



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: December 13, 2021
From: Kendra Amaral, Town Manager
Subject: Title 16 Recodification
Councilor Sponsor: Chairperson Judy Spiller

SUMMARY

The Recodification of Title 16 was launched in January of 2019 with the goal of ensuring the Land Use Code reflects the professional, transparent, and informative service approach desired in the Comprehensive Plan. After two years, countless meetings, line-by-line reviews, and Planning Board recommendation to adopt, the Recodification is ready for its final review and vote.

The Recodification project focused on a comprehensive review of Title 16 Land Use Code, and developed recommendations to address areas of inconsistency and vagueness that have arisen from incremental amendments to Title 16 over the years. Integral in the process was the Kittery Land Issues Committee, which reviewed and recommended the organizational structure, identified solutions to address the known and discovered inconsistencies, and agreed to process amendments that provide clear direction to property owners and developers.

The Recodification accomplishes a number of goals:

- removes performance standard “easter eggs” hiding in unexpected sections of the Code such as in definitions; and places them in their respective appropriate sections;
- removes redundant terminology and contradictory use of terminology;
- addresses questions and inconsistent language regarding which permitting authority proceeds the other, in a site plan review process;
- makes clearer and in some cases simplifies the application and review process for development; and
- categorizes and organizes restrictions, standards, and requirements in a manner that is intuitive and comprehensive.

The Recodification does not include substantive or “policy level” changes to the Code; though throughout the project policy items for future consideration were identified and catalogued.

PROPOSAL FOR ADOPTION

At its heart, this project was a complete reorganization of 436 pages of Land Use Code. For this reason, a “strike out/underline” of the existing code was not feasible or productive. Therefore, the recommendation to the Council is to vote to delete in its entirety and replace Title 16 Land Use Code.

The Kittery Land Issues Committee (KLIC) served as the project working group. KLIC includes a representative from each of the land-interested Boards, Commissions and Committees. A focused discussion was held with Council, Planning Board, Board of Appeals, Port Authority, Conservation

Commission, local developers, architects and engineers, to gather input on areas of concern in the existing code language. These entities were followed up with at the end of the drafting process, to gather feedback and address any issues. The Planning Board held no fewer than 12 meetings and workshops, in many cases going through a line-by-line review of the proposed text. Three of these meetings were public hearings.

Every effort was made to follow the Town Code formatting. However, MS Word gets glitchy when there are a significant number of levels of indexing. General Code, our ordinance maintenance vendor, will address all formatting issues and will identify any areas where references may need updating based on the formatting effort when the new language is incorporated into the full Town Code.

The Town Attorney is conducting a final review of the text to confirm it is compliant with State law. We expect to have their written opinion on that before the Council votes. We do not anticipate any issues with compliance, as that has been forefront in the development of the new language from the beginning. The opinion will simply provide written confirmation.

PROPOSED SOLUTION/RECOMMENDATION

Adopt the new Title 16 Code as proposed.

ATTACHMENTS

- Staff Memo summarizing the changes and process
- Draft Title 16 (in separate file due to size of file)
- Draft Title 16 Enactment



TOWN OF KITTERY
Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: KENDRA AMARAL, TOWN MANAGER
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: TITLE 16 RECODIFICATION
DATE: DECEMBER 7, 2021

This memo follows the October 6, 2021 and November 17, 2021 memos previously presented to the Planning Board (attached below).

After the Planning Board workshop on November 9, 2021, the Planning Board reviewed the Title 16 Recodification project at a public hearing on November 18, 2021. At that meeting, the Planning Board recommended the proposed draft Title 16 with changes as discussed at the workshop be sent to Town Council for review.

To recap, Planning Department staff, the Kittery Land Issues Committee (KLIC), and the Planning Board have spent many hours reviewing proposed language changes and formatting for the proposed code. Staff is grateful for the Planning Board's attention and willingness to thoroughly review and consider these changes, understanding that they use this ordinance regularly during their service to the Town. The Planning Board have held public hearings on this draft code on October 14, 2021, October 28, 2021, and November 18, 2021. Prior to these public hearings, the Planning Board discussed the Title 16 Recodification projects at the following meetings:

October 8, 2020, October 22, 2020, November 12, 2020; December 10, 2020; January 14, 2021; January 28, 2021; February 11, 2021; February 25, 2021; March 11, 2021

Staff has incorporated the changes discussed at the workshop and the November 18 Planning Board meeting into a final draft document that is ready for Town Council review.

Thank you,

Adam Causey, AICP
Planning & Development Director



TOWN OF KITTERY
Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: PLANNING BOARD
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: TITLE 16 RECODIFICATION
DATE: NOVEMBER 17, 2021

This memo is a companion to the October 6, 2021 memo previously presented to the Planning Board. This separate memo deals with comments from the Planning Board since their October 28, 2020 meeting. However, the larger intent and context of the Recodification project has not changed since the last meeting, so I will refer back to the original memo for those who want a more comprehensive view of the initial changes proposed.

To recap, Planning Department staff, the Kittery Land Issues Committee (KLIC), and the Planning Board have spent many hours reviewing proposed language changes and formatting for the proposed code. Staff is grateful for the Planning Board's attention and willingness to thoroughly review and consider these changes, understanding that they use this ordinance regularly during their service to the Town. The Planning Board have held public hearings on this draft code on October 14, 2021, October 28, 2021, and November 18, 2021 (scheduled). Prior to these public hearings, the Planning Board discussed the Title 16 Recodification projects at the following meetings:

October 8, 2020, October 22, 2020, November 12, 2020; December 10, 2020; January 14, 2021; January 28, 2021; February 11, 2021; February 25, 2021; March 11, 2021

The Planning Board held a workshop on November 9, 2021 to review their submitted comments and hear from staff on how to incorporate any potential changes. A review of those comments submitted to staff and the resolution from the workshop is provided on the following pages.

Staff believes the proposed draft of Title 16 with the amendments outlined below is ready for the Planning Board to recommend to Town Council. Whenever the Planning Board elects to move forward, a separate workshop with Town Council will be scheduled.

Thank you,

Adam Causey, AICP
Planning & Development Director

Section reviewed: 16.1

Submitted comment: Some of the text in the existing code (current code Section 16.7) is not included in the recodification code Section 16.1.8. Specifically:

- at line 280 paragraph [2] on page 16.7:10 of the existing code is not included
- at line 289 the last eight lines of existing code are not include
- at line 295 the last two lines of existing text are not included,
- at line 310 the designation of a separate paragraph 5 is eliminated and the text added to paragraph 4, changing the meaning of the requirement,
- at line 314 the last two lines of existing text are not included,
- at lines 327 through 341 some existing text is not included and some existing wording has been changed

These omissions and changes are substantive. For the record, please identify the origin of these changes and how they got past the review process.

Workshop review: During the workshop, the Planning Board had concerns over the deletion and relocation of certain language from the nonconformance section of 16.1.8 General Development Requirements. The Board opined that moving forward with such changes would constitute as a major policy amendment outside the scope of the recodification process. Ultimately, the Board agreed to reinstate the language as it is currently written under the current section 16.7, where applicable.

Staff response: Staff agrees that certain segments of the code under 16.1.8 were inappropriately amended, necessitating the reinstatement of its current content and syntax under 16.7. Although there are certain amendments made to this section that staff have found to be appropriate, as those changes reduce redundancy and remove misplaced standards (e.g., removes new construction standards from the nonconformance section). Staff, in general, is neutral on the reversion to the original construction / placement of those standards in the instance the Board wants the original text reinstated.

Section reviewed: 16.1 General Provisions

Submitted comment: In Section 16.1.6, please add the word “must” to shall at Line 62 and fix grammar.

Workshop review: Discussion on the use of “must” to convey the intent of required elements of the code.

Staff response: Staff will amend Section 16.1.6 at Line 62 to read:

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

Section reviewed: 16.2 Administration and Enforcement

Submitted comments: On proposed code Section 16.2, while not complete there are text duplications and omissions in 16.2.4 Port Authority in both paragraphs A and B. Also, I have not found where existing code paragraphs 16.5.5 and 16.5.6 are located in recodification code. There are text duplications and omissions in 16.2.4 Port Authority.

Workshop review: Lines 115 through 122 are duplicative and should be removed. Some omissions from Port Authority language, and there was discussion to not conflict or duplicate with sections of the Charter or code Title 4 referencing the Port Authority.

Staff response: “Temporary Housing standards” previously contained in 16.5.5 and 16.5.6. can now be found in proposed code Section 16.5.28. The duplications on Lines 115 through 122 will be removed and replaced with the following:

A. Appointment and composition.

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

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

(3). ~~The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years. Members of the Port Authority are appointed by the Town Council.~~

(4). ~~The Port Authority consists of seven members, who are Kittery residents, serving staggered terms of office of five years. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.~~

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

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

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

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

Section reviewed: 16.2 Administration and Enforcement

Submitted comments: Clarify title of single-family residential commencement and completion rules to Section 16.2.8

Workshop review: General discussion on adding clarifying language that covers activities described in subdivision, site plan, and other development plan sections.

Staff response:

Staff will make the following changes to Section 16.2.8 at Line 223:

16.2.8. Building/Regulated Activity Permits and Requirements

Section reviewed: 16.2 Administration and Enforcement

Submitted comments: The Basis of Decision code section is used by the Planning Board when reviewing Special Exception Use requests but the section only makes reference to the Board of Appeals.

Workshop review: Discussed making the language broader to cover all jurisdictional boards.

Staff response: Staff recommends to alter relevant language in Section 16.2 to change certain references of only the “Board of Appeals” to “appropriate jurisdictional Board”.

Section reviewed: 16.3 Definitions

Submitted comments:

- Add definition for “AADT – Annual Average Daily Traffic”
- Add “Dwelling, Cottage Cluster” to definitions (keeping the same format and naming strategy as for other dwellings).
- Delete Cottage Cluster
- Modify “Cluster Residential Development” definition based on review of Section 16.8 (see later in this document on Page 14)
- Clarify “Master Site Development Plan” and ensure conformance with Section 16.6

Workshop review:

- Discussion regarding some definitions that are missing, including several types of the term “glare.”
- Discussion of “marina” and what constitutes uses allowed in such a development.

Staff response: Part of the recodification effort is to reduce the number of terms in the Definition section due to obsolescence or redundancy and to remove any performance standards that had often been written into definitions, which are best contained to Section 16.5 Performance Standards. Staff combined certain individual terms like “Grocery Store” with other retail uses as “Retail Sales.” Part of the feedback from users of the code was that the current definition section is too lengthy and contains too many typical terms that can be defined by a dictionary. Performance standards (the “how” you do something) do not belong in definitions since that contributes to flipping back and forth within the code and can lead to conflict if both Definitions and Performance Standards aren’t updated uniformly.

- Staff recommends not reverting any of the terms previously removed or consolidated.
- Staff will add “Annual Average Daily Traffic (AADT)” as the following:
A measure of the total volume of vehicular traffic on a street or road for a year divided by 365 days.
- Staff will add and alphabetize all Dwelling Unit terms
- Staff will clarify “Master Site Development Plan” to read:

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

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

B. The standards are applied to the ~~zone~~ proposed master development boundary rather than to individual lots, tracts and parcels ~~within the zone~~.

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: A preference to have uses alphabetized within each zoning district.

Workshop review: Discussion regarding ease of use if items are in alphabetical order within sections. Though this could prove difficult in certain situations once the code is amended, staff agrees to start out the new code this way.

Staff response: Staff proposes to alphabetize uses currently listed within Section 16.4 but notes they cannot guarantee that future amendments are alphabetized in the same manner.

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: Which professionals are certified to challenge or redefine OZ-SL & RP zone boundaries in Section 16.4.6?

Workshop review: Discussion regarding what types of “Maine State professional” is allowed to certify boundaries for wetlands and shoreland.

Staff response:

- Staff proposes the following amendment to Section 16.4.6(4) on Line 91:

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

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: Clarify language in Lines 176, 324, 479, 600, 726, 811, 1140, 1296, 3213, 3709, and 3996 to show we mean the already defined term “functionally water-dependent uses.”

Workshop review: No discussion.

Staff response:

- Staff proposes the following amendments to various parts of Section 16.4. on Lines 176, 324, 479, 600, 726, 811, 1140, 1296, 3213, 3709, and 3996:

...functionally ~~and wetland~~ water-dependent uses...

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: Maintain conformity withing zones on the “Accessory Use” language as it was changed to “Accessory Use and Building” from “Accessory Buildings and Structures.”

Workshop review: Discussion to make sure the code is consistent with regard to uses listed in permitted use language.

Staff response:

- Staff proposes the following amendments to various permitted and special exception use segments of Section 16.4:

Accessory Buildings, Structures, and Uses ~~Use and Building~~

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: Dwelling, two family. Currently there’s no duplex option in the zone, just an option for an ADU. Would three housing units on lots in the Rural Conservation zone be in line with the purpose statement that says RC “require(s) special measures to ensure low-density development”?

Workshop review: While not discussed during the workshop, this was discussed at the previous Planning Board meeting on October 28.

Staff response:

- Staff proposes the following amendments to Section 16.4.15 at Line 768:

(5). ~~Dwelling, Two Family~~

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: The BL & BL1 gasoline spacing provisions aren’t in the current online Code. Is it a new add or has it been enacted recently?

Workshop review: No discussion.

Staff response: The gasoline spacing provisions are in the existing Title 16 in both the B-L and B-L1 zones under Special Exception Uses. The language was included in the recodification draft on Line 1144 (B-L) and Line 1300 (B-L1). There is a formatting error on Line 1144 that should be adjusted to maintain consistency accordingly:

(7). ~~Gasoline Sales~~

~~a. l. Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be located within 1,000 feet of any private residence; and (c) not be located within 150 feet of any existing structure.~~

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: In the BL and BL-1 zones, current OZ-SL rules limit dwellings to single-family or duplexes. They're both SEs. The new OZ-SL permitted dwelling use in BL is "Dwellings, if farther than 100ft from..." the resource. There is no mention of any dwelling types or number of dwellings in BL's SEs. Yet dwellings are called out in BL-1's SEs.

Perhaps this was just an oversight in BL? And, is much of the either BL zone in the OZ-SL? Haven't had time to look at Zoning map.

Workshop review: No discussion.

Staff response: These sections were rewritten prior to the adoption of the 2019 amendments which permit dwelling outside the base zone setback of the Shoreland Overlay Zone and prohibits new structures by right within the base zone setback. The recodification draft contains inconsistencies relative to that update. Staff will make the following amendments to the Permitted Use sections of all OZ-SL zones, where applicable to mirror the existing permitted residential (dwelling) uses:

c. Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland:

(1) Dwelling, Single-Family

(2) Dwelling, Two-Family

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: On Line 1309 there appear to be new BL-1 parking requirements that aren't in the current code. Please mention at meeting if newly enacted or are a proposed change.

Workshop review: No discussion.

Staff response: This was a copy error. Parking standards are included in Section 16.7. Staff recommends the following amendment to Section 16.4.18 at Line 1309:

~~*d. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.*~~

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: On Line 1431 (and others), is “parking area” meant to replace “commercial parking lot or parking garage”? Does it infer garage? Does it need a definition in 16.3?

Workshop review: No discussion.

Staff response: This was an intentional change reflected in the new definitions (Section 16.3 Line 1102). A “Parking area” includes a parking garage.

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: In the MU district, on Line 3500, gas station is conditioned on a 2,000-foot separation?

Workshop review: No discussion.

Staff response: This is from the existing language contained in the MU zone regulations under §16.3.2.13D(10)(c).

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: In the MU-BI district, why was grocery store/food store taken out of the MU-BI zone?

Workshop review: No discussion.

Staff response: Grocery store was combined with “Retail sales” and would be permitted per the new 16.4.24.B.(24).

Section reviewed: 16.4 Land Use Zone Regulations

Submitted comments: “Buffers” are included in the MU-N “surface parking” section. There’s no connection. Might it be separated out as #9, and change Open Space to 10, etc. to end (which is currently 11)?

Workshop review: No discussion.

Staff response: Staff agrees that this is a formatting error and proposes the following amendment to Section 16.4.26.D.(8) on Line 4471:

iv. f. Buffers required between residential uses and mixed use or nonresidential uses, and between adjacent residential zones and this zone must be 50 feet wide and consist of one of the following as determined by the Planning Board:

- ~~1.i.~~ Existing natural woodland and vegetation.
- 2.ii. Existing natural woodland augmented by the planting of additional trees consisting of a variety of species at least 2.5-inch caliper and 12 feet high.
- ~~3.~~ iii. A fence at least six feet high, constructed of material similar to surrounding buildings, with plantings of trees and shrubs at least six feet tall on either side of the fence.

Section reviewed: 16.5. General Performance Standards

Submitted comments: It's imperative that we increase the stormwater management criteria to a 100-year level for major developments. It's clear that there have been, and will likely be, more major storms as the climate continues to warm. Why wait to increase this requirement?

Workshop review: Discussed other Town efforts to regulate stormwater and floodplain management, including updates to the C zones earlier this year that were coupled with incentives to use low-impact development strategies and best management practices.

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

Section reviewed: 16.6

Submitted comments: Master Site Plan Development definition and description needs to be clarified.

Workshop review: The Planning Board reviewed the Master Site Development Plan Review and discussed adding a Preliminary Plan step in the process.

Staff response: Staff recommends the following amendment to 16.6.1 on Line 22:

B. The standards are applied to the ~~zone~~ proposed master development boundary rather than to individual lots, tracts and parcels ~~within the zone~~.

Staff also recommends adding a Preliminary Plan step to 16.6.3, either referencing or mirroring the language located in the existing Site Plan section.

Section reviewed: 16.7

Submitted comments: The review authority for Minor Site Plans has changed to the staff's Technical Review Committee. Since a small staff committee will be reviewing plans that encompass projects up to 5,000sf, might we include abutter notification and create an opportunity for abutter input?

Workshop review: Planning Board reviewed the proposed Minor Site Plan vs Major Site Plan thresholds and consensus was reached on developments between 1,000-5,000sf would fall under Minor Site Plan review. Consensus was for some notification to abutters for filed Minor Site Plans.

Staff response: Staff agrees regarding abutter notification and proposes the following be added in Section 16.7.10.D.(4) at Line 841:

f. The applicant shall demonstrate they have sent written notice of their filing for Minor Site Plan review by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property).

Section reviewed: 16.7

Submitted comments: Improve waiver and modification language per the following:

- Include a reference citation to Basis for Decision (now in 16.2 starting at line 675) and please add any additional criteria needed to guide the Planning Board toward consistent reasoning and action. These older regs may be inadequate to meet the challenge for the many performance standards throughout Title 16.
- List any performance standards that should never be waived or modified
- Include that waiving or modifying any standards based on consideration of cost is not permitted. It's in the current Code & it should be included with waiver authority, wherever it's listed. For the sake of fairness, applicants and Board alike should know what waivers and modification requests can be made, and what the Board is meant to consider before it makes a decision.
- As of now, waiver/modification authority is only in site plan and subdivision chapters. Shouldn't they also be in new 16.5., 16.6, 16.7, and 16.8 for ease of use? Or, perhaps move the waiver authority (as 16.1.8.C) after the 16.1 Conformity sections, then Nonconformance would start as 16.1.8.D.?

Workshop review: Discussion on waivers and modifications, which standards could be waived or modified, and how the Planning Board arrives at any decision to waive or modify standards.

Staff response: Staff believes the separate waiver/modification provisions should remain in Site Plan (16.7) and Subdivision (16.8) sections, as those contain different processes for approvals, which include steps for potential waivers and modifications for each applicant type. The process

for Site Plan review is better served if a Site Plan applicant can review all standards and processes within the Site Plan section, and the same for an applicant for Subdivision review. Staff had difficulty identifying firm rules for which standards are never waived or modified, since waiver and modification requests are tied to submitted plans with individual context and circumstance. A review of other seacoast Maine municipality ordinances revealed waiver language very consistent with Kittery's and also broadly written as to not identify discrete elements that could be waived or those that should never be waived. Since the Planning Board has expressed interest in determining the scope of their waiver authority, staff believes this is a policy question best discussed with Town Council before any substantive changes are made. However, some tweaks to the current language could put the onus on the applicant to explain how a waiver or modification does not harm the public, rather than its current iteration.

- Staff suggest the following language, if the Planning Board wishes to amend at this time, at Section 16.7.8 on Line 254:

A. Waiver authorization.

~~*Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements or performance standards do not promote the interest of public health, safety and general welfare, , upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.*~~

Upon written request, the Planning Board may waive or modify certain required improvements, due to special circumstances of a particular plan, if the applicant demonstrates that the interest of public health, safety, the natural environment, and general welfare are not harmed, or if those improvements are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, subject to appropriate conditions as determined by the Planning Board, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

...

C. Objectives secured. In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing waiver or modification requests.

- Similar language could also be added to Section 16.8.7 beginning at Line 127:

~~*A. Waiver authorization. Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.*~~

Upon written request, the Planning Board may waive or modify certain required improvements, due to special circumstances of a particular plan, if the applicant demonstrates that the interest of public health, safety, the natural environment, and general welfare are not harmed, or if those improvements are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, subject to appropriate conditions as determined by the Planning Board, and provided the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan and Title 16.

B. Objectives secured. In granting modifications or waivers ~~from requirements in 16.5 General Performance Standards or 16.8.10 Performance Standards and Approval Criteria, below,~~ the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified. The Planning Board shall consider the provisions in Section 16.2.12.F. Basis for Decisions when reviewing such waiver or modification requests.

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

Sections reviewed: 16.8

Submitted comments: Water supply (somewhere near Line 1048) really must have language that ensures that where there's no town water line, a development SHALL NOT cause an adverse impact on water volume or quality on surrounding properties.

Workshop review: Discussion centered on properties not connected to Town water but utilize wells and take from local aquifers/ground water.

Staff response: Staff agrees with the intent of the request but has concerns about the analysis needed to determine adverse impacts on water supply. Further discussion and analysis are necessary to determine the best policies and ordinance language that would improve development outcomes, which could include mandatory connections to public water within some distance of existing development (like the language in the sewer connection requirement). Staff recommends this become a separate policy issue to evaluate. Note: water quality standards and type of service (public, private or shared private) are part of the proposed Conservation Subdivision amendments and related Chapter 16.8 changes the Board will have occasion next year to discuss.

Sections reviewed: 16.8

Submitted comments: Add language that dictates that only four distinct dimensional standards of lots – to lot area, lot coverage, frontage and setbacks – may be modified by the Planning Board in review of Cluster Residential Subdivisions.

Workshop review: Discussion of aligning Town language with state law on cluster regulations, to limit what dimensional standards can actually be modified. Note that this change is also anticipated to be made to the proposed Conservation Subdivision changes the Planning Board will see next year.

Staff response: Staff agrees and proposes the following amendment to Section 16.8.10.H.(3) on Line 1664:

Dimension standards modifications. Notwithstanding other provisions of this title relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential development under this article, may modify ~~said~~ certain dimensional standards limited to lot area, lot coverage, frontage and setback requirements to permit flexibility in approaches to site design in accordance with the standards of this title. The Board may allow subdivision or site development with the limited modified dimensional standards listed above where the Board determines the benefit of a cluster development is consistent with this title. Such modifications may not be construed as granting variances to relieve hardship.

Staff also recommends amending the Definitions section for Cluster Residential Development in Section 16.3.2. on Line 248 with the following:

CLUSTER RESIDENTIAL DEVELOPMENT

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

Sections reviewed: 16.9

Submitted comments:

- Review 16.9.3.D. for structure and clarity.

Workshop review: Requested staff look at Lines 209 through 244 as the construction of that passage does not seem correct.

Staff proposal: Staff agrees and will modify the passage at 16.9.3.D. as follows:

D. ~~Exempt and non-exempt uses.~~ Exempt uses and development not requiring shoreland development review by the Planning Board:

~~1.~~ Proposed development of principal and accessory structures in compliance with §16.4.28.D, when not subject to Planning Board review as explicitly required elsewhere in this title, shall be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing a building permit, subject to, but not limited to the following requirement:

~~i.~~ a. The total devegetated area of the lot (that portion within the Shoreland Overlay Zone) shall be calculated by the applicant and verified by the CEO and recorded in the Town's property records.

(2). Clearing of vegetation for activities other than timber harvesting. These are subject to review and approval by the Shoreland Resource Officer or Code Enforcement Officer.

(3). Division of a conforming parcel that is not subject to subdivision as defined in §16.3.

(4). A permit is not required for the replacement of an existing road culvert, provided the replacement culvert is not:

a. More than one standard culvert size larger in diameter than the culvert being replaced;

b. More than 25% longer than the culvert being replaced; and

c. Longer than 75 feet.

~~(5).~~ d. When replacing an existing culvert, the watercourse must be protected so that the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

(65). A permit is not required for an archaeological excavation, provided the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measure

Sections reviewed: N/A - general construction issues

Submitted comments:

- Alphabetize sections for ease of reference
- Add reference numbers to

Workshop review: General discussion on the formatting of the new document.

Staff proposal: Staff commits to do the following:

- Alphabetize terms and uses within each section (with some minor inconsistencies that may be necessary within subsections)
- Add reference points to each physical page or set of pages. Some of these references will be dictated by the format required by our online code vendor, eCode, but staff will push for ease of navigation within each section.



TOWN OF KITTERY
Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307

TO: PLANNING BOARD
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: TITLE 16 RECODIFICATION
DATE: OCTOBER 6, 2021

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

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

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

Summary of restructuring:

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

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

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

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

16.1 General Provisions

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

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

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

16.2 Administration and Enforcement

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

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

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

16.3 Definitions

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

Abuts definition changed to reference performance standard:

“That which is contiguous to, or shares, a common boundary line. The owner of a property that is contiguous to or shares a common boundary line is an abutter. See § 16.5.2, §16.7.10.C(2)c and § 16.8.9.C(3)c on abutter notification process when a new development or redevelopment is proposed.”

Abutter definition removed and language combined with “Abuts” definition

Abutting Property definition and figure moved to performance standard section 16.5.2

Accessory Dwelling Unit definition edited and referenced performance standard

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

Accessory Use added reference to **Principal Use**

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

Acre definition removed, standard measurement

Acreage definition removed, standard measurement

Age-Restricted Housing definition and term edited from Elderly Housing

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

Agriculture definition edited

“The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance for sale, lease, or personal use of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products; but excluding marijuana. Agriculture does not include forestry or sawmills, as defined in this Ordinance. See § 16.5.4 for Agriculture general performance standards.”

Agriculture, Piggery definition added

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

Agriculture, Poultry Facility definition added

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

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

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

Basement definition edited

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

Boathouse definition added

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

Buffer Area definition removed, covered in Buffer definition

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

Building Materials and Supplies and moved to be in alphabetical order

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

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

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

Commercial School definition added

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

Corner Lot definition edited

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

In zones where yards are required:

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

Day Care Facility definition edited to remove state requirement

“A house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under 16 years of age, who are unattended by their parent(s) or guardian(s), for

any part of a day. Any facility, the chief purpose of which is to provide education, is not considered a Day Care Facility.”

Drive-through Facility definition added

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

Dwelling, Attached Single-Family definition added

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

Dwelling, Manufactured Housing definition edited

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

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

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

Dwelling, Single-Family definition added

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

Dwelling, Two-Family definition added

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

Dwelling Unit definition edited to remove Temporary, Intrafamily Dwelling Unit

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

“RESIDENTIAL CARE FACILITY

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

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

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

Farmers Market definition added

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

Food Store definition removed, Retail Sales definition covers this use

Gambling or Gaming definition edited

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

Gambling Casino definition edited

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

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

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

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

Glare definition removed

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

Grocery Store definition removed, Retail Sales definition covers this use

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

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

Industry, Heavy term retained with a modification to the definition

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

Industry, Light term retained with a modification to the definition

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

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

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

Marijuana, Adult Use Store

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

Marijuana, Business

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

Marijuana, Cultivation Facility

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

- Tier 1: Up to 500 square feet of plant canopy*
- Tier 2: Up to 2,000 square feet of plant canopy*
- Tier 3: Up to 7,000 square feet of plant canopy*
- Tier 4: Up to 20,000 square feet of plant canopy”*

Marijuana, Manufacturing Facility

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

Marijuana, Medical Caregiver Retail Store

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

Marijuana, Medical Registered Caregiver

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

Marijuana, Medical Registered Caregiver Home Establishment

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

Marijuana, Medical Registered Dispensary

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

Marijuana, Testing Facility

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

Marina definition edited

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

Mobile Home Park definition edited

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

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

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

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

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

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

Parking Space definition removed, added to performance standards

Private Assembly definition added

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

Public Assembly Area definition added

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

Public or Private School definition added

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

Public Utility Facility definition added

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

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

Recreation, Public Open Space definition added

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

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

“RECREATION, COMMERCIAL INDOOR

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

“RECREATION, COMMERCIAL OUTDOOR

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

Recreational Vehicle definition edited

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

Recreational Vehicle Park definition added

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

Religious Use definition added

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

Retail Use term changed to **Retail Sales**

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

Sawmill, Permanent definition added

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

Sawmill, Temporary definition added

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

*month period. Sawmill operations may be subject to State regulations.
This definition does not include the use of handheld chainsaws.*

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

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

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

Theater, Drive-in definition added

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

Trailer definition removed, referenced state definitions via Manufactured Housing definition

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

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

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

16.4 Land Use Regulations

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

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

16.5 General Performance Standards

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

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

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

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

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

Accessory Dwelling Unit: performance standard taken out of definition and added to applicability of the Accessory Dwelling Units. *“The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal unit.”*

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

Agriculture, Piggery: performance standards added:

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

B. *Setbacks. The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:*

(1) *Structures: 50 feet*

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

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

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

Agriculture, Poultry Facility: performance standards added...

A. *“Number of Animals. These standards apply to the keeping of thirteen (10) or more poultry animals that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a permitted use or a special exception use. These standards do not apply to the raising and selling of any number of poultry that are under six (6) months of age.*

B. *Setbacks. The following distances are from the identified nearest property not owned or controlled by the operator/owner of the poultry facility:*

(1) *Structure, including Barn or Coops: 50 feet*

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

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

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

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

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

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

16.6 Master Site Development Plan Review

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

16.7 Site Plan Review

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

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

Added: Distinction between Minor and Major Site Plans:

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

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

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

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

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

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

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

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

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

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

Added: GIS file submission requirement at Final Plan Stage

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

16.8 Subdivision Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

o Performance Guarantees

Types of Guarantees

Contents of Guarantees

Provisions for the release of guarantees

Procedures for collecting on the guarantee with the applicant is in default

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

16.9 Other Plan Development Review

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

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

Policy discussions for future updates:

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

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

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

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

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

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

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

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

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

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

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

Timeline:

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

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

Thank you,

Adam Causey, AICP
Director of Planning & Development

**KITTERY TOWN CODE –
TITLE 16
RECODIFICATION**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001 and §4352, pursuant to its
7 powers that authorize the town, under certain circumstances, to provide for the public health,
8 welfare, morals, zoning, and safety, and does not intend for this Ordinance to conflict with any
9 existing state or federal laws; and

10 **WHEREAS**, the Town of Kittery’s Comprehensive Plan articulates a community goal to improve
11 the town’s economic and development processes and reflect a more professional, transparent,
12 and informative planning effort; and

13 **WHEREAS**, to accomplish this goal the Town conducted a review and recodification of Title 16
14 Land Use and Development Code that resulted in a proposal to wholesale change Title 16; and

15 **WHEREAS**, the proposed wholesale change of Title 16 categorizes and organizes restrictions,
16 standards, and requirements in a manner that is intuitive and comprehensive, eliminates
17 redundant terminology and inconsistent use of terminology, simplifies and clarifies application
18 and development review processes, and addresses long-standing questions about multi-
19 jurisdictional review processes; and

20 **WHEREAS**, the proposed wholesale change of Title 16 does not incorporate substantive or
21 policy-level changes to the Town’s zoning ordinance;

22 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001 and §4352, AND
23 TOWN CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS THE DELETION AND
24 REPLACEMENT OF TITLE 16, LAND USE and DEVELOPMENT CODE, IN WHOLE, AS
25 PRESENTED.

26 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
27 20____, by: _____ {NAME} Motion to approve by Councilor
28 _____ {NAME}, as seconded by Councilor _____ {NAME} and
29 passed by a vote of _____.

30 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
31 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

32 **Attest:** {NAME}, _____ Town Clerk