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July 8, 2022

Kendra Amaral
Town Manager
Town of Kittery
200 Rogers Road
Kittery, Maine 03904

Re: Review of Voter Petition

Dear Kendra:

You have asked me to provide a review of the proposed voter petition submitted to the Town on June 13, 2022 entitled "Shall the Inhabitants of the Town of Kittery repeal Kittery Town Code Title 16, Land Use and Development, §16.3.2.10, Mixed-Use-Neighborhood, MU-N ordinance (lined out copy attached) herewith and replace with the original Business Park Zone ordinance (underlined copy attached) with immediate effect?" ("the Petitioned Ordinance"). I understand that the Town Clerk certified the voter petition and it has been forwarded to the Town Council for further action pursuant to Section 11.01 of the Town Charter. A copy of the Petitioned Ordinance is attached to this letter.

As an initial matter, review of a petitioned ordinance is governed by Section 11.02(2) of the Charter which reads as follows:

Any such proposed ordinance must be examined by an attorney for the town before it is submitted to the voters. The attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clarity and precision in its phraseology, but may not materially change its meaning and effect.

Under the standard of examination outlined in the above Charter provision, I offer the following comments on the Petitioned Ordinance:

- **Code References**

- As a general comment, the Land Use and Development Code was amended and re-codified on January 24, 2022, and the Petitioned Ordinance uses outdated code references that should be corrected (see below for further details).

- **Addition of Section 16.3.2.10 Business-Park B-P District**

- Re-codification. This proposed ordinance language establishing a new (or restored) B-P base zone should be corrected to reflect references to the current codification system, either by renumbering it to Section 16.4.23 (*et seq.*) to replace the proposed elimination of the Mixed-Use Zone, or through a new Section 16.4-31 (*et. seq.*)
- Permitted uses (Section 16.3.2.10(B)). The proposed language includes reference to a number of uses that have been since renamed and defined in the existing Ordinance. Some of those references can be corrected to re-name them without changing the meaning and effect, while others cannot be corrected since they include substantive differences from the existing terms.
 - Specifically, the Council can make the following corrections without changing the meaning and effect:
 - (e) “Commercial parking lot or parking garage” should be changed to “Parking area (public or private)”
 - (h) “Grocery, food store, convenience store, including gas station” should be changed to “Retail sales and “Retail sales convenience store”
 - (n) “Place of public assembly, including theater” should be changed to “Public Assembly area, theater”
 - (t) “Retail uses and wholesale businesses excluding used car lots and junkyards” should be changed to “Wholesale businesses excluding used car lots”
 - The following should remain, although it is worth noting that the proposed uses differ somewhat from the existing terminology:
 - “School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political, or social nature”
- Standards (Section 16.3.2.10(D)). There are several internal references to re-codified or renamed provisions that should be corrected as follows:
 - In the first paragraph, the phrase “Article XI Cluster Residential and Cluster Mixed-Use Development” should be corrected to “Section 16.8.10(H), Cluster residential development”.

- In the first paragraph, the phrase “Article II, Master Site Development Plan” should be corrected to “Chapter 16.6, Master Site Development Plan”.
 - In Subsection D(1), the reference to “Chapters 16.8 and 16.9” should be corrected to “Chapters 16.5, 16.7, and 16.8”.
 - In Subsection D(3), the reference to “Article XI of Chapter 16.8” should be corrected to “Section 16.8.10(H), Cluster residential development” and the phrase “Ordained 9-28-15” should be deleted.
 - In Subsection D(4)(c), reference to “Chapter 16.8” should be corrected to “Chapters 16.4, 16.5, and 16.8”.
- **Deletion of Section 16.3.2.10 Mixed-Use Neighborhood MU-N District**
 - Deletion of MU-N District. This proposed ordinance language that would delete the MU-N District regulations should be corrected to reflect references to the current codification system by renumbering it to Section 16.4.26 (*et seq.*) and include the current version to ensure accuracy in its text and references as permitted by the Charter. I would note, however, that the existing MU-N District contains several differences from the prior version of the District that the petitioners purport to eliminate, but it is clear from the petition language itself that the intent was to eliminate the MU-U in its entirety.
 - **Zoning Map**
 - The Petitioned Ordinance does not include any proposed amendments to the Town’s Zoning Map nor does it reference the Map in the petition itself. A Zoning Map must be separately amended pursuant to the provisions in state law and must describe each zone established (which can also be provided by description by metes and bounds.) 30-A M.R.S. § 4352(3) & (9). Thus, if enacted, the Petitioned Ordinance would adopt new B-P District regulations and eliminate the existing MU-N District regulations, while the areas currently zoned as MU-N will remain and there would be no areas zoned B-P. This will create confusion in potentially unregulated zoning areas and should be addressed by the Council with a future Zoning Map amendment.

In conclusion, except as it relates to any amendment to the Zoning Map, I recommend that the Council make the minor corrections to the Petitioned Ordinance outlined above to assure accuracy in its text and references and clarity and precision in its phraseology. I did not find any repetitive, illegal, or unconstitutional provisions.

If enacted, however, I recommend that the Council subsequently adopt amendments to the Zoning Map to clarify where the new B-P District is located and to rezone any area currently zoned as MU-N. The Council also has the authority to enact a moratorium to give it time to work on such an amendment if it determines that such a moratorium is necessary to prevent a

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shortage or overburden of public facilities or because the existing ordinance is inadequate to prevent serious public harm from development in the affected zone. 30-A M.R.S. § 4356

I hope this is helpful, and please let me know if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Saucier", with a long horizontal flourish extending to the right.

Philip R. Saucier

PRS/ree

Enclosures

Charles Denault
11 Melanies Court
Kittery, Maine 03904

06-13-2022

(Town Clerk)

To the distinguished members of the Town Council and Town Manager Amaral, pursuant to the Kittery Town Charter *Article XI. Initiative and Referendum § 11.02. A petition was recently circulated throughout the Town. This petition stated:*

Pursuant to Kittery Town Charter, Section 11.02, Petition for enactment of ordinances, we the undersigned voters of the Town of Kittery herewith and hereby call for a special town election for the purpose of submitting to a binding referendum vote the question of adopting the following ordinance: "Shall the Inhabitants of the Town of Kittery repeal Kittery Town Code Title 16, Land Use and Development, §16.3.2.10, Mixed-Use-Neighborhood, MU-N ordinance (lined out copy attached) herewith and replace with the original Business Park Zone ordinance (underlined copy attached) with immediate effect?" **YES or NO**

Many citizens oppose this Dennett Rd development. Based on the charter requirements, a total of 499 signatures were needed and with the assistance of several residents, we have surpassed that required count and obtained approximately 654 signatures.

The original petitions have been copied and documented. We the citizens of the petition look forward to your assistance.

Thank you for your time.



Charles H. Denault Jr.

Chdenault2@gmail.com

FORM NUMBER	COUNT	Collected by	FORM NUMBER	COUNT	Collected by
PETITION #	Totals	Names	PETITION #	Totals	Names
1	4	Jeffrey Brayne	39	15	Amelia Bensley
2	4	David Preston	40	1	Dana Kimball
3	8	Amelia Bensley	41	12	Dana Kimball
4	15	Amelia Bensley	42	14	Dana Kimball
5	6	Charles Denault	43	2	Dana Kimball
6	3	Dana Kimball	44	9	Nancy Long
7	12	Charles Denault	45	6	Dana Kimball
8	15	Sharon Clark	46	5	Dana Kimball
9	15	Amelia Bensley	47	3	John Perry
10	15	Amelia Bensley	48	5	John Perry
11	15	Amelia Bensley	49	3	Dana Kimball
12	5	Amelia Bensley	50	15	Caroline Hall
13	12	Amelia Bensley	51	15	Sharon Clark
14	15	Amelia Bensley	52	15	Charles Denault
15	15	Amelia Bensley	53	14	Charles Denault
16	15	Amelia Bensley	54	15	Caroline Hall
17	15	Charles Denault	55	15	Caroline Hall
18	15	Amelia Bensley	56	15	Jennifer Thayer
19	13	Amelia Bensley	57	3	Charles Denault
20	13	Elisa Fraser	58	15	Charles Denault
21	3	Dana Kimball	59	5	Dominic Goupil
22	13	Sharon Clark	60	6	Dominic Goupil
23	3	Kelly Philbrook	61	15	Caroline Hall
24	3	Jennifer Thayer	62	12	William Watson
25	6	David Preston	63	15	Charles Denault
26	5	David Preston	64	11	Charles Denault
27	1	Gerald Richard			
28	10	Celeste Bragg	Total Column #2	261	
29	15	Charles Denault			
30	15	David Preston			
31	6	Amelia Bensley			
32	3	Amelia Bensley	Column #1	393	
33	15	Amelia Bensley	Column #2	261	
34	7	Gerald Richard	Total Signatures	654	
35	14	Kathleen Lemoine			
36	15	Dana Kimball			
37	15	Charles Denault			
38	14	Morgan Baker			

Total Column #1 **393**

The totals of the sheet represent the total number of people who signed the petition.
The petition # represents the sheet number of the signatures.



Article XI. Initiative and Referendum

§ 11.01. General authority.

(1) Initiative. The qualified voters of the town have the power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a town election. (Amended by vote of the people 11-7-17)

(2) Referendum. Voters of the town have the power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a town election. (Amended by vote of the people 11-7-17)

§ 11.02. Petition for enactment of ordinances.

(1) Voters of the town may at any time propose the enactment of any lawful ordinance by filing a petition stating the complete text of such ordinance, and signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election with the town clerk. The council shall call a public hearing in the manner prescribed in § 2.14, subsection 2, to be held within 30 days from the date of the filing of such petition with the town clerk, and within 60 days after said public hearing hold a special town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the election, such ordinance is enacted by the council in the manner prescribed for ordinances in general. Such ordinance takes effect in the same manner as ordinances of the same kind adopted by the council, provided a majority of those voting thereon have voted in the affirmative. (Amended by vote of the people 11-7-17)

(2) Any such proposed ordinance must be examined by an attorney for the town before it is submitted to the voters. The attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clarity and precision in its phraseology, but may not materially change its meaning and effect. (Amended by vote of the people 10-4-94; amended by vote of the people 11-7-2000; amended by vote of the people 6-11-02; Amended by vote of the people 11-7-17)



16.3.2.10 Business – Park B-P.

A. Purpose.

To encourage investment that promotes development of a high-quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

B. Permitted Uses.

1. The following land uses are permitted for projects that are cluster mixed-use developments:

- a. Art studio/gallery;
- b. Building materials and garden supply;
- c. Business and professional offices;
- d. Business services;
- e. Commercial parking lot or parking garage;
- f. Conference center;
- g. Cluster residential development;
- h. Grocery, food store, convenience store, including gas station;
- i. Light industry;
- j. Mass transit station;
- k. Mechanical services, excluding junkyard;
- l. Motel, hotel, rooming house, inn;
- m. Personal service;
- n. Place of public assembly, including theater;
- o. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- p. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- q. Repair services;
- r. Research and development;
- s. Restaurant;
- t. Retail uses and wholesale businesses excluding used car lots and junkyards;
- u. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
- v. Shops in pursuit of trade;

- w. Veterinary hospital;
- x. Warehousing and storage; and
- y. Specialty food and/or beverage facility.

2. The following land uses are permitted for projects that are not cluster mixed-use developments:

- a. Business and professional offices;
- b. Accessory uses and buildings; and
- c. Business services.

C. Special Exception Uses. None

D. Standards.

The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development. Multiple-parcel development is subject to Chapter 16.10, Article II, Master Site Development Plan:

1. Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. Except for cluster mixed-use developments, the following space standards apply.

Minimum land area per dwelling unit 10,000 square feet with sewer service

Minimum lot size 120,000 square feet

Minimum street frontage 150 feet

Minimum front yard 50 feet

Minimum rear and side yards 30 feet*

*Except as may be required by the buffer provisions of this Code, and except where the side and/or rear yards of the proposed nonresidential-use abut a residential district or use, in which case a minimum of forty (40) feet is required.

Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.

Maximum building height 40 feet

Maximum building and outdoor stored material coverage 50 percent

3. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that: (Ordained 9-28-15)

i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.

4. Other standards.

a. Parking.

All new or revised parking must be visually screened through the use of landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties (see the Design Handbook for appropriate examples).

b. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. The front elevation must contain one or more of the following elements: (i) windows, or (ii) display cases (see design handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (see the Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. The Board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel, and hipped roofs. Shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the Planning Board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see the Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping Standards.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip.

Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of forty (40) feet in depth of vegetated landscape buffer must be provided adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Street Side Trees. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.

Development not based on a master development plan must, as a minimum, provide one street tree for each twenty-five (25) feet of street frontage.

The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see the Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of fifteen (15) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see the Design Handbook for examples of appropriate treatments).

ii. Outdoor Service and Storage Areas.

Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see the Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards.

Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally, and provide safe and sufficient connectivity to the surrounding neighborhoods. (See the Design Handbook for appropriate examples).

e. Open Space Standards.

Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each parcel, or individual lot if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources. Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

~~§ 16.3.2.10 Mixed-Use Neighborhood MU-N.~~

~~[Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10; 6-10-2013 by Ord. No. 13-02; 9-28-2015 by Ord. No. 15-05; 11-26-2018 by Ord. No. 10-18]~~

~~A. Purpose: To encourage higher density, mixed-use development that provides increased housing opportunities and a desirable setting for business while balancing such increased development with environmentally conscious and ecologically sensitive use of land.~~

~~B. Permitted uses.~~

- ~~(1) Accessory buildings and uses including minor or major home occupations;~~
- ~~(2) Art studio/gallery;~~
- ~~(3) Business and professional offices;~~
- ~~(4) Business services;~~
- ~~(5) Conference center;~~
- ~~(6) Convalescent care facility;~~
- ~~(7) Convenience store, neighborhood grocery facilities excluding the sale of gasoline;~~
- ~~(8) Day care facility;~~
- ~~(9) Dwellings, limited to the following:~~
 - ~~(a) Multiunit residential;~~
 - ~~(b) Dwelling units on the upper floors of a mixed-use building that is served by public sewer;~~
- ~~(10) Eldercare facility, attached dwelling units only;~~
- ~~(11) Elderly day care facility;~~
- ~~(12) Food store;~~
- ~~(13) Grocery store;~~
- ~~(14) Hospital;~~
- ~~(15) Hotel;~~
- ~~(16) Industry, light (less than or equal to 20,000 square feet in gross floor area);~~
- ~~(17) Inn;~~
- ~~(18) Liner buildings, as part of a mixed-use building;~~
- ~~(19) Low-intensity recreation;~~
- ~~(20) Nursing care facility, long term;~~
- ~~(21) Personal services;~~
- ~~(22) Public open space or recreation;~~
- ~~(23) Public utility facilities including substations, pumping stations, and treatment facilities;~~
- ~~(24) Repair service;~~
- ~~(25) Research and development;~~
- ~~(26) Restaurant;~~
- ~~(27) Retail use, not to exceed 30,000 square feet in gross floor area unless part of a mixed-use building;~~
- ~~(28) Selected commercial recreation, except shooting and archery ranges;~~
- ~~(29) Shop in pursuit of trades;~~

~~(30) Specialty food and/or beverage facility;~~

~~(31) Theater;~~

~~(32) Veterinary hospital.~~

~~C. Special exception uses.~~

~~(1) Commercial kennel;~~

~~(2) Commercial parking lot or garage;~~

~~(3) Construction services;~~

~~(4) Equipment sales and rentals (only on lots with frontage on Route 236);~~

~~(5) Gas service station (only on lots with frontage on Route 236);~~

~~(6) Industry, light (greater than 20,000 square feet in gross floor area);~~

~~(7) Mass transit station;~~

~~(8) Mechanical service;~~

~~(9) New or used motor vehicle sales (only on lots with frontage on Route 236);~~

~~(10) Repair garage (only on lots with frontage on Route 236);~~

~~(11) Retail use, greater than 30,000 square feet in gross floor area and less than 50,000 square feet in gross floor area;~~

~~(12) Undefined use; additional commercial/business uses not defined by Chapter 16.2.~~

~~D. Undefined uses; will be considered by the Planning Board based on the following criteria:~~

~~(1) If the use is consistent with the Comprehensive Plan and zoning district purposes; and~~

~~(2) If the use meets special exception criteria found in § 16.6.4.4.~~

~~E. In addition, the undefined use must meet one or both of the following criteria:~~

~~(1) If the proposed use has substantially similar impacts as a listed use.~~

~~(2) If the proposed use is compatible with existing uses within the zoning district for which it is proposed.~~

~~F. Standards.~~

~~(1) All development and the use of land in the MU-N Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met unless noted otherwise below.~~

~~(2) All submissions must include a lighting plan. Hours of operation and number of employees for businesses must also be provided.~~

~~(3) The following space standards apply:~~

~~(a) Minimum land area per dwelling unit – mixed-use building: 4,000 square feet for first residential unit plus 3,000 square feet for each additional unit, no minimum land area for business or commercial uses when combined in a building with residential uses except that the total lot size must be at least 20,000 square feet.~~

~~[1] NOTE: ADA-compliant units may be located on the first floor through a special exception permit by the Planning Board but only 50% of the first floor may be such ADA-compliant residential units.~~

~~(b) Minimum land area per dwelling unit—multiunit residential: 4,000 square feet for first unit, plus 2,500 square feet for each additional unit up to 16 units per acre of lot size. Total lot size must be a minimum of 20,000 square feet.~~

~~(c) Mixed-use or multiunit residential buildings which encompass at least 50% of required parking within the building: Two additional residential units may be added to each story above the parking with no additional land area required.~~

~~(d) Mixed-use buildings which encompass at least 50% of required parking within the building and include a liner building for nonresidential uses buffering parking from the street: One additional residential unit may be added to each story with no additional land area required.~~

~~(e) Minimum land area per bed for long-term nursing care and convalescent care facilities that are connected to public sewer: 2,000 square feet.~~

~~(f) Minimum land area per residential unit for eldercare facilities that are connected to public sewer: 3,000 square feet.~~

~~(g) Minimum lot size: 20,000 square feet.~~

~~(h) Minimum street frontage: 75 feet.~~

~~(i) Minimum front setback on Route 236: 30 feet.~~

~~(j) Minimum front setback on Dennett Road: 50 feet.~~

~~(k) Minimum front setback on Martin Road: 100 feet.~~

~~(l) Maximum front setback all other roads: 20 feet.~~

~~(m) Spacing between buildings: 15 feet.*~~

~~(n) Maximum rear and side setbacks: 20 feet.**~~

~~[1] 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 § 4~~

~~(o) Maximum building height: 50 feet (exclusive of solar apparatus).~~

~~(p) Maximum impervious and outdoor stored material coverage: 70%.~~

~~[1] NOTE: With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I—III, as amended from time to time, incorporated in site design, otherwise 60%. Maximum on-site stormwater infiltration is the desired and measurable outcome.~~

~~(q) Minimum setback from streams, water bodies and wetlands in accordance with Table 16.9.~~

~~[1] NOTES:~~

~~[a] With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I—III, as amended from time to time, incorporated in site design, then wetland setbacks pursuant only to Maine Department of Environmental Protection (MDEP) Rules Chapters 305 and 310.~~

~~[b] Without Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I—III, as amended from time to time, incorporated in site design, wetland setbacks pursuant to Kittery Town Code Title 16, Table 16.9.~~

~~[c] The Town shall retain expert consultation (qualified wetland scientist and/or Maine-certified soil scientist) to determine wetland delineations and classifications and to perform soil testing as needed, all of which shall be paid for by the applicant at the time of sketch plan. The qualified wetlands scientist and/or Maine-certified soil scientist shall determine through field investigation the presence, location and configuration of wetlands on the area proposed for use. Any wetland alterations proposed must also be reviewed by the Town's consultant(s) at the applicant's expense. These requirements are in addition to engineering, stormwater management/BMPs, traffic or other types of peer review that may also be required.~~

~~(r) Minimum open space:~~

~~[1] Lot size less than 100,000 square feet: 15%.~~

~~[2] Lot size greater than 100,000 square feet: 25%.~~

~~[3] NOTE: This requirement may be met by a payment in lieu to the Wetland Mitigation Fund. These fees shall be set by Town Council. Landscaping, screening and buffer requirements must still be met.~~

~~(4) Parking:~~

~~(a) Parking is encouraged within buildings. New or revised surface parking areas, garages, and entrances to parking within buildings must be located to the rear of buildings. If a rear location is not achievable, as determined by the Planning Board, parking, garages and entrances to parking must be located to the side of the building. Screening and/or fencing is required for surface parking areas along a street. See Subsection F(9), Landscaping, Screening and Buffers. Parking requirements are based on the Institute of Transportation Engineers (ITE) parking generation rates.~~

~~(b) Joint use agreements (between businesses and residences) for parking are encouraged. A plan describing how joint use parking needs will be met is required as part of any development that proposes such parking and must be reviewed and approved by the Planning Board.~~

~~(c) Parking requirements for nonresidential uses may be met partially or in full by parking on the street except that no parking is allowed on Route 236, Dennett Road, or Martin Road. Such on-street parking plans must be reviewed by planning staff prior to submission and then reviewed and approved by the Planning Board.~~

~~(d) Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.~~

~~[1] Parking for development that includes trails and low intensity recreation: Development that includes the creation of public trails and low intensity recreational opportunities such as wildlife observation stations or boardwalks may apply the pertinent off-street parking standards below. All other off-street parking standards as found in § 16.8.9.4 shall apply.~~

~~[2] Multiunit residential buildings and mixed-use buildings that include residential.~~

~~[a] One parking space for studio and one-bedroom dwelling units.~~

~~[b] One and one-half parking spaces for two-bedroom dwelling units plus one guest parking space per every four dwelling units.~~

~~[c] Parking spaces for more than two-bedroom dwelling units.~~

~~(5) Loading docks, overhead doors, service areas and outdoor storage areas.~~

~~(a) Loading docks and overhead doors must be located on the rear or side of the building. Loading docks must be screened from view by adjacent residential uses. This screening must consist of the following:~~

~~[1] A fence, constructed of a material similar to surrounding buildings, of sufficient height as determined by the Planning Board to accomplish the screening. No fence may be less than six feet tall.~~

~~(b) All service areas for dumpsters, compressors, generators and similar items as well as any outdoor storage areas must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service or storage area except for the necessary ingress/egress.~~

~~(6) Site design. Site design and building placement must be attentive to the surrounding environment including sun, wind and shade patterns related to proposed and existing buildings. A sun/shade analysis may be required by the Planning Board.~~

~~(7) Energy and sustainability. Energy efficiency is allowed and encouraged through the use of solar power, geothermal, and other alternative and sustainable power sources.~~

~~(8) Building design standards.~~

~~(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.~~

~~(9) Landscaping, screening and buffers.~~

~~(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.~~

~~[1] Landscaping along the street frontage of each building must consist of one of the following:~~

~~[a] 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.~~

~~[b] 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.~~

~~[2] Surface parking areas that abut a street must provide screening in one of the following ways:~~

~~[a] 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.~~

~~[b] A combination of trees and shrubs including at least 50% evergreen species, all at least six feet high at time of planting, in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no orange or red-dyed mulching material may be used.~~

~~[3] A minimum of 10% of any surface parking area consisting of 10 or more parking spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the screening requirements in Subsection F(9)(c)[2] if the parking area abuts a street. Bioretention cells and rain gardens may be utilized to meet the landscaping requirements and perform stormwater management.~~

~~[4] 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:~~

~~[a] Existing natural woodland and vegetation.~~

~~[b] 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.~~

~~[c] 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.~~

~~(10) Open space. Open space must be provided as a percentage of the total parcel area including freshwater wetlands, water bodies, streams and setbacks. Required open space must be shown on the site plan with a note dedicating it as open space. The open space must be situated to protect significant natural features and resources, minimize environmental impacts and promote an aesthetically pleasing site.~~

~~(a) Wherever possible, large healthy trees and areas with mature tree cover must be included in the open space.~~

~~(b) Location of open space must promote the continuity of open space networks across adjacent parcels.~~

~~(c) Where possible, open space and open space networks must include public trails and low-intensity recreational opportunities.~~

~~(11) Special situations. Expansions or modifications of 1,000 square feet or less to existing uses are exempt from landscaping, screening and buffer requirements.~~

~~(12) Conditions for approving special exception uses in the Neighborhood Mixed Use Zone. All applications must include a narrative describing why the use proposed will promote the general welfare (specifics may be found in Chapter 2 Definitions for special exception) of the Town of Kittery, how the use proposed will meet the special exception criteria found in § 16.6.4.4 and how the proposed development will adapt and relate to the natural environmental conditions found on the site~~

~~§ 16.3.2.10 Mixed-Use Neighborhood MU-N.~~

~~[Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10; 6-10-2013 by Ord. No. 13-02; 9-28-2015 by Ord. No. 15-05; 11-26-2018 by Ord. No. 10-18]~~

~~A. Purpose: To encourage higher density, mixed-use development that provides increased housing opportunities and a desirable setting for business while balancing such increased development with environmentally conscious and ecologically sensitive use of land.~~

~~B. Permitted uses.~~

- ~~(1) Accessory buildings and uses including minor or major home occupations;~~
- ~~(2) Art studio/gallery;~~
- ~~(3) Business and professional offices;~~
- ~~(4) Business services;~~
- ~~(5) Conference center;~~
- ~~(6) Convalescent care facility;~~
- ~~(7) Convenience store, neighborhood grocery facilities excluding the sale of gasoline;~~
- ~~(8) Day-care facility;~~
- ~~(9) Dwellings, limited to the following:~~
 - ~~(a) Multiunit residential;~~
 - ~~(b) Dwelling units on the upper floors of a mixed-use building that is served by public sewer;~~
- ~~(10) Eldercare facility, attached dwelling units only;~~
- ~~(11) Elderly day-care facility;~~
- ~~(12) Food store;~~
- ~~(13) Grocery store;~~
- ~~(14) Hospital;~~
- ~~(15) Hotel;~~
- ~~(16) Industry, light (less than or equal to 20,000 square feet in gross floor area);~~
- ~~(17) Inn;~~
- ~~(18) Liner buildings, as part of a mixed-use building;~~
- ~~(19) Low-intensity recreation;~~
- ~~(20) Nursing care facility, long term;~~
- ~~(21) Personal services;~~
- ~~(22) Public open space or recreation;~~
- ~~(23) Public utility facilities including substations, pumping stations, and treatment facilities;~~
- ~~(24) Repair service;~~
- ~~(25) Research and development;~~
- ~~(26) Restaurant;~~
- ~~(27) Retail use, not to exceed 30,000 square feet in gross floor area unless part of a mixed-use building;~~
- ~~(28) Selected commercial recreation, except shooting and archery ranges;~~
- ~~(29) Shop in pursuit of trades;~~

~~(30) Specialty food and/or beverage facility;~~

~~(31) Theater;~~

~~(32) Veterinary hospital.~~

~~C. Special exception uses.~~

~~(1) Commercial kennel;~~

~~(2) Commercial parking lot or garage;~~

~~(3) Construction services;~~

~~(4) Equipment sales and rentals (only on lots with frontage on Route 236);~~

~~(5) Gas service station (only on lots with frontage on Route 236);~~

~~(6) Industry, light (greater than 20,000 square feet in gross floor area);~~

~~(7) Mass transit station;~~

~~(8) Mechanical service;~~

~~(9) New or used motor vehicle sales (only on lots with frontage on Route 236);~~

~~(10) Repair garage (only on lots with frontage on Route 236);~~

~~(11) Retail use, greater than 30,000 square feet in gross floor area and less than 50,000 square feet in gross floor area;~~

~~(12) Undefined use; additional commercial/business uses not defined by Chapter 16.2.~~

~~D. Undefined uses: will be considered by the Planning Board based on the following criteria:~~

~~(1) If the use is consistent with the Comprehensive Plan and zoning district purposes; and~~

~~(2) If the use meets special exception criteria found in § 16.6.4.4.~~

~~E. In addition, the undefined use must meet one or both of the following criteria:~~

~~(1) If the proposed use has substantially similar impacts as a listed use.~~

~~(2) If the proposed use is compatible with existing uses within the zoning district for which it is proposed.~~

~~F. Standards.~~

~~(1) All development and the use of land in the MU-N Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met unless noted otherwise below.~~

~~(2) All submissions must include a lighting plan. Hours of operation and number of employees for businesses must also be provided.~~

~~(3) The following space standards apply:~~

~~(a) Minimum land area per dwelling unit – mixed-use building: 4,000 square feet for first residential unit plus 3,000 square feet for each additional unit, no minimum land area for business or commercial uses when combined in a building with residential uses except that the total lot size must be at least 20,000 square feet.~~

~~[1] NOTE: ADA-compliant units may be located on the first floor through a special exception permit by the Planning Board but only 50% of the first floor may be such ADA-compliant residential units.~~

~~(b) Minimum land area per dwelling unit – multiunit residential: 4,000 square feet for first unit, plus 2,500 square feet for each additional unit up to 16 units per acre of lot size. Total lot size must be a minimum of 20,000 square feet.~~

~~(c) Mixed-use or multiunit residential buildings which encompass at least 50% of required parking within the building. Two additional residential units may be added to each story above the parking with no additional land area required.~~

~~(d) Mixed-use buildings which encompass at least 50% of required parking within the building and include a liner building for nonresidential uses buffering parking from the street. One additional residential unit may be added to each story with no additional land area required.~~

~~(e) Minimum land area per bed for long-term nursing care and convalescent care facilities that are connected to public sewer: 2,000 square feet.~~

~~(f) Minimum land area per residential unit for eldercare facilities that are connected to public sewer: 3,000 square feet.~~

~~(g) Minimum lot size: 20,000 square feet.~~

~~(h) Minimum street frontage: 75 feet.~~

~~(i) Minimum front setback on Route 236: 30 feet.~~

~~(j) Minimum front setback on Dennett Road: 50 feet.~~

~~(k) Minimum front setback on Martin Road: 100 feet.~~

~~(l) Maximum front setback all other roads: 20 feet.~~

~~(m) Spacing between buildings: 15 feet.*~~

~~(n) Maximum rear and side setbacks: 20 feet.**~~

~~[1] 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 § 1~~

~~(o) Maximum building height: 50 feet (exclusive of solar apparatus).~~

~~(p) Maximum impervious and outdoor stored material coverage: 70%.~~

~~[1] NOTE: With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I – III, as amended from time to time, incorporated in site design, otherwise 60%. Maximum on-site stormwater infiltration is the desired and measurable outcome.~~

~~(q) Minimum setback from streams, water bodies and wetlands in accordance with Table 16.9.~~

~~[1] NOTES:~~

~~[a] With Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I – III, as amended from time to time, incorporated in site design, then wetland setbacks pursuant only to Maine Department of Environmental Protection (MDEP) Rules Chapters 305 and 310.~~

~~[b] Without Best Management Practices (BMPs) and Low Impact Development Practices (LIDs) as defined in Chapter 16.2 and based on Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I – III, as amended from time to time, incorporated in site design, wetland setbacks pursuant to Kittery Town Code Title 16, Table 16.9.~~

~~[c] The Town shall retain expert consultation (qualified wetland scientist and/or Maine-certified soil scientist) to determine wetland delineations and classifications and to perform soil testing as needed, all of which shall be paid for by the applicant at the time of sketch plan. The qualified wetlands scientist and/or Maine-certified soil scientist shall determine through field investigation the presence, location and configuration of wetlands on the area proposed for use. Any wetland alterations proposed must also be reviewed by the Town's consultant(s) at the applicant's expense. These requirements are in addition to engineering, stormwater management/BMPs, traffic or other types of peer review that may also be required.~~

~~(r) Minimum open space:~~

~~[1] Lot size less than 100,000 square feet: 15%.~~

~~[2] Lot size greater than 100,000 square feet: 25%.~~

~~[3] NOTE: This requirement may be met by a payment in lieu to the Wetland Mitigation Fund. These fees shall be set by Town Council. Landscaping, screening and buffer requirements must still be met.~~

~~(4) Parking:~~

~~(a) Parking is encouraged within buildings. New or revised surface parking areas, garages, and entrances to parking within buildings must be located to the rear of buildings. If a rear location is not achievable, as determined by the Planning Board, parking, garages and entrances to parking must be located to the side of the building. Screening and/or fencing is required for surface parking areas along a street. See Subsection F(9), Landscaping, Screening and Buffers. Parking requirements are based on the Institute of Transportation Engineers (ITE) parking generation rates.~~

~~(b) Joint-use agreements (between businesses and residences) for parking are encouraged. A plan describing how joint-use parking needs will be met is required as part of any development that proposes such parking and must be reviewed and approved by the Planning Board.~~

~~(c) Parking requirements for nonresidential uses may be met partially or in full by parking on the street except that no parking is allowed on Route 236, Dennett Road, or Martin Road. Such on-street parking plans must be reviewed by planning staff prior to submission and then reviewed and approved by the Planning Board.~~

~~(d) Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.~~

~~[1] Parking for development that includes trails and low intensity recreation: Development that includes the creation of public trails and low intensity recreational opportunities such as wildlife observation stations or boardwalks may apply the pertinent off-street parking standards below. All other off-street parking standards as found in § 16.8.9.4 shall apply.~~

~~[2] Multiunit residential buildings and mixed-use buildings that include residential.~~

~~[a] One parking space for studio and one-bedroom dwelling units.~~

~~[b] One and one-half parking spaces for two-bedroom dwelling units plus one guest parking space per every four dwelling units.~~

~~[c] Parking spaces for more than two-bedroom dwelling units.~~

~~(5) Loading docks, overhead doors, service areas and outdoor storage areas.~~

~~(a) Loading docks and overhead doors must be located on the rear or side of the building. Loading docks must be screened from view by adjacent residential uses. This screening must consist of the following:~~

~~[1] A fence, constructed of a material similar to surrounding buildings, of sufficient height as determined by the Planning Board to accomplish the screening. No fence may be less than six feet tall.~~

~~(b) All service areas for dumpsters, compressors, generators and similar items as well as any outdoor storage areas must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service or storage area except for the necessary ingress/egress.~~

~~(6) Site design. Site design and building placement must be attentive to the surrounding environment including sun, wind and shade patterns related to proposed and existing buildings. A sun/shade analysis may be required by the Planning Board.~~

~~(7) Energy and sustainability. Energy efficiency is allowed and encouraged through the use of solar power, geothermal, and other alternative and sustainable power sources.~~

~~(8) Building design standards:~~

~~(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.~~

~~(9) Landscaping, screening and buffers.~~

~~(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.~~

~~[1] Landscaping along the street frontage of each building must consist of one of the following:~~

~~[a] 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.~~

~~[b] 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.~~

~~[2] Surface parking areas that abut a street must provide screening in one of the following ways:~~

~~[a] 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.~~

~~[b] A combination of trees and shrubs including at least 50% evergreen species, all at least six feet high at time of planting, in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no orange or red-dyed mulching material may be used.~~

~~[3] A minimum of 10% of any surface parking area consisting of 10 or more parking spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the screening requirements in Subsection F(9)(c)[2] if the parking area abuts a street. Bioretention cells and rain gardens may be utilized to meet the landscaping requirements and perform stormwater management.~~

~~[4] 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:~~

~~[a] Existing natural woodland and vegetation.~~

~~[b] 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.~~

~~[c] 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.~~

~~(10) Open space. Open space must be provided as a percentage of the total parcel area including freshwater wetlands, water bodies, streams and setbacks. Required open space must be shown on the site plan with a note dedicating it as open space. The open space must be situated to protect significant natural features and resources, minimize environmental impacts and promote an aesthetically pleasing site.~~

~~(a) Wherever possible, large healthy trees and areas with mature tree cover must be included in the open space.~~

~~(b) Location of open space must promote the continuity of open space networks across adjacent parcels.~~

~~(c) Where possible, open space and open space networks must include public trails and low-intensity recreational opportunities.~~

~~(11) Special situations. Expansions or modifications of 1,000 square feet or less to existing uses are exempt from landscaping, screening and buffer requirements.~~

~~(12) Conditions for approving special exception uses in the Neighborhood Mixed-Use Zone. All applications must include a narrative describing why the use proposed will promote the general welfare (specifics may be found in Chapter 2 Definitions for special exception) of the Town of Kittery, how the use proposed will meet the special exception criteria found in § 16.6.4.4 and how the proposed development will adapt and relate to the natural environmental conditions found on the site~~

16.3.2.10 Business – Park B-P.

A. Purpose.

To encourage investment that promotes development of a high-quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

B. Permitted Uses.

1. The following land uses are permitted for projects that are cluster mixed-use developments:

a. Art studio/gallery;

b. Building materials and garden supply;

c. Business and professional offices;

d. Business services;

e. Commercial parking lot or parking garage;

f. Conference center;

g. Cluster residential development;

h. Grocery, food store, convenience store, including gas station;

i. Light industry;

j. Mass transit station;

k. Mechanical services, excluding junkyard;

l. Motel, hotel, rooming house, inn;

m. Personal service;

n. Place of public assembly, including theater;

o. Public open space recreational uses, recreational facilities, and selected commercial recreation;

p. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

q. Repair services;

r. Research and development;

s. Restaurant;

t. Retail uses and wholesale businesses excluding used car lots and junkyards;

u. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;

v. Shops in pursuit of trade;

- w. Veterinary hospital;
- x. Warehousing and storage; and
- y. Specialty food and/or beverage facility.

2. The following land uses are permitted for projects that are not cluster mixed-use developments:

- a. Business and professional offices;
- b. Accessory uses and buildings; and
- c. Business services.

C. Special Exception Uses. None

D. Standards.

The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development. Multiple-parcel development is subject to Chapter 16.10, Article II, Master Site Development Plan:

1. Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. Except for cluster mixed-use developments, the following space standards apply.

Minimum land area per dwelling unit 10,000 square feet with sewer service

Minimum lot size 120,000 square feet

Minimum street frontage 150 feet

Minimum front yard 50 feet

Minimum rear and side yards 30 feet*

*Except as may be required by the buffer provisions of this Code, and except where the side and/or rear yards of the proposed nonresidential-use abut a residential district or use, in which case a minimum of forty (40) feet is required.

Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.

Maximum building height 40 feet

Maximum building and outdoor stored material coverage 50 percent

3. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that: (Ordained 9-28-15)

i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.

4. Other standards.

a. Parking.

All new or revised parking must be visually screened through the use of landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties (see the Design Handbook for appropriate examples).

b. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. The front elevation must contain one or more of the following elements: (i) windows, or (ii) display cases (see design handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (see the Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. The Board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel, and hipped roofs. Shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the Planning Board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see the Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping Standards.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip.

Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of forty (40) feet in depth of vegetated landscape buffer must be provided adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Street Side Trees. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.

Development not based on a master development plan must, as a minimum, provide one street tree for each twenty-five (25) feet of street frontage.

The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see the Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of fifteen (15) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see the Design Handbook for examples of appropriate treatments).

ii. Outdoor Service and Storage Areas.

Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see the Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards.

Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally, and provide safe and sufficient connectivity to the surrounding neighborhoods. (See the Design Handbook for appropriate examples).

e. Open Space Standards.

Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each parcel, or individual lot if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources. Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

