The twenty-five-foot-by-fifty-foot rectangular plots must be established where

- 1576 the landowner or lessee proposes clearing within the required buffer;
1577 [ii] Each successive plot must be adjacent to, but not overlap a previous plot;
1578 [iii] Any plot not containing the required points must have no vegetation removed
1579 except as otherwise allowed by this title;
1580 [iv] Any plot containing the required points may have vegetation removed down
1581 to the minimum points required or as otherwise allowed by this title; and
1582 [v] Where conditions permit, no more than 50% of the points on any twenty-five-
1583 foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches
1584 in diameter.
- 1585 [3] For the purposes of § 16.8.10.O(2)(b)[2], "other natural vegetation" is defined as
1586 retaining existing vegetation under three feet in height and other ground cover and
1587 retaining at least five saplings less than two inches in diameter at 4 1/2 feet above
1588 ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do
1589 not exist, no woody stems less than two inches in diameter may be removed until five
1590 saplings have been recruited into the plot.
- 1591 [4] Notwithstanding the above provisions, no more than 40% of the total volume of trees
1592 four inches or more in diameter, measured at 4 1/2 feet above ground level, may be
1593 removed in any ten-year period.
- 1594 [a] To protect water quality and wildlife habitat, existing vegetation under three feet
1595 in height and other ground cover, including leaf litter and the forest duff layer,
1596 must remain uncut, uncovered or undisturbed, except to provide for a footpath or
1597 other permitted uses as described in § 16.8.10.O.(2)[b] above.
- 1598 [b] Pruning of tree branches on the bottom 1/3 of the tree is allowed.
- 1599 [c] To maintain a buffer strip of vegetation, when the removal of storm-damaged,
1600 diseased, unsafe or dead trees results in the creation of cleared openings, these
1601 openings must be replanted with tree species that are suitable to Kittery's growing
1602 conditions unless existing new tree growth is present. See Design Handbook
1603 Kittery Maine, approved by the Kittery Planning Board, August 11, 2005, pages
1604 13 and 14, for the listing of approved plant materials.
- 1605 [d] Article II of this chapter does not apply to those portions of public recreational
1606 facilities adjacent to public swimming areas as long as cleared areas are limited to
1607 the minimum area necessary.
- 1608 (c) At distances greater than 100 feet, horizontal distance, from the normal high-water line of
1609 any other water body, tributary stream, or the upland edge of a coastal wetland, and 100 feet,
1610 horizontal distance, from the normal high-water line of any other water body, tributary
1611 stream, or the upland edge of a wetland, there will be allowed on any lot, in any ten-year
1612 period, selective cutting of not more than 40% of the volume of trees four inches or more in
1613 diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the
1614 development of permitted uses must be included in the forty-percent calculation. For the
1615 purposes of these standards, volume may be considered to be equivalent to basal area.
- 1616 (d) It is not permissible to clear openings for any purpose, including but not limited to
1617 principal and accessory structures, driveways, lawns and sewage disposal areas, exceeding
1618 in the aggregate 25% of the lot area within the Resource Protection or Shoreland Overlay
1619 Zone or 10,000 square feet, whichever is greater, including land previously cleared. This

- 1620 provision does not apply to the Commercial Fisheries/Maritime Activities Zones.
- 1621 (e) Legally existing nonconforming cleared openings may be maintained, but must not be
- 1622 enlarged, except as allowed by this title.
- 1623 (f) Fields and other cleared openings which have reverted to primarily shrubs, trees or other
- 1624 woody vegetation will be regulated under the provisions of this chapter.
- 1625 (3) Land dedication.
- 1626 Reserved land acceptable to the Planning Board and applicant may be gifted to the
- 1627 municipality as a condition of approval, only when Council has agreed to the gifting.
- 1628 (4) Landscape plan for preservation of natural and historic features.
- 1629 (a) The applicant is required to submit a proposed development design plan(s) that includes a
- 1630 landscape plan showing:
- 1631 [1] Preservation of existing trees 10 inches or more caliper at breast height;
- 1632 [2] Replacement of trees and vegetation;
- 1633 [3] Graded contours;
- 1634 [4] Streams, wetlands and water bodies; and
- 1635 [5] Preservation of scenic, historic or environmentally significant areas.
- 1636 (b) Cutting of trees on the northerly borders of lots should be avoided as far as possible to
- 1637 provide a natural wind buffer.
- 1638 (c) Unless the applicant can demonstrate it is impracticable, street and lot layout must be
- 1639 adapted to the topography. Extensive grading and filling must be avoided as much as
- 1640 possible.
- 1641 (5) Archaeological or historic sites.
- 1642 (a) When the proposed development contains any identified archaeological or historic sites
- 1643 or any areas identified by the Maine Critical Areas Program as rare and irreplaceable natural
- 1644 areas, these areas must be included in a development plan's open space, and suitably
- 1645 protected by appropriate covenants and management plans.
- 1646 (b) Any proposed land use activity involving structural development or soil disturbance on
- 1647 or adjacent to sites listed on or eligible to be listed on the National Register of Historic
- 1648 Places must be submitted by the applicant to the Maine Historic Preservation
- 1649 Commission for review and comment at least 20 days prior to action being taken by the
- 1650 Town Planner and/or the Planning Board. The development Review Authority will
- 1651 consider comments received from the Commission prior to rendering a decision on the
- 1652 application.
- 1653 (c) In Shoreland, Resource Protection or Commercial Fisheries/Maritime Uses Overlay
- 1654 Zones, a permit is not required for an archaeological excavation, provided the excavation
- 1655 is conducted by an archaeologist listed on the State Historic Preservation Officer's Level
- 1656 1 or Level 2 approved list, and unreasonable erosion and sedimentation is prevented by
- 1657 means of adequate and timely temporary and permanent stabilization measures.
- 1658 P. Technical and Financial Capacity
- 1659 (1) Financial Capacity.
- 1660 (a) The applicant shall have adequate financial resources to construct the proposed
- 1661 improvements and meet the criteria of the standards of these regulations. In making its

1662 determination the Planning Board shall consider all documentation submitted by the
1663 developer relative to their financial capacity to construct, operate, and maintain all
1664 aspects of the development. The Board shall also consider the proposed time frame for
1665 construction and the effects of inflation.

1666 (2) Technical Ability

1667 (a) The applicant shall retain qualified contractors and consultants to supervise, construct and
1668 inspect the required improvements in the proposed subdivision.

1669 (b) In determining the applicant's technical ability the Board shall consider the applicant's
1670 previous experience, the experience and training of the applicant's consultants and
1671 contractors, and the existence of violations of previous approvals granted to the
1672 applicant.

1673 16.8.11 Post-Approval

1674 A. Approved final plan.

1675 (1) No subdivision plan shall be released for recording at the Registry of Deeds until the
1676 required performance guarantee has been posted. If an approved plan is not recorded in the
1677 Registry of Deeds within one (1) year of the original approval, it shall become null and
1678 void. The Planning Board may grant an extension as particular circumstances dictate,
1679 which may not exceed an additional ninety-day period. Where applicable, the stormwater
1680 and erosion control maintenance agreement that must be included in the document of
1681 covenants, homeowners' documents and/or as riders to the individual deed must be
1682 recorded with the York County Registry of Deeds.

1683 B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the York County
1684 Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance
1685 with this title.

1686 C. Subdivision land conveyance.

1687 (1) No person, firm, corporation, or other legal entity may convey, offer, or agree to convey
1688 any land in a subdivision which has not been approved by the Planning Board, recorded in
1689 the York County Registry of Deeds and shown on the final plan as a separate lot.

1690 (2) Subdivision frontage street completion. No lot in a subdivision may be sold, leased or
1691 otherwise conveyed before the street upon which such lot has frontage is completed to
1692 rough grade standard up to and including the entire frontage of the lot. Prior to the issuance
1693 of certificates of occupancy by the CEO, the street from which the unit is accessed must be
1694 completed in accordance with § 16.5.27, Streets and Pedestrian ways/Sidewalks Site
1695 Design Standards.

1696 D. Approved plan expiration.

1697 (1) A subdivision plan's approval will expire if work has not commenced within one year from
1698 the Planning Board date of approval. Where work has commenced within one year of such
1699 approval, the approval will expire unless work is complete within three years of the original
1700 date of Planning Board approval.

1701 (2) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an
1702 approved plan expiration date upon written request by the developer for an inclusive period

- 1703 from the original approval date, not to exceed five years for a subdivision plan and three
1704 years for all other development plans.
- 1705 (3) When a plan's approval expires, the applicant may reapply subject to the Town Code
1706 current at the time of reapplication.
- 1707 E. Approval not acceptance of property. The approval by the Planning Board of a plan, a
1708 master site development plan or any other subsequent development plan does not
1709 constitute, nor is it evidence of, any acceptance by the municipality of any street, easement
1710 or other open space shown on the plan. When a park, playground or other recreation area is
1711 shown on the plan, approval of the plan does not constitute an acceptance by the
1712 municipality of such areas. The Planning Board must require the plan to be endorsed with
1713 appropriate notes to this effect. The Planning Board may also require the filing of a written
1714 agreement between the applicant and the municipal officials covering future deed and title,
1715 dedication and provision for the cost of grading, development, equipment and maintenance
1716 of any such recreation area.
- 1717 F. Performance Guarantees
- 1718 (1) Types of Guarantees. The applicant shall provide one of the following performance
1719 guarantees for an amount adequate to cover 100% of the total construction costs of all
1720 required improvements, plus an additional 10% as contingency. A performance guarantee
1721 shall not expire between October 31 and April 15 the following year.
- 1722 (a) Certified check payable to the municipality or a savings account or certificate of deposit
1723 naming the municipality as owner, for the establishment of an escrow account;
- 1724 [1] For any account opened by the applicant, the Town of Kittery shall be named as
1725 owner or co-owner, and the consent of the Town shall be required for a withdrawal.
- 1726 (b) An irrevocable letter of credit, from a financial institution approved by the Town
1727 Manager, establishing funding for the construction of the subdivision, from which the
1728 municipality may draw if construction is inadequate.
- 1729 [1] The letter of credit shall use the template established by the Town of Kittery.
- 1730 (2) Contents of guarantee. The performance guarantee shall contain the following:
- 1731 (a) Construction schedule;
- 1732 (b) Itemized construction cost estimates for roadways, curbing, esplanades, sidewalks,
1733 sanitary sewerage systems, storm drainage systems, utilities, street lighting, tree
1734 planting, erosion and sedimentation control measures, and other public improvements
1735 for each major phase of construction, taking into account inflation;
- 1736 (c) Provisions for inspections of each phase of construction;
- 1737 (d) Provisions for the release of part or all of the performance guarantee to the developer;
1738 and
- 1739 (e) A date after which the applicant will be in default and the municipality shall have access
1740 to the funds to finish construction.
- 1741 (3) Release of Guarantee. Prior to the release of any part of the performance guarantee, the Town
1742 Manager shall determine to his/her satisfaction, in part based upon the report of the Town's
1743 Engineer or other qualified individual retained by the municipality and any other agencies and
1744 departments who may be involved, that the proposed improvements meet or exceed the design
1745 and construction requirements for that portion of phase of the subdivision for which the release

- 1746 is requested.
- 1747 (a) Performance guarantees may be reduced periodically, but in no event more than one (1)
1748 time per month. In no case shall the performance guarantee be reduced by less than ten
1749 thousand dollars (\$10,000) at one time or in any line item where improvements remain
1750 to be completed.
- 1751 (b) No performance guarantee shall be reduced to less than the ten (10) percent contingency
1752 until all work is complete.
- 1753 (c) The Town shall retain the 10% performance guarantee contingency for a period of one
1754 (1) year from the date of final paving for any street to be offered for public acceptance.
1755 The guarantee shall ensure the workmanship and the durability of all materials used in
1756 the construction of public improvements within the right-of-way that may become
1757 defective within that one (1) year period, as determined by the Director of Public Works.
- 1758 (4) Default. If upon investigation, the town's consulting engineer or other qualified individual
1759 retained by the Town finds that any of the required improvements have not been
1760 constructed in general conformance with the plans and specifications filed as part of the
1761 application, he or she shall so report in writing to the Code Enforcement Officer, the Town
1762 Manager, the Planner and the applicant or builder. The Town Manager, or his or her
1763 designee, shall take any steps necessary to preserve the municipalities rights.
- 1764 G. Inspection of required improvements.
- 1765 (1) Prior to the commencement of any work associated with development approved in
1766 accordance with this title, the developer or duly authorized representative must provide a
1767 schedule of expected construction activities by phase to the inspecting official, which may
1768 be the Code Enforcement Officer (CEO) or their representative or, when applicable, the
1769 Town's Peer Review Engineer, and coordinate a preconstruction meeting. Attendance at
1770 said meeting must at a minimum include authorized representation from the Town, the
1771 developer and their general contractor. Meeting minutes must be prepared by the Town's
1772 representative and distributed to all attendees and the Town Planner.
- 1773 (2) The developer or general contractor shall coordinate inspections with the inspecting official
1774 and provide written notice at least seven days prior to commencing each major phase of
1775 construction as outlined in the construction schedule. When all phases of work are
1776 complete, the general contractor shall request a final inspection from the inspecting official,
1777 who shall prepare a punch list of any outstanding items to be completed, within seven days
1778 of the final inspection. Once all outstanding items have been completed, the developer or
1779 the general contractor shall coordinate a final walk-through where the inspecting official
1780 determines if the construction has been completed in accordance with the approved plans.
1781 The inspecting official shall provide, in writing, to the developer or the general contractor
1782 within seven days of the final walk-through what, if any, construction is not complete or
1783 confirm that the development is complete and has been constructed according to the
1784 approved plans.
- 1785 (3) If the inspecting official finds, upon inspection of the required improvements, that any of
1786 the required improvements have not been constructed in accordance with the approved
1787 plans and specifications, the inspecting official must report, in writing, to the Town
1788 Planner, the developer or duly authorized representative of the developer, and, when
1789 applicable, the CEO. The Town Planner shall inform the Planning Board of any issues

- 1790 identified by the inspections. The Town shall take any steps necessary to preserve the
1791 municipality's rights.
- 1792 (4) Where applicable and in advance of any construction, the developer must deposit sufficient
1793 funds for said inspections in an applicant's service account per Chapter 3.3. The amount is
1794 based on a scope of services and fee prepared by the Town's Peer Review Engineer after
1795 review of the developer's construction estimate prepared by a professional engineer or a
1796 qualified contractor.
- 1797 (5) Stormwater and erosion control inspection.
- 1798 (a) During October to November of each year in which construction for grading, paving and
1799 landscaping occurs on a development site, the Town will, at the expense of the developer,
1800 cause the site to be inspected by a qualified individual. By December 1, the inspector must
1801 submit a site report to the Town Planner that describes the inspection findings and indicates
1802 whether stormwater and erosion control measures (both temporary and permanent) are in
1803 place and properly installed. The report must include a discussion and recommendation on
1804 any and all problem areas encountered.
- 1805 (b) After major construction activities have been completed on a development site, the
1806 developer must, on or by July 1 of each year, provide a completed and signed certification to
1807 the Code Enforcement Officer per § 16.8.10.F, Post-construction stormwater management.
- 1808 (c) Erosion control debris. The owner or occupant of any land in any zone must not allow
1809 erosion control materials, such as plastic erosion control fences and related stakes or other
1810 materials, to remain on the site but must remove the same within six months of the date such
1811 erosion control materials were installed, or the date when no longer required, whichever is
1812 later. When a violation is discovered, the Code Enforcement Officer will order compliance
1813 by written notice of violation to the owner of any land in any zone requesting removal of
1814 such violation within 30 days of the date of written notice. An extension of time to correct
1815 may be made by the Code Enforcement Officer for good and sufficient reason.
- 1816 H. Plan revisions after approval. No changes, erasures, modifications or revisions may be
1817 made to any Planning Board approved final plan, unless in accordance with the Planner's
1818 and CEO's powers and duties as found in Chapter 16.2, or unless the plan has been
1819 resubmitted and the Planning Board specifically approves such modifications. In the event
1820 a final plan is recorded without complying with this requirement, the same is null and void,
1821 and the Planning Board must institute proceedings to have the plan stricken from Town
1822 records and the York County Registry of Deeds.
- 1823 (1) Field changes.
- 1824 (a) If at any time before or during the construction of the required improvements it appears
1825 to be necessary or desirable to modify the required improvements, the Code Enforcement
1826 Officer and Town Planner are authorized to approve minor plan amendments due to
1827 unforeseen field circumstances, such as encountering hidden outcrops of bedrock, natural
1828 springs, etc. The Code Enforcement Officer and Town Planner must issue any approval
1829 under this subsection in writing and transmit a copy of the approval to the Planning Board.
1830 Revised plans must be filed with the Town and recorded, where appropriate. The developer
1831 must provide the revised plan to the Town Planner, and it shall be recorded in the York
1832 County Register of Deeds when applicable.
- 1833 (2) Modifications to approved plan.

- 1834 (a) Minor modifications. Modifications to a Planning Board approved plan that do not
1835 require Planning Board review per § 16.8.11.H may be approved by the Code Enforcement
1836 Officer and Town Planner. Such approvals must be issued in writing to the developer with a
1837 copy to the Planning Board. The developer must provide the revised plan to the Town
1838 Planner, and it shall be recorded in the York County Register of Deeds, when applicable.
- 1839 (b) Major modifications. Major modifications (e.g., relocations of principal structures, rights-
1840 of-way or property boundaries; changes of grade by more than 1%) require Planning Board
1841 approval.
- 1842 I. Maintenance of improvements. The developer, or owner, is required to maintain all
1843 improvements and provide for snow removal on streets and pedestrian ways/sidewalks
1844 unless and until the improvement has been accepted by the Town Council. Acceptance of
1845 Streets and Ways
- 1846 (1) Conditions. A street or way constructed on private lands by the owner(s) thereof and not
1847 dedicated for public travel prior to the enactment of this title must be laid out and accepted
1848 as a public street or way by the Town Council only upon the following conditions:
- 1849 (a) The owners must give the Town a deed to the property within the boundaries of the street
1850 at the time of acceptance by the Town.
- 1851 (b) A plan of said street or way must be recorded in the York County Registry of Deeds at
1852 the time of its acceptance.
- 1853 (c) A petition for laying out and acceptance of said street or way must be submitted to the
1854 Town Council upon a form prescribed by the Commissioner of Public Works. Said petition
1855 must be accompanied by a plan, profile and cross section of said street as follows:
- 1856 [1] A plan drawn, when practical, to a scale of 40 feet to one inch and to be on one or
1857 more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan must
1858 show the North point; the location and ownership of all adjoining lots of land; rights-
1859 of-way and easements; streetlights and electric lines; boundary monuments;
1860 waterways, topography and natural drainage courses with contour at not greater than
1861 two-foot intervals; all angles, bearings and radii necessary for the plotting of said
1862 street and lots and their reproduction on the ground; the distance to the nearest
1863 established street or way, together with the stations of their side lines;
- 1864 [2] A profile of said street or way drawn to a horizontal scale of 40 feet to one inch and a
1865 vertical scale of four feet to one inch. Said profile must show the profile of the side
1866 lines and center line of said street or way and the proposed grades thereof. Any
1867 buildings abutting the street or way must be shown on said profile;
- 1868 [3] A cross section of said street or way drawn to a horizontal scale of five feet to one
1869 inch and a vertical scale of one foot to one inch; and
- 1870 [4] The location and size of water and sewer mains and surface water drainage systems,
1871 as installed.
- 1872 (2) Such street or way must have been previously constructed in accordance with the standards
1873 and criteria established in § 16.5, General Performance Standards and § 16.8, Subdivision
1874 Review.
- 1875 (3) Acceptance of streets and ways required in public interest.
- 1876 (a) Notwithstanding the provisions of any other section hereof, the Town may at any time lay

- 1877 out and accept any street or way in the Town as a public street or way of said Town
1878 whenever the general public interest so requires. The cost of said street or way may be borne
1879 by the Town.
- 1880 (4) Easements.
- 1881 (a) The Board may require easements for sewerage, other utilities, drainage and stream
1882 protection. In general, easements may not be less than 20 feet in width. Wider easements
1883 may be required.
- 1884 (5) No street or way to be accepted until after report.
- 1885 (a) Street acceptance as Town way. Upon completion of construction of any street/road
1886 intended for proposal for acceptance as a Town way, a written certification that such way
1887 meets or exceeds the design and construction standards of this title, signed by a professional
1888 engineer registered by the State of Maine, prepared at the developer's expense, must be
1889 submitted to the Board. If underground utilities are laid in such way, the developer must also
1890 provide written certification from the servicing utility(ies), that such installation was in a
1891 manner acceptable to the utility. The Board is to review the proposal and forward a
1892 recommendation to the Town Council regarding acceptance.
- 1893 (b) No street or way may be laid out and accepted by the Town Council until the Planning
1894 Board and the Public Works Commissioner have made a careful investigation thereof and
1895 reported to the Town Council their recommendations in writing with respect thereto.
- 1896 J. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code
1897 Enforcement Officer is to keep a complete record of all essential transactions of
1898 development in the Shoreland and Resource Protection Overlay Zones, including
1899 applications submitted, permits granted or denied, variances granted or denied, revocation
1900 actions, revocation of permits, appeals, court actions, violations investigated, violations
1901 found, and fees collected. On a biennial basis, a summary of this record must be submitted
1902 to the Director of the Bureau of Land and Water Quality within the Department of
1903 Environmental Protection.
- 1904 K. Subdivision lot monumentation prior to sale. Prior to the sale of any approved subdivision
1905 lot, the subdivider must provide the Planner with a letter from a registered land surveyor,
1906 stating all monumentation shown on the plan has been installed.
- 1907 L. Utility service. Prior to the installation of any public utility to a site, the developer must
1908 have obtained all necessary approvals from the appropriate local, state or federal authority.
- 1909 M. Grading/construction final plan required. Grading or construction of roads, grading of land
1910 or lots, or construction of buildings which require a final plan as provided in this title, until
1911 such time as the final plan has been duly prepared, submitted, reviewed, approved and
1912 endorsed as provided in this title, is prohibited until the original copy of the final plan so
1913 approved and endorsed has been duly recorded in the York County Registry of Deeds.
- 1914 N. Nonstormwater discharge. No person, except where exempted in § 16.5.19, Nonstormwater
1915 Discharge may create, initiate, originate, or maintain a nonstormwater discharge to the
1916 storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the
1917 fact that the municipality may have approved the connections, drains or conveyances by
1918 which a person discharges unallowable nonstormwater discharges to the storm drainage
1919 system.

1920 O. Nuisances. Any violation of this title is deemed to be a nuisance.

1921 P. Erosion control debris. The owner or occupant of any land in any zone must not allow
1922 erosion control materials, such as plastic erosion control fences and related stakes or other
1923 materials, to remain on the site but must remove the same within six months of the date
1924 such erosion control materials were installed, or the date when no longer required,
1925 whichever is later. When a violation is discovered, the Code Enforcement Officer will
1926 order compliance by written notice of violation to the owner of any land in any zone
1927 requesting removal of such violation within 30 days of the date of written notice. An
1928 extension of time to correct may be made by the Code Enforcement Officer for good and
1929 sufficient reason.

1930

16.9.1 Maritime and Shoreland Related Development

A. General. The purpose of maritime and shoreland development reviews function as a control for the Town to oversee proposed developments located in, or in close proximity to, designated resource protected areas so as to ensure the safe and healthful conditions of significant natural, wildlife, cultural and maritime resource.

B. Applicability

(1) Kittery Port Authority. The Kittery Port Authority's ("Port Authority") jurisdiction extends to applications proposing any development from the navigable tidal waters to the highest annual tide or upland edge of a coastal wetland. The Port Authority, through its established Rules and Regulations, reviews and approves applications for piers, wharves, landings, floats, bridges, other water-dependent structures or uses.

(2) Planning Board. The Planning Board's jurisdiction for review and approval extends to applications proposing any upland development from the highest annual tide of any water bodies or upland edge of a coastal or freshwater wetland or any development located within the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones or all other structures not requiring Port Authority approval, except for applications as provided under 16.9.1.B.1.

C. General review Process and Notification

(1) Process.

(a) Prior to the submission of a shoreland development application with the Port Authority or the Planning Board, a preliminary application meeting between the Town Planner, Code Enforcement Officer, or designee, and the applicant or agent, shall occur to review the proposed project, performance standards and procedural requirements thereof.

(b) If Port Authority or Planning Board review is not required, the Code Enforcement Officer and Town Planner shall review the application for compliance with this title.

(c) If the Planning Board must review and approve a development plan application involving a pier, ramp, flotation system or principal marine structure, prior to the submission of the development plan application requiring Planning Board review, the Port Authority must review and approve any proposed pier, ramp and float system or principal marine structure application.

(d) All required local approvals (excluding Town building permits), federal and state approvals and/or permits shall be received by the Code Enforcement Officer, prior to the issuance of a building permit.

(e) 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 shall apply for, and obtain, a building permit from the Code Enforcement Officer.

(2) Notification.

(a) If Port Authority or Planning Board review is not required, the Code Enforcement Officer shall send a written record of their findings to both the Planning Board and Port Authority.

42 (b) The Town Planner must transmit copies of Planning Board decisions and the Code
43 Enforcement Officer must transmit copies of Board of Appeals decisions and all
44 documentation constituting the record of the decision for marine-related development
45 to the Port Authority.

46 (c) The Port Authority shall notify the applicant and the Code Enforcement Officer, in
47 writing, of the granting of, or denial of, the applicant's request.

48 16.9.2 Port Authority Shoreland Development Review

49 A. Review for completeness. The Code Enforcement Officer and Town Planner shall review
50 Port Authority applications for completeness prior to the Port Authority's Chairperson
51 placing the application on the Port Authority's agenda.

52 B. Application process. All Port Authority applications for shoreland development review shall
53 adhere to the listed procedures as enumerated in their Rules and Regulations.

54 C. Submission requirements. Shoreland Development Plans for marine-related uses requiring
55 Port Authority approval shall include the following elements:

56 (1) Aerial photographs (images available in the public domain) and vicinity maps and plans
57 showing the property in relation to surrounding properties, and the location of the lots
58 that would have use of the pier, ramp and float system. Maps and plans are to include:

59 (a) Construction plans for piers, ramps and floats;

60 (b) Areas of vegetation clearing;

61 (c) Location of required parking space(s); and

62 (d) Location of boat and/or float storage.

63 (2) Rights granted for access to the pier, ramp and float system or to any water-dependent
64 structure; public and private access paths.

65 (3) Documentation addressing visual impact and controls to assure continuing conformance
66 to the shorefront development plan and this title.

67 (4) All necessary applications for permits, leases, approvals, and any supporting
68 documentation as may be required have been filed, including the following:

69 (a) Department of Environmental Protection permit application pursuant to the Natural
70 Resources Protection Act, 38 M.R.S. § 480C;

71 (b) Army Corps of Engineers permit application;

72 (c) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged
73 Land Coordinator application; and

74 (d) Building permit application

75 (5) Any other details requested by the Port Authority, including, but not limited to,
76 information as enumerated in the Port Authority's Rules and Regulations.

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

79 (1) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all
80 dimensional and other standards (excluding setbacks from water bodies) of this title
81 apply to structures and uses projecting into a water body beyond the highest annual tide.

- 82 (2) Boathouses, while convenient to locate near the water, are not considered functionally
83 water-dependent uses and must meet the same setback requirement as principal
84 structures. The State of Maine no longer issues permits for construction of boathouses
85 below the highest annual tide due to the adverse environmental impact; therefore, new
86 boathouses must be located on uplands.
- 87 (3) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
88 other structure beyond the highest annual tide.
- 89 (4) Access from shore must be developed on soils appropriate for such use and constructed
90 so as to control erosion.
- 91 (5) The location must not interfere with existing developed recreational and maritime
92 commerce or natural beach areas.
- 93 (6) The facility must be located so as to minimize adverse effects on fisheries.
- 94 (7) The facility must be a water-dependent use and no larger in dimension than necessary to
95 carry on the activity and must be consistent with existing conditions, use and character
96 of the area.
- 97 (8) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
98 extending beyond the highest annual tide of a water body or within a wetland unless the
99 structure requires direct access to the water as an operational necessity.
- 100 (9) No existing structures built on, over or abutting a pier, dock, wharf or other structure
101 extending beyond the highest annual tide of a water body or within a wetland may be
102 converted to residential dwelling units in any district.
- 103 (10) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on,
104 over or abutting a pier, wharf, dock or other structure extending beyond the highest
105 annual tide of a water body or within a wetland must not exceed 20 feet in height above
106 the pier, wharf, dock or other structure.
- 107 (11) Applicants proposing any construction or fill activities in a waterway or wetland
108 requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the
109 Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the
110 Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit
111 issued.
- 112 (12) Proposals for any principal marine structure use, any residential joint- and/or shared-use
113 pier, or any residential-development-use pier require Planning Board approval.
- 114 (13) A residential development containing five or more lots in a zone permitting a
115 residential-development-use pier may construct only one residential development use
116 pier.
- 117 (14) Commercial development of the shorefront must provide for access by the general
118 public as part of a shorefront development plan.
- 119 (15) Only one pier, ramp and float structure is permitted on any noncommercial or
120 nonindustrial lot.
- 121 (16) Marine-related permanent structures located below the mean low-water line require the
122 following permits, leases and approvals:
- 123 (a) Port Authority approval;
- 124 (b) Department of Environmental Protection permit pursuant to the Natural Resources

- 125 Protection Act, 38 M.R.S. § 480-C;
126 (c) Army Corps of Engineers permit;
127 (d) Maine State Department of Conservation, Bureau of Parks and Lands, Submerged
128 Land Coordinator approval; and
129 (e) Building permit.
130 (17) Any other performance standards as enumerated in the Port Authority's Rules and
131 Regulations.
- 132 E. Findings of fact. An application shall be approved or approved with conditions if the Port
133 Authority makes a positive finding based on the information presented. The application must
134 be demonstrated that the proposed use will shall:
- 135 (1) Maintain safe and healthful conditions;
136 (2) Not result in water pollution, erosion or sedimentation to surface waters;
137 (3) Adequately provide for the disposal of all wastewater;
138 (4) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife
139 habitat;
140 (5) Conserve shore cover and visual, as well as actual, points of access to inland and coastal
141 waters;
142 (6) Protect archaeological and historic resources;
143 (7) Not adversely affect existing commercial fishing or maritime activities in a commercial
144 fisheries/maritime activities district;
145 (8) Avoid problems associated with floodplain development and use; and
146 (9) Is in conformance with the provisions of this title.
- 147 F. The approved plan must be recorded with the York County Registry of Deeds.
- 148 G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland development plan
149 decision by the Planning Board may be made per §16.2.12.B.

150 **16.9.3 Planning Board Shoreland Development Review**

- 151 A. Review process
- 152 (1) Following a pre-application meeting with the Town Planner or Code Enforcement
153 Officer, the applicant filing a shoreland development review permit shall submit to the
154 Code Enforcement Officer or Town Planner a complete application and site plan, drawn
155 to scale as indicated in accordance with §16.7.10.C.4.
156 (2) Within 35 days of the receipt of a written application, the Town Planner, must notify the
157 applicant, in writing, that the application is or is not complete. If the application is
158 incomplete, the written notification must specify the additional material required to
159 complete the application.
160 (3) A decision on the application will occur within 35 days after the first available date on
161 the Planning Board's agenda following receipt of the completed application, or within 35
162 days of the public hearing, if one is held.
- 163 B. Waivers

164 (1) Over the course of the application's review, with consideration of the development's
165 overall limited scale and impact to the site, the Planning Board may waive or modify
166 application submittals required in §16.9.3.C

167 C. Submission requirements

168 (1) All applications shall be signed by the owner, or an agent with written authorization from
169 the owner to apply for a shoreland development review permit, certifying that the
170 information in the application is complete and correct.

171 (2) All applications shall be dated, and the Town Planner or designee shall note upon each
172 application the date and time of its receipt.

173 (3) Whenever the nature of the proposed structure requires the installation of a subsurface
174 sewage disposal system, a complete application for a subsurface wastewater disposal
175 permit shall be submitted. The application shall include a site evaluation approved by the
176 Plumbing Inspector.

177 D. Exempt uses and development not requiring shoreland development review by the Planning
178 Board

179 (1) Proposed development of principal and accessory structures in compliance with
180 §16.4.28.D, when not subject to Planning Board review as explicitly required elsewhere
181 in this title, shall be reviewed and approved by the Code Enforcement Officer (CEO)
182 prior to issuing a building permit, subject to, but not limited to the following requirement:

183 (a) The total devegetated area of the lot (that portion within the Shoreland Overlay Zone)
184 shall be calculated by the applicant and verified by the CEO and recorded in the
185 Town's property records.

186
187 (2) Clearing of vegetation for activities other than timber harvesting. These are subject to
188 review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

189
190 (3) Division of a conforming parcel that is not subject to subdivision as defined in §16.3.

191
192 (4) A permit is not required for the replacement of an existing road culvert, provided the
193 replacement culvert is not:

194
195 (a) More than one standard culvert size larger in diameter than the culvert being
196 replaced;

197 (b) More than 25% longer than the culvert being replaced; and

198 (c) Longer than 75 feet.

199 (d) When replacing an existing culvert, the watercourse must be protected so that the
200 crossing does not block fish passage, and adequate erosion control measures must be
201 taken to prevent sedimentation of the water in the watercourse

202
203 (5) A permit is not required for an archaeological excavation, provided the excavation is
204 conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1
205 or Level 2 approved list and unreasonable erosion and sedimentation is prevented by

206 means of adequate and timely temporary and permanent stabilization measure.

207

208 E. Non-exempt uses requiring shoreland development review

209 (1) After the effective date of this title, no person may, without first obtaining a permit,
210 engage in any activity or use of land or structure requiring a permit in the Shoreland or
211 Resource Protection Overlay Zones in which such activity or use would occur, or expand,
212 change or replace an existing use or structure, or renew a discontinued nonconforming
213 use.

214 (2) Any development proposed in the Resource Protection (OZ-RP) and Shoreland - Stream
215 Protection Area (OZ-SL-75) Overlay Zones must be approved by the Planning Board.

216 (3) Any permit required by this section is in addition to any other permit required by other
217 law or ordinance.

218

219 F. Findings of fact.

220 (1) Permits shall be approved, or approved with conditions, if the proposed use or structure is
221 found to be in conformance with the purposes and provisions of this section and all other
222 applicable provisions found in this title, except where expressed relief has been lawfully
223 granted.

224 (2) An application shall be approved or approved with conditions if the Planning Board
225 makes a positive finding based on the information presented. The application must
226 demonstrate that the proposed use shall:

227 (a) Maintain safe and healthful conditions;

228 (b) Not result in water pollution, erosion or sedimentation to surface waters;

229 (c) Adequately provide for the disposal of all wastewater;

230 (d) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other
231 wildlife habitat;

232 (e) Conserve shore cover and visual, as well as actual, points of access to inland and
233 coastal waters;

234 (f) Protect archaeological and historic resources;

235 (g) Not adversely affect existing commercial fishing or maritime activities in a
236 commercial fisheries/maritime activities district;

237 (h) Avoid problems associated with floodplain development and use

238 (i) Is in conformance with the provisions of this title; and

239 (j) Be recorded with the York County Registry of Deeds.

240

241 G. Final plan approval and recording.

242 (1) An approval by the Planning Board must take the form of an agreement between the
243 Town and the applicant, incorporating as elements the application, the Planning Board's
244 findings of fact, and such conditions as the Planning Board may impose upon approval.

245 (2) The Planning Board must send copies of the agreement to Code Enforcement Officer.

- 246 (3) A plan has final approval only when the Planning Board has indicated approval by formal
247 action and the plan has been properly signed by a majority of the Planning Board
248 members or by the Chair only, if so voted by the Planning Board.
- 249 (4) Approved final plan recording. An approved plan involving the division of land,
250 easements, or property boundary modification must be recorded by the York County
251 Registry of Deeds. A paper copy and an electronic version of the recorded plan must be
252 returned to the Town Planner.
- 253 H. Modification to an approved plan. Any modification to an approved shoreland development
254 may be considered for approval under §16.7.12.C or §16.8.11.H.
- 255 I. Plan revisions after approval. No changes, erasures, modifications or revisions may be made
256 to any Planning Board approved shoreland development plan, unless in accordance with the
257 Planner's and CEO's powers and duties as found in Chapter 16.4 and elsewhere found in Title
258 16, or unless the plan has been resubmitted and the Planning Board specifically approves
259 such modifications. In the event a final plan is recorded without complying with this
260 requirement, the same is null and void, and the Planning Board must institute proceedings to
261 have the plan stricken from Town records and the York County Registry of Deeds.
- 262 J. Appeal of shoreland development plan decision. Appeal of a Planning Board shoreland
263 development plan decision may be made pursuant to §16.2.12.B.
- 264 K. Other References to Shoreland Development Review Within Title 16.
- 265 (1). Below are other pertinent sections within Title 16 referencing shoreland development
266 provisions:
- 267
- 268 (a) §16.4.28— Shoreland Overlay Zone OZ-SL Development and Performance Standards
- 269 (b) §16.4.30— Commercial Fisheries / Maritime Activities Overlay Zones OZ-CFMU
- 270 (c) §16.4.29— Resource Protection Overlay Zone OP-RP
- 271 (d) §16.2.13.D(2)—Notice of violation within the shoreland or resource protection
272 overlay zones
- 273 (e) §16.5.23.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone
- 274 (f) §16.5.24—Dwellings in Resource Protection and Shoreland Overlay Zones
- 275 (g) §16.5.27.N—Road and driveway standards in Shoreland and Resource Protection
276 Overlay Zones.
- 277 (h) §16.5.29.A(1)—Timber Harvesting in the Shoreland Overlay Zone
- 278 (i) §16.7.3.A—Shoreland development review during site plan review
- 279 (j) §16.8.4.A—Shoreland development review during subdivision review
- 280 (k) §16.8.9.C.(3)(a)(ii)—Scheduling public hearings for shoreland development
281 applications
- 282

283 16.9.4 Right of Way Plan Review

284 A. General. Right-of-Way Plans are intended to demonstrate to the Planning Board that a lot
285 will have a sufficient ROW to provide both the required frontage to that lot and to allow safe
286 vehicular access. Such a lot may exist as a “landlocked” lot which requires a Right-of-Way
287 Plan approval because necessary access doesn’t meet driveway standards or the lot may be a
288 proposed division from an existing lot which wouldn’t have required frontage without a new
289 ROW. When a lot is proposed for division, such division must not create a non-conforming
290 lot or structure. Right-of-Way Plans do not apply to any lot that requires subdivision
291 approval.

292 B. Applicability.

293 (1) A person who has right, title, or interest in a parcel of land must obtain Right of Way
294 Plan approval for a site when:

295 (a) A lot requires a new ROW to meet street frontage requirements

296 (b) A lot is proposed for division and requires ROW access and street frontage for the
297 proposed new lot.

298 (2) A ROW proposed under this section must be and will remain a private road unless the
299 applicant pursues street acceptance and is granted that acceptance by the Town per
300 §16.8.11.L of the municipal ordinance.

301 C. Review Process & Submission Requirements

302 (1) Pre-application and Conference

303 (a) Process. Before submitting a proposed Right-of-Way Plan to the Board, the owner
304 and/or applicant must meet with the Town Planner to discuss the conceptual design
305 regarding road design, stormwater management, dimensional requirements, and any
306 potential impacts to existing or proposed development and the environment.

307 (2) Sketch Plan

308 (a) Process. The applicant must submit a Right-of-Way application and sketch plan for
309 review and consideration by the Planning Board.

310 (b) Plan requirements

311 [1] The sketch plan must show the proposed road and lot division (if applicable),
312 including structures, site improvements and landscape features, in relation to
313 existing conditions and municipal land use regulations. Any proposed buildings
314 must also be shown.

315 [2] If the proposed ROW could or will provide frontage to lots other than the lot
316 under consideration, those abutting lots and their structures, if any, must also be
317 shown on the sketch plan.

318 [3] While not required, a plan prepared by a surveyor is recommended.

319 (c) Planning Board review and decisions, including site walk

320 [1] The Planning Board must determine whether the Right-of-Way sketch plan
321 proposal complies with municipal land use regulations regarding both submission
322 content and design and must, when necessary, make specific suggestions to be
323 incorporated by the applicant in subsequent submissions.

324 [2] If the sketch plan is accepted and approved, with or without conditions, the next
325 application step will be a Final Plan.

326 [3] A site walk may be scheduled at the Planning Board’s discretion.

327 (3) Final Plan

328 (a) Failure to submit final plan application. If a Right-of-Way final plan is not submitted
329 to the Planning Board within six months after the approval of the sketch plan, the
330 Planning Board may, at its discretion, refuse to act on the final plan and require
331 resubmission of the sketch plan. Any plan resubmitted must comply with all
332 application requirements, including payment of application fees.

333 (b) Process, including optional public hearing

334 [1] The applicant must submit a final Right-of-Way plan for review and consideration
335 by the Planning Board. Any conditions imposed by sketch plan approval must be
336 addressed in the submission.

337 [2] The Planning Board may, at its discretion, choose to hold a public hearing. If a
338 public hearing will be held, the proceedings must conform to public hearings as
339 described by 16.8.9.C.(3).

340 [3] The Planning Board may, at its discretion, request a review of the plans by the
341 Town’s peer review engineer. The cost of this peer review will be borne by the
342 applicant.

343 [4] The Technical Review Committee (TRC) must review the final plan and submit
344 comments prior to final plan approval.

345 [5] The Board must accept the application as complete and after consideration and
346 review, which may span more than one regularly scheduled meeting, vote to
347 approve with or without conditions or deny the plan.

348 (c) Plan requirements

349 [1] A complete final plan application must fulfill all the requirements as indicated on
350 the application checklist and described by §16.8.9.D.(10) unless the Planning
351 Board, by formal action, upon the applicant’s written request, waives or defers any
352 requirement(s) for submission. The Board may request any additional information
353 pertinent to complete understanding of the application.

354 (d) Findings of Fact

355 [1] Action by the Planning Board must be based upon findings of fact which certify
356 or waive compliance with all the required standards of this ordinance, and which
357 certify the Right-of-Way plan meets the requirements as listed in
358 §16.8.9.D.(4).(b).

359 [2] In addition, the Board must find that the proposed ROW:

360 [a] Does not create any nonconforming lots or buildings; and

361 [b] Can reasonably permit vehicular passage.

362 (e) Street naming

363 [1] Prior to submission of the final plan for Planning Board signatures (see
364 §16.9.4.C.f.i below), the applicant must apply for and be approved for, a street
365 name which complies with Chapter 8.5 of the municipal regulations.

366 [2] Once approved, the street name must be placed on the final plan prior to
367 submission for Planning Board signature.

368 [3] Street signage is required per Chapter 8.5-5.

369 (f) Final Plan approval and recording

370 [1] A plan has final approval only when the Planning Board has indicated approval
371 by formal action and the plan has been properly signed by a majority of the
372 Planning Board members or by the Chair or Vice-Chair only, if so voted by the
373 Planning Board.

374 [2] An approved Row-of-Way plan involving the division of land, easements, or
375 property boundary modification must be recorded by the York County Registry of
376 Deeds. A paper copy and electronic copy of the recorded plan must be returned to
377 the Town Planner. An as-built plan and electronic files may also be required at the
378 discretion of the Town Planner or Director of Planning.

379 (g) Performance guaranty

380 [1] Prior to the issue of a building permit, the applicant must, in an amount and form
381 acceptable to the Town Manager, file with the Municipal Treasurer an instrument
382 to cover the full cost of the required improvements. A period of one year (or such
383 other period as the Planning Board may determine appropriate, not to exceed
384 three years) is the guaranty time within which required improvements must be
385 completed.

386 [2] In cases where the Right-of-Way plan consists of an extension of an existing road
387 and as approved, will remain unpaved with minimal site improvements required,
388 the Director of Planning may waive the performance guaranty.

389 [3] Where applicable, a maintenance agreement must be included in the document of
390 covenants, homeowners' documents and/or as riders to the individual deed.

391 (h) Modifications to approved plans. No modifications to an approved Right-of-Way
392 final plan may be made unless such modifications comply with §16.9.4.

393 (i) Appeal of Planning Board decision. Appeal of a Right-of-Way plan decision by the
394 Planning Board may be made per §16.2.12.B.

395

396