



**KITTERY PORT AUTHORITY
TOWN HALL
200 ROGERS RD.
KITTERY, ME 03904**

Phone: 207-439-0452 ext 301
Email: kpa@kitteryme.org
www.kitteryme.gov

**Workshop Agenda
Tuesday April 27, 2021 6:00 P.M.
STAR Theater- Kittery Community Center
120 Rogers Road, Kittery ME 03904**

1. The Kittery Port Authority will hold a workshop to discuss the proposed recodification of Title 16 – Land Use and Development Code with the Kittery Planning & Development Department staff.

Draft of changes and application information are available in hard copy form at the Town Hall Planning Department Office, located at 200 Rogers Road, Kittery, ME 03904, during regular business hours. To request a reasonable accommodation for this meeting please contact staff at (207) 475-1304.



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

TO: KITTERY PORT AUTHORITY
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: TITLE 16, LAND USE & DEVELOPMENT CODE
DATE: APRIL 20, 2020

This memo briefly explains changes proposed to Title 16 (Land Use & Development Code) that involve the Kittery Port Authority. There are not substantial changes to the code related to KPA responsibilities other than moving certain sections but there are areas that were removed or altered due to being redundant or superfluous. Staff intends to review these changes with the KPA at the April 27, 2021 workshop to ensure proposed changes are satisfactory.

The Title 16 recodification project purpose began in November 2018 to reorganize and clean up the Town's zoning code, making it less redundant and more user-friendly. The COVID-19 pandemic has certainly stretched this process longer than anticipated but staff is close to a final draft that will go to the Planning Board for recommendation to Town Council.

The first part of this project involved restructuring the ordinance to make it easier to navigate and locate relevant standards, procedures, and requirements. The structure for the "new" Title 16 is built on the existing Town code framework. This work involved reorganizing 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.

The next part of the work was to make updates to processes, standards, and definitions in the ordinance. 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.

The below table shows where existing sections related to the KPA are now contained in the proposed updated code:

Current Code	Draft Code
16.1.6 Port Authority	16.2.4 Port Authority
16.11 Marine-related Development	16.9 Other Development Review

The relevant draft code sections listed above are attached to this memo. Development regulations and standards involving Port Authority or Planning Board approval are not proposed for amendment in this recodification, rather the changes being made are to clarify the respective boards' jurisdictional authority. Thus, staff raises the following policy-related issue for the KPA to consider:

1. Currently, Title 16 references the "Highest Annual Tide", "Mean High-Water Mark," and "Normal High-Water Line" interchangeably. This can be confusing for a reader not familiar with these definitions as each term is not a synonym for the other. In light of this, does the KPA want to change the code to reference only the HAT when describing jurisdictional boundaries and keep the other terms in place where appropriate?

Planning & Development Department staff will attend the workshop to discuss this in detail with the KPA.

Thank you,

Adam Causey, AICP
Director, Planning & Development Department

1 **16.2 Administration and Enforcement**

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16.2.1. **Administration and Enforcement**

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

16.2.2. **Planning Board appointment and powers.**

A. Appointment and composition.

- (1). The Planning Board is established by the Town Charter, Article VIII, Sec. 8.01, Planning, and applicable state statutes.
- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- (8). Vacancies are filled by Town Council appointment for the unexpired term.

B. Powers and duties.

- (1). The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board and show the vote of each member upon each question.
- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties.
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).
- (6). The Board is to:
 - a. Perform duties as provided by law.
 - b. Hear and decide on required development plans, including special exception use requests, that require Planning Board review, using the development application and review procedures and criteria and other provisions in this title.
 - c. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

16.2.3. **Board of Appeals**

A. Appointment and composition.

- (1). The Board of Appeals is established by the Town Charter, Article VIII, Sec. 8.04,

and 30-A M.R.S. § 2691.

- (2). The Board consists of seven members, who are Kittery residents, serving staggered terms of office of three years.
- (3). Members of the Board are appointed by the Town Council.
- (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- (5). Members serve until their successors are appointed and qualified.
- (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3) of the Town Charter.
- (7). A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
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- (2). A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and hold meetings to perform duties
- (4). Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- (5). All records of the Board are public records, except as excluded under 1 M.R.S. § 402(3) and (3-A).
- (6). The Board is to:
 - a. Perform duties as provided by law.
 - b. Administrative decision appeal. Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this title.
 - c. Variance request. Hear and decide on a variance request within the limitations set forth in this title and 30-A M.R.S. § 4353(4).
 - d. Miscellaneous variation request. To hear and decide on a miscellaneous variation request to permit variation in:
 - i. Nonconformance as prescribed in § 16.1.8;
 - ii. Standards contained in § 16.7.E, § 16.7.F, or § 16.5.21 Sign violation and appeal; or
 - iii. Accessory dwelling unit standards per § 16.5.3.
 - e. Special exception use request. Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the development application and review (§16.7) procedures and review criteria and other provisions in this title.

16.2.4. Port Authority

A. Appointment and composition.

- 115 (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter
116 163, as amended, and Town Charter, Article IX.
- 117 (2). The Port Authority consists of seven members, who are Kittery residents, serving
118 staggered terms of office of five years.
- 119 (3). The Port Authority consists of seven members, who are Kittery residents, serving
120 staggered terms of office of five years.
- 121 (4). The Port Authority consists of seven members, who are Kittery residents, serving
122 staggered terms of office of five years.
- 123 (5). Members serve until their successors are appointed and qualified.
- 124 (6). No member shall serve more than two consecutive terms of five years. Any
125 member who has served two consecutive terms of five years is ineligible to serve
126 on the Board for a period of one year. Computation of term limits commences with
127 the first term of five years following the effective date of this provision.
128 Computation of term limits does not include service prior to the effective date of
129 this provision nor to terms of fewer than five years after the effective date.
- 130 (7). A member of the Port Authority may be dismissed for cause by the Town Council
131 before the expiration of such member's term after notice and hearing.
- 132 (8). Vacancies are filled by Town Council appointment for the unexpired term.

133 B. Powers and duties.

- 134 (1). The Board shall elect annually a chairperson and vice chairperson from its
135 membership and a secretary. It is the duty of the secretary to keep and maintain a
136 permanent record of all meetings of the Port Authority and show the vote of each
137 member upon each question
- 138 (2). The Port Authority is to:
- 139 a. Perform duties as provided by law.
- 140 b. Where Town Council action is required under 38 M.R.S. § 1021 et seq.,
141 Wharves and Fish Weirs, the Council may appoint the Port Authority as its
142 designee for on-site inspection and to issue a written report on the same to
143 the Council.
- 144 c. Water area development powers and duties.
- 145 i. The Port Authority is to provide advice to the Planning Board on
146 development applications dealing with piers, wharfs, marinas and
147 other uses projecting into water bodies.
- 148 ii. Where Port Authority review is required, such review must be
149 completed prior to Planning Board review.
- 150 iii. Port Authority review and approval authority under this title applies
151 to structures extending into a water body beyond the mean high-
152 water line or the upland edge of a coastal wetland and extends from
153 the water body to the mean high-water line or upland edge of a
154 coastal wetland.
- 155 iv. The Port Authority may approve, for convenience of access to a pier
156 from land upland of the mean high-water line or the edge of a
157 coastal wetland, an extension of the pier that is the shortest
158 practicable extension at its nominal height and width. All other
159 structures upland of, and abutting or built on or over, a structure
160 extending into a water body beyond the mean high-water line or the
161 edge of a coastal wetland require Planning Board approval. Only
162 one pier, ramp and float structure is permitted on any
163 noncommercial or nonindustrial lot.
- 164 v. Where the Planning Board is the lead reviewing authority, a

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

- vi. Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-water line. The standards contained in § 16.5.20. are to be met.

16.2.5. **Town Planner**

- A. Responsibilities. The Town Planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The Town Planner is responsible for all municipal planning functions, including the administration of this title, and the implementation of the Kittery Growth Management Program. These functions include but are not limited to land and water use planning; providing technical assistance and staff support to the Planning Board; researching, developing, coordinating and administering land and water use and planning related projects; maintaining accurate planning records; and interacting with members of the public involved with the planning process.
- B. Plan submission.
 - (1). All plan submission requirements for an application for land/water area use and development are to be submitted to the Town Planner.
 - (2). The Town Planner must review all plan submission contents to ascertain that they meet the requirements of this title before they are delivered for review or consideration by the Planning Board.
 - (3). The Town Planner, upon confirmation of a plan's submission contents sufficiency, is to place the application on the Board's agenda for a scheduling hearing.
NOTE: Town Planner confirmation does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the Planning Board.
- C. Staff coordination. The Town Planner is to coordinate with appropriate municipal department heads to ensure they have received required plan information for the performance of their duties under this title.
- D. Reporting. The Planner must report the status of all active plans (received, pending, under review, and approved not built – past expiration date) to the Board monthly

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

- A. Responsibility. It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of this title.
- B. Permits. The CEO is to issue required permits for building, occupancy, plumbing, electrical or such other as may be required.
- C. Appeal/request initiation. The CEO must initiate the forms required for appeals/requests to the Board of Appeals.
- D. Inspection. The CEO must inspect all buildings, developments, subdivisions and such other facilities/uses within the requirements of this title.
- E. Business use changes. The Town Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in § 16.7.2.B. Approval

must be based on compliance with all requirements of this title.

16.2.7. Enforcement; general

[Amended 9-26-2011 by Ord. No. 11-15].

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

16.2.8. Building/Regulated Activity Permits

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

- A. Permit. No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.
- B. Conformity. No building/regulated activity permit may be issued except in conformity with this title, except after written order of the Board of Appeals.
- C. Permit records. The CEO must maintain a public record of all building/regulated activity permits and applications thereof.
- D. Permit period. [Amended 10-26-2015 by Ord. No. 15-11]
- (1). A permit expires if the Code Enforcement Officer determines no substantial work has been commenced within six months from date of issue. A permit expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's satisfaction. Written request for renewal must be made prior to the permit expiration.
 - (2). The permit may be renewed one time only for a single six-month period to commence work, upon payment of the base application fee. If the Code Enforcement Officer determines substantial work has not commenced upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted.
 - (3). The permit may be renewed one time only for a single six-month period to complete work, upon payment of the base application fee. If work is not substantially complete as determined by the Code Enforcement Officer upon expiration of the six-month renewal period, a new permit application and payment of all applicable new permit fees must be submitted based on the value of the remaining permitted work.
 - (4). Any work commenced or completed without the issue of a permit as required by this title is subject to an after-the-fact permit with all applicable fees doubled.
- E. Permit threshold. A permit is required if the activity involves any of the following thresholds, as determined by the Code Enforcement Officer:
- (1). Fair market value of the work is greater than \$2,000;
 - (2). Changes to electric, plumbing or septic systems;

- (3). Increase in coverage;
- (4). Construction of a building or expansion of a structure;
- (5). Structural alteration;
- (6). Change in use or new business occupancy;
- (7). Erection or expansion of signage;
- (8). Installation or expansion of piers and docks;
- (9). An activity that requires inspection by the CEO to determine compliance with this title; or
- (10). Creates one or more acres of disturbed area.
- (11). Structure demolition. [Added 9-24-2012 by Ord. No. 12-11]

F. Application.

(1). Plans.

- a. All applications for building/regulated activity permits are to be accompanied by plans showing the actual dimensions and shape of the lot to be built upon, including but not limited to property and setback lines; the exact sizes and locations and dimensions of the proposed building or alteration of any existing structures and the proposed sewage disposal systems as designed by a Maine-licensed site evaluator. The Code Enforcement Officer may waive the requirement for plans in the case of minor interior alterations which in the CEO's opinion do not result in a change in use. The application is to include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this title. All plans and correspondence are to include the map and lot designation of the property concerned in the upper right-hand corner.
- b. At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative is to have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or applicant, except when a temporary occupancy permit has been given to the dwelling owner or applicant.

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

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

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

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

- a. All developments must be in conformance with the procedures, standards and requirements of this title.
- b. All work that requires a building/regulated activity permit must conform to

the Maine Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 et seq., which is adopted by the Department of Public Safety, Bureau of Building Codes and Standards, Maine Technical Building Codes and Standards Board, by Rule 16-635, Chapters 1 through 6, as may be amended from time to time.

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

- i. National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-A.
- ii. Maine State Plumbing Codes standards, adopted pursuant to 32 M.R.S. § 3403-B.
- iii. Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.
- iv. Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32 M.R.S. § 14804.
- v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S. § 15104-A.
- vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
- vii. National Fire Protection Association (NFPA) firesafety codes and standards, adopted pursuant to 25 M.R.S. § 2452 and § 2465, as follows:
 - a. NFPA 1 - Fire Code.
 - b. NFPA 101 - Life Safety Code.
 - c. NFPA 54 - Fuel Gas Code.
 - d. NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and Solid-Fuel-Burning Appliances.

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

16.2.9. Certificate of occupancy

- A. Certificate requirement. It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this title and all applicable state and federal requirements.
- B. Certificate application requirement. No building/regulated activity permit may be issued until an application has been made for a certificate of occupancy and the certificate of occupancy is issued in conformity with the provisions of this title upon completion of the work.
- C. Temporary certificate.
 - (1). A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants

and the public.

- D. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all Planning Board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the Planning Board, and certificate of occupancy may be issued by the CEO, when phase conditions have been met.
- E. Records. The Code Enforcement Officer must maintain a public record of all certificates of occupancy.
- F. Failure to obtain certificate. Failure to obtain a certificate of occupancy is a violation of this title.
- G. Minor interior alterations. An occupancy permit is not required for minor interior alterations during which the building would be considered occupied and which, in the judgment of the Code Enforcement Officer, does not constitute a change in use of the building.

16.2.10. Numbering of buildings

[Added 9-26-2011 by Ord. No. 11-15]

- A. Street-numbering map.
 - (1). All buildings must bear a distinctive street number in accordance with and as designated upon the street-numbering map on file with the Town's Assessing Department. The Town Assessor is responsible to maintain and keep current said map.
 - (2). No person may affix, or allow to be affixed, a different street number from the one designated on the street-numbering map.
- B. Display of number. The number is to be displayed upon the front of the building and/or on the side facing the street. The number must be plainly visible from the street. Owners of buildings and houses that are set back out of view from the road must place a post or sign at the driveway entrance with the specified numbers. Said post/sign is not considered a structure which must conform to Land Use and Development Code setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said post/sign must be placed out of the Town's right-of-way and be six feet in height.
- C. Multi-Family Dwellings. For multi-family dwellings, the house number is to be displayed as outlined in Subsection **B**. Each individual apartment or living unit must be clearly sublettered.
- D. Number dimensions and color. Numbers must be no less than three inches in height and contrast in color with the color of the building or background to which they are attached.
- E. Time limit for compliance; violation; penalty. Any person who, after being notified by the Police Chief or any law enforcement officer from the Town, fails to comply with any of the provisions of this section within the time limit of not more than 30 days specified in such notice is liable to a fine of not less than \$50 nor more than \$100 per violation.

16.2.11. Plumbing and septic system permit fees

[Added 9-26-2011 by Ord. No. 11-15]

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

meanings given to them in the State Plumbing Code.

B. Plumbing permit fees.

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

- a. Any person who begins any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is liable to pay double the permit fee fixed by this section for such work. However, this provision does not apply to emergency work when it is proven to the satisfaction of the local plumbing inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days, or else a double permit fee as hereinabove provided is to be charged.
- b. For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached is construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings are to be based on the number of plumbing fixtures, water heaters, etc., involved.
- c. The following permit fees are to be charged:
 - i. Minimum fee for all permits, see Appendix A.
 - ii. Fixture fee, see Appendix A.
 - iii. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
 - iv. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
 - v. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
 - vi. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
 - vii. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stickbuilt structures, and a plumbing fixture fee is to be charged based on this section.
 - viii. A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

C. Subsurface wastewater disposal system fees.

- (1). Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.
- (2). Late permit fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in Subsection A of this section.

16.2.12. Decision Appeal, Variance and Other Requests

A. Purpose.

This chapter describes the minimum requirements for aggrieved parties to file an appeal under this title and related state statutes or to seek the granting of a special exception as found in § 16.4, as well as a variance or miscellaneous variation request to the standards as provided herein.

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

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

C. Appeal of Code Enforcement Officer decision.

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

D. Appeals/requests to Board of Appeals.

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

- (1). Administrative decision appeal. When the Board of Appeals reviews an administrative decision appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this title and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify or reverse the decision of the Code Enforcement Officer.
- (2). Variance request.
 - a. A variance may be granted only by the Board of Appeals under the following conditions:
 - i. For a reduction in dimensional requirements related to height, area and size of structure or size of yards and open spaces;
 - ii. The use is not prohibited by this title; and
 - iii. Only if the strict application of the terms of this title would result in undue hardship. The term "undue hardship" means the applicant must demonstrate all of the following:
 - a. The land in question cannot yield a reasonable return unless a variance is granted.
 - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - c. The granting of a variance will not alter the essential character of the locality.
 - d. The hardship is not the result of action taken by the applicant or a prior owner.

- 500 b. Notwithstanding § 16.2.12.D(2)a, the Board of Appeals may grant a
501 variance to an owner of a residential dwelling for the purpose of making
502 that dwelling accessible to a person with a disability who resides in or
503 regularly uses the dwelling. The Board of Appeals must restrict any
504 variance granted under this subsection solely to the installation of
505 equipment or the construction of structures necessary for access to or egress
506 from the dwelling by the person with the disability. The Board of Appeals
507 may impose conditions on the variance, including limiting the variance to
508 the duration of the disability or to the time that the person with the
509 disability lives in the dwelling. The term "structures necessary for access to
510 or egress from the dwelling" includes railing, wall or roof systems
511 necessary for the safety or effectiveness of the structure.
- 512 c. A copy of each variance request within the Shoreland Overlay Zone,
513 including the application and all supporting information supplied by the
514 applicant, must be forwarded by the Code Enforcement Officer to the
515 Commissioner of the Maine Department of Environmental Protection at
516 least 20 days prior to action by the Board of Appeals. Any comments
517 received from the Commissioner prior to the action by the Board of
518 Appeals will be made part of the record to be taken into consideration by
519 the Board of Appeals.
- 520 d. The Board of Appeals must limit any variance granted as strictly as possible
521 to ensure conformance with the purposes and provisions of this title to the
522 greatest extent possible and, in doing so, may impose such conditions of
523 approval to a variance as it deems necessary. The party receiving the
524 variance must comply with any conditions imposed.
- 525 (3). Miscellaneous variation request. The Board of Appeals may hear, decide and
526 approve variations in:
- 527 a. Nonconformance as prescribed in § 16.1.8;
528 b. Parking, loading and traffic standards contained in § 16.7.11.F and §
529 16.7.11.G;
530 c. Sign violation and appeal standards contained in § 16.5.21.M; or
531 d. Accessory dwelling unit standards contained in § 16. 5.3.
- 532 (4). Special exception use request.
- 533 a. The Board of Appeals will hear, decide and may grant an applicant's special
534 exception use request where authorized in § 16.4 for any application
535 excluded from Planning Board review as stated in § 16.7.2.B, if the
536 proposed use meets the criteria set forth in § 16.2.12.F, Basis for decision.
- 537 b. The Planning Board will review, decide and may approve an applicant's
538 special exception use request where the proposed project requires Planning
539 Board review as defined in § 16.7.2.B or is located in a Shoreland or
540 Resource Protection Overlay Zone. The Planning Board must find the
541 proposed project and use meets the criteria set forth in § 16.7.10.D and
542 § 16.2.12.F.

543 E. BOA appeal/request filing procedures.

- 544 (1). Making an appeal/request. An administrative decision appeal, variance request or
545 miscellaneous variation request may be submitted to the Board of Appeals. An
546 administrative appeal must be submitted within 30 days of the date of the official
547 written decision being appealed. Other requests may be filed at will.
- 548 a. The appeal or request must be filed with the Code Enforcement Officer on
549 forms approved by the Board of Appeals and the party must specifically
550 state on such forms the grounds for such appeal or request, including

551 claimed discrepancies in the interpretation of this title and reasons why the
552 appeal or request should be granted. Incomplete applications for appeals
553 and/or requests will not be accepted. Upon receipt of an appeal or request
554 application, the Code Enforcement Office must stamp a receipt date on the
555 appeal or required form. Said date constitutes the filing date of the appeal or
556 request. Applications for appeals or requests must include the following:

- 557 i. The appeal or request must be made by the property owner, an
558 aggrieved party or their respective duly authorized agent.
- 559 ii. The appeal or request must include a concise written statement,
560 indicating what relief is requested and why the appeal or request
561 should be granted.
- 562 iii. Where the appeal or request is made from a decision by the Code
563 Enforcement Officer, the applicant must submit plans, maps and
564 related documentation to the code enforcement office for
565 distribution to the Board of Appeals members at least two weeks
566 prior to the meeting of the Board of Appeals. A minimum of 10 sets
567 of all submissions is required.
- 568 iv. The Board of Appeals must hold a public hearing on an appeal or
569 request within 35 days of its receipt of a complete written
570 application, unless this time period is extended by the applicant and
571 BOA.
- 572 b. At any time between the initial acceptance by the Code Enforcement
573 Officer of an appeal/request and final approval or denial of the
574 appeal/request by the Board of Appeals, the owner or applicant must allow
575 members of the Board of Appeals full access to the subject property, not
576 including building interiors, without obtaining prior permission, written or
577 oral.

578 (2). Hearing and notice.

- 579 a. Before taking any action on any appeal/request, the Board of Appeals must
580 hold a public hearing and provide the following notifications:
 - 581 i. By mail at least seven and not more than 14 days prior to the
582 scheduled hearing date, to owners of abutting property that an
583 appeal/request is made, the nature of the appeal/request and the time
584 and place of the public hearing thereon; and
 - 585 ii. Notice of all such actions must also be published in a newspaper of
586 general circulation in the Town at least seven days prior to the
587 public hearing.
- 588 b. Failure of any property owner to receive a notice of public hearing will not
589 necessitate another hearing or invalidate any action by the Board of
590 Appeals.

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

596 (4). Decisions of the Board of Appeals.

- 597 a. The person filing the appeal or request has the burden of proof.
- 598 b. A minimum of four like votes is required for a decision by the Board of
599 Appeals, except on procedural matters.
- 600 c. The Board of Appeals must decide the appeal or request within 30 days
601 after the close of the hearing and issue a written decision.

- d. Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.
- (5). Order of review.
- a. Where a special exception request or appeal is necessary as an integral part of a development review process, Board of Appeals action is encouraged prior to Planning Board review where required. The findings of the Board of Appeals as well as any file material must be made available to the Planning Board.
- b. The Planning Board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request.
- (6). Special exception referral.
- a. Before granting any special exception, the Board of Appeals may refer the application to the Planning Board and/or Port Authority for a report prior to any subsequent BOA review of the application.
- b. The Planning Board and/or Port Authority report must be considered informational in character and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data.
- c. The Planning Board and/or Port Authority report must be submitted to the BOA for its consideration prior to the officially scheduled time of public hearing on the request.
- (7). Venue and representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.
- (8). Code Enforcement Officer attendance. The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs or other material the CEO deems appropriate for an understanding of the appeal/request.
- (9). Appellant's case first. The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairperson.
- (10). Expiration of approval.
- a. Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.
- b. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the section above.
- c. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in Subsection J(1) above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.
- d. Such a request must be submitted in writing to the Code Enforcement

Officer prior to the date of said approval expiration.

- (11). Reconsideration. In accordance with 30-A M.R.S. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision.
 - a. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.
 - b. Appeal of a reconsidered decision to the Superior Court must be made within 15 days after the decision on reconsideration.
- (12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.
- (13). Fees. The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

F. Basis for decision.

- (1). Conditions.
 - a. In hearing appeals/requests under this section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.
 - b. In hearing appeals/requests under this section, the Board of Appeals must use the following criteria as the basis of a decision, that:
 - i. The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
 - ii. The use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located or of permitted or legally established uses in adjacent use zones;
 - iii. The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and
 - iv. The use will be in harmony with and promote the general purposes and intent of this title.
- (2). Factors for consideration. In making such determination, the Board of Appeals must also give consideration, among other things, to:
 - a. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
 - b. The conservation of property values and the encouragement of the most appropriate uses of land;
 - c. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
 - d. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether

- liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;
- e. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
 - f. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
 - g. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
 - h. The necessity for paved off-street parking;
 - i. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;
 - j. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;
 - k. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
 - l. Whether the proposed use will be adequately screened and buffered from contiguous properties;
 - m. The assurance of adequate landscaping, grading and provision for natural drainage;
 - n. Whether the proposed use will provide for adequate pedestrian circulation;
 - o. Whether the proposed use anticipates and eliminates potential nuisances created by its location; and
 - p. The satisfactory compliance with all applicable performance standard criteria contained in § 16.6 and 16.7.
- (3). Additional special exception conditions. Special exception approvals may be subject to additional conditions as determined by the BOA, including the following:
- a. Front, side or rear yards in excess of minimum requirements;
 - b. Modifications of the exterior features of buildings or other structures;
 - c. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
 - d. Regulation of design of access drives, sidewalks and other traffic features;
 - e. Off-street parking and loading spaces in excess of the minimum requirements; or
 - f. Restrictions on hours of operation.
- (4). Findings of fact. After reaching a decision on an appeal/request under this section, the Board of Appeals must verify on the record its findings of fact supporting the basis of its decision.
- (5). Outstanding violations. No variance, special exception or miscellaneous variation request may be granted for premises on which outstanding violations of this title exist, unless the effect of such variance, special exception or miscellaneous variation would remedy all such violations.
- (6). Appeals and variances. The Board of Appeals may, upon written application of an

aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of this chapter. The Board of Appeals may grant a variance from the requirements of § 16.5.10, Floodplain Management, § 16.5.10.A et seq., consistent with state law and the following criteria: [Added 9-26-2011 by Ord. No. 11-15]

- a. Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- b. Variances may be granted only upon:
 - i. A showing of good and sufficient cause; and
 - ii. A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
 - iii. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and
 - iv. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- c. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:
 - i. Other criteria of this section and § 16.5.10.H.(9) are met; and
 - ii. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- e. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in Subsection 6(a) through (d) of this section.
- f. Any applicant who meets the criteria of Subsection 6(a) through (e) of this section is to be notified by the Board of Appeals, in writing, over the signature of the Chairperson of the Board of Appeals, that:
 - i. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per \$100 of insurance coverage;
 - ii. Such construction below the base flood level increases risks to life and property; and
 - iii. The applicant agrees, in writing, that the applicant is fully aware of

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

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

16.2.13. Violations and Enforcement

When any violation of any provision of this title or § 16.5.18, Nonstormwater Discharge, is found to exist, the Town Attorney or the CEO, as provided by Maine Rules of Civil Procedure Rule 80K and any provisions of this title and relevant statute, with the advice and consent of the Town Manager, is authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same to be brought in the name of the Town.

- A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this title, is responsible for the violation and is subject to the penalties and the remedies herein provided.
- B. Applications for permits or approvals involving sites with a violation. An application for a building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.
- C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to § 16.2.7 for enforcing and securing compliance with the provisions of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.
- D. Notice of violation and order (notice).
 - (1). It is the duty of the CEO to serve written notice on the landowner or the landowner's agent and any other person or entity responsible (hereafter termed "violation") for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this title and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in § 16.2.13.H and must set forth a fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452
 - (2). Notwithstanding any other provision of this chapter, when the notice involves a violation of this title pertaining to shoreland or resource protection zoning or 30-A M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be imposed, an order of remediation or other corrective action(s) consistent with and in compliance with 30-A M.R.S. § 4452 deemed necessary by the CEO to correct or mitigate the violation to the affected area(s), unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.
 - (3). All proposed plans for corrective action submitted by the violator must comply

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

- (4). The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. § 4452 exists for which the violator is responsible.
- (5). Additionally, if there is a violation of § 16.5.18, Nonstormwater Discharge, the enforcement authority will order compliance by written notice of violation to that person, indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation: [Amended 5-30-2018 by Ord. No. 04-18]
 - a. The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;
 - b. The cessation of discharge practices or operations in violation of this section;
 - c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - d. The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

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

- (1). Be served in hand to the violator by the CEO or a person duly authorized by the CEO;
- (2). Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
- (3). Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail, if not returned or undeliverable, is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or
- (4). Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

F. Appeal of notice of violation and order.

- (1). The violator served with a notice of violation and order may appeal the notice of violation and order to the Board of Appeals by filing an administrative appeal application in accordance with § 16.2.12.E(1).
- (2). If a completed appeal is not filed within 30 days of receipt of the violation and order, then the notice of violation and order is final, and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the Board of Appeals (BOA) must hold a public hearing pursuant to § 16.2.12.E(2) and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The Board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.
- (3). Any adverse decision of the BOA may be further appealed to the Superior Court

pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.

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

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

H. Time limit for corrective action.

- (1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.2.13.D of this section is 30 days following receipt of the notice of the violation and order, unless:
 - a. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
 - b. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
 - c. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.
- (2). If a violator in a timely fashion files a completed administrative appeal application with the Town Clerk as provided in § 16.2.13.F, any period of time from date of receipt of such an appeal to date of decision of the BOA, inclusive, is not counted as part of the cumulative time period described in this section. If the BOA upholds the CEO's determination, the timeline set forth in the notice of violation and order resumes, beginning the day after the decision is rendered, unless it is extended by the BOA.

I. Penalties.

- (1). The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the notice:
 - a. Fine imposed: \$200 for the first seven-day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500 for each specific violation, or the maximum as provided by 30-A M.R.S. § 4452, if greater.

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

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

J. Consent agreements.

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

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

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

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

16.2.14. Enforcement and Penalties

A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.9, Article VIII, Floodplain Management, pursuant to 30-A M.R.S. § 4452.

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

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

- (1). The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- (2). A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
- (3). A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (4). Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

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

16.9 Other Plan Development Review

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16.9.1 Maritime and Shoreland Related Development

A. General. The purpose of maritime and shoreland development reviews function as a control for the Town to oversee proposed developments located in, or in close proximity to, designated resource protected areas so as to ensure the safe and healthful conditions of significant natural, wildlife, cultural and maritime resource.

B. Applicability

- (1). Kittery Port Authority. The Kittery Port Authority's ("Port Authority") jurisdiction extends to applications proposing any development from the navigable tidal waters to the mean high-water line or upland edge of a coastal wetland. The Port Authority, through its established Rules and Regulations, reviews and approves applications for piers, wharves, landings, floats, bridges, other water-dependent structures or uses.
- (2). Planning Board. The Planning Board's jurisdiction for review and approval extends to applications proposing any upland development from the normal high-water line of any water bodies or upland edge of a costal or freshwater wetland or any development located within the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses Overlay Zones or all other structures not requiring Port Authority approval, except for applications as provided under 16.9.1.B.1.

C. General review Process and Notification

(1). Process.

- a. Prior to the submission of a shoreland development application with the Port Authority or the Planning Board, a preliminary application meeting between the Town Planner, Code Enforcement Officer, or designee, and the applicant or agent, shall occur to review the proposed project, performance standards and procedural requirements thereof.
- b. If Port Authority or Planning Board review is not required, the

38 Planning and Development Department shall review the
39 application for compliance with this title.

- 40 c. Where the Planning Board must review and approve a
41 development plan involving a pier, ramp, flotation system or
42 principal marine structure, and prior to Planning Board approval,
43 the Port Authority must comment on the plan's conformance with
44 Port Authority rules and regulations and navigational aspects of
45 any proposed pier, ramp and float system or principal marine
46 structure.
- 47 d. All required local approvals (excluding Town building permits),
48 federal and state approvals and/or permits shall be received by the
49 Code Enforcement Officer, prior to the issuance of a building
50 permit.
- 51 e. Prior to the commencement of construction on any pier, dock,
52 wharf, marina or any other proposed use that projects into a water
53 body, the owner and/or developer shall apply for, and obtain, a
54 building permit from the Code Enforcement Officer.

55 **(2). Notification.**

- 56 a. If Port Authority or Planning Board review is not required, the
57 Planning and Development Department shall send a written record
58 of their findings to both the Planning Board and Port Authority.
- 59 b. The Town Planner must transmit copies of Planning Board
60 decisions and the Code Enforcement Officer must transmit copies
61 of Board of Appeals decisions and all documentation constituting
62 the record of the decision for marine-related development to the
63 Port Authority.
- 64 c. The Port Authority shall notify the applicant and the Code
65 Enforcement Officer, in writing, of the granting of, or denial of,
66 the applicant's request.

67 **16.9.2Port Authority Shoreland Development Review**

- 68 A. Review for completeness. The Planning and Development Department shall
69 review Port Authority applications for completeness prior to the Port Authority's
70 Chairperson placing the application on the Port Authority's agenda.
- 71 B. Application process. All Port Authority applications for shoreland development
72 review shall adhere to the listed procedures as enumerated in their Rules and
73 Regulations.
- 74 C. Submission requirements. Shoreland Development Plans for marine-related uses
75 requiring Port Authority approval shall include the following elements:
 - 76 (1). Aerial photographs (images available in the public domain) and vicinity
77 maps and plans showing the property in relation to surrounding properties,
78 and the location of the lots that would have use of the pier, ramp and float
79 system. Maps and plans are to include:

- a. Construction plans for piers, ramps and floats;
 - b. Areas of vegetation clearing;
 - c. Location of required parking space(s); and
 - d. Location of boat and/or float storage.
- (2). Rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths.
 - (3). Documentation addressing visual impact and controls to assure continuing conformance to the shorefront development plan and this title.
 - (4). All necessary applications for permits, leases, approvals, and any supporting documentation as may be required have been filed, including the following:
 - a. Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480C;
 - b. Army Corps of Engineers permit application;
 - c. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application; and
 - d. Building permit application
 - (5). Any other details requested by the Port Authority, including, but not limited to, information as enumerated in the Port Authority's Rules and Regulations.

D. Performance standards. Development involving piers, wharves, marinas and other uses projecting into water bodies must conform to the following standards:

- (1). In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional and other standards (excluding setbacks from water bodies) of this title apply to structures and uses projecting into a water body beyond the normal high-water mark
- (2). Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The State of Maine no longer issues permits for construction of boathouses below the normal high-water line due to the adverse environmental impact; therefore, new boathouses must be located on uplands.
- (3). Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or other structure beyond the normal high-water line.
- (4). Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- (5). The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
- (6). The facility must be located so as to minimize adverse effects on fisheries.
- (7). The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing

conditions, use and character of the area.

- (8). No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- (9). No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.
- (10). Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland must not exceed 20 feet in height above the pier, wharf, dock or other structure.
- (11). Applicants proposing any construction or fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- (12). Proposals for any principal marine structure use, any residential joint-and/or shared-use pier, or any residential-development-use pier require Planning Board approval.
- (13). A residential development containing five or more lots in a zone permitting a residential-development-use pier may construct only one residential development use pier.
- (14). Commercial development of the shorefront must provide for access by the general public as part of a shorefront development plan.
- (15). Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.
- (16). Marine-related permanent structures located below the mean low-water line require the following permits, leases and approvals:
 - a. Port Authority approval;
 - b. Department of Environmental Protection permit pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-C;
 - c. Army Corps of Engineers permit;
 - d. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator approval; and
 - e. Building permit.
- (17). Any other performance standards as enumerated in the Port Authorities Rules and Regulations.

E. Findings of fact. An application shall be approved or approved with conditions if the Port Authority makes a positive finding based on the information presented. The application must be demonstrated that the proposed use will shall:

- (1). Maintain safe and healthful conditions;
- (2). Not result in water pollution, erosion or sedimentation to surface waters;
- (3). Adequately provide for the disposal of all wastewater;
- (4). Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5). Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6). Protect archaeological and historic resources;
- (7). Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
- (8). Avoid problems associated with floodplain development and use
- (9). Is in conformance with the provisions of this title; and

F. The approved plan must be recorded with the York County Registry of Deeds.

G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland development plan decision by the Planning Board may be made per §16.2.12.B.

16.9.3 Planning Board Shoreland Development Review

A. Review process

- (1). Following a pre-application meeting with the Town Planner, the applicant filing a shoreland development review permit shall submit to the Town Planner a complete application and site plan, drawn to scale as indicated in accordance with §16.7.10.C.4.
- (2). Within 35 days of the receipt of a written application, the Town Planner must notify the applicant, in writing, that the application is or is not complete. If the application is incomplete, the written notification must specify the additional material required to complete the application.
- (3). A decision on the application will occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held.

B. Waivers

- (1). Over the course of the application's review, with consideration of the development's overall limited scale and impact to the site, the Planning Board may waive or modify application submittals required in §16.9.3.C

C. Submission requirements

- (1). All applications shall be signed by the owner, or an agent with written authorization from the owner to apply for a shoreland development review permit, certifying that the information in the application is complete and correct.
- (2). All applications shall be dated, and the Town Planner or designee shall

note upon each application the date and time of its receipt.

- (3). Whenever the nature of the proposed structure requires the installation of a subsurface sewage disposal system, a complete application for a subsurface wastewater disposal permit shall be submitted. The application shall include a site evaluation approved by the Plumbing Inspector.

D. Exempt and non-exempt uses.

- (1). Exempt uses and development not requiring shoreland development review by the Planning Board

- a. Proposed development of principal and accessory structures in compliance with §16.4.11.5.b, 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. 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 §16.3.2.

- (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). 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.

- (6). 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

E. Non-exempt uses requiring shoreland development review

- (1). After the effective date of this title, no person may, without first obtaining

a permit, engage in any activity or use of land or structure requiring a permit in the Shoreland or Resource Protection Overlay Zones in which such activity or use would occur, or expand, change or replace an existing use or structure, or renew a discontinued nonconforming use.

- (2). Any development proposed in the Resource Protection (OZ-RP) and Shoreland - Stream Protection Area (OZ-SL-75) Overlay Zones must be approved by the Planning Board.
- (3). Any permit required by this section is in addition to any other permit required by other law or ordinance.

F. Findings of fact.

- (1). Permits shall be approved, or approved with conditions, if the proposed use or structure is found to be in conformance with the purposes and provisions of this section and all other applicable provisions found in this title, except where expressed relief has been lawfully granted.
- (2). An application shall be approved or approved with conditions if the Planning Board makes a positive finding based on the information presented. The application must demonstrate that the proposed use shall:
 - a. Maintain safe and healthful conditions;
 - b. Not result in water pollution, erosion or sedimentation to surface waters;
 - c. Adequately provide for the disposal of all wastewater;
 - d. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - e. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - f. Protect archaeological and historic resources;
 - g. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
 - h. Avoid problems associated with floodplain development and use
 - i. Is in conformance with the provisions of this title; and
 - j. Be recorded with the York County Registry of Deeds.

G. Final plan approval and recording.

- (1). An approval by the Planning Board must take the form of an agreement between the Town and the applicant, incorporating as elements the application, the Planning Board's findings of fact, and such conditions as the Planning Board may impose upon approval.
- (2). The Planning Board must send copies of the agreement to Code Enforcement Officer.
- (3). A plan has final approval only when the Planning Board has indicated approval by formal action and the plan has been properly signed by a majority of the Planning Board members or by the Chair only, if so voted

288 by the Planning Board.

- 289 (4). Approved final plan recording. An approved plan involving the division of
290 land, easements, or property boundary modification must be recorded by
291 the York County Registry of Deeds. A paper copy and an electronic
292 version of the recorded plan must be returned to the Town Planner.

293 H. Modification to an approved plan. Any modification to an approved shoreland
294 development may be considered for approval under §16.9.3.

295 I. Plan revisions after approval. No changes, erasures, modifications or revisions
296 may be made to any Planning Board approved shoreland development plan,
297 unless in accordance with the Planner's and CEO's powers and duties as found in
298 Chapter 16.4 and elsewhere found in Title 16, or unless the plan has been
299 resubmitted and the Planning Board specifically approves such modifications. In
300 the event a final plan is recorded without complying with this requirement, the
301 same is null and void, and the Planning Board must institute proceedings to have
302 the plan stricken from Town records and the York County Registry of Deeds.

303 J. Appeal of shoreland development plan decision. Appeal of a Planning Board
304 shoreland development plan decision may be made pursuant to §16.2.12.B.
305

306 **16.11.1.6 Other References to Shoreland Development Review Within Title 16.**

- 307 1. Below are other pertinent sections within Title 16 referencing shoreland development
308 provisions:
309

310 A. §16.3.2.17— Shoreland Overlay Zone OZ-SL Development and Performance
311 Standards

312 B. §16.3.2.18— Commercial Fisheries / Maritime Activities Overlay Zones OZ-
313 CFMU

314 C. §16.3.2.19— Resource Protection Overlay Zone OP-RP

315 D. §16.4.4.C—Recordkeeping in the Shoreland and Resource Protection Overlay
316 Zones

317 E. §16.4.5.D(2)—Notice of violation within the shoreland or resource protection
318 overlay zones

319 F. §16.5.21.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone

320 G. §16.5.22.A—Single- and duplex-family dwellings in Resource Protection and
321 Shoreland Overlay Zones

322 H. §16.5.25.N—Road and driveway standards in Shoreland and Resource Protection
323 Overlay Zones.

324 I. §16.5.27.A(1)—Timber Harvesting in the Shoreland Overlay Zone

325 J. §16.7.3.A—Shoreland development review during site plan review

326 K. §16.8.4.A—Shoreland development review during subdivision review

327 L. §16.8.9.C(3)(A)—Scheduling public hearings for shoreland development
328 applications

16.9.4 Right of Way Plan Review

A. General. Right-of-Way Plans are intended to demonstrate to the Planning Board that a lot will have a sufficient ROW to provide both the required frontage to that lot and to allow safe vehicular access. Such a lot may exist as a “landlocked” lot which requires a Right-of-Way Plan approval because necessary access doesn’t meet driveway standards or the lot may be a proposed division from an existing lot which wouldn’t have required frontage without a new ROW. When a lot is proposed for division, such division must not create a non-conforming lot or structure. Right-of-Way Plans do not apply to any lot that requires subdivision approval.

B. Applicability.

(1). A person who has right, title, or interest in a parcel of land must obtain Right of Way Plan approval for a site when:

- a. A lot requires a new ROW to meet street frontage requirements
- b. A lot is proposed for division and requires ROW access and street frontage for the proposed new lot.

(2). A ROW proposed under this section must be and will remain a private road unless the applicant pursues street acceptance and is granted that acceptance by the Town per §16.8.11.L of the municipal ordinance.

C. Review Process & Submission Requirements

(1). Pre-application and Conference

- a. Process. Before submitting a proposed Right-of-Way Plan to the Board, the owner and/or applicant must meet with the Town Planner to discuss the conceptual design regarding road design, stormwater management, dimensional requirements, and any potential impacts to existing or proposed development and the environment.

(2). Sketch Plan

- a. Process. The applicant must submit a Right-of-Way application and sketch plan for review and consideration by the Planning Board.
- b. Plan requirements
 - i. The sketch plan must show the proposed road and lot division (if applicable), including structures, site improvements and landscape features, in relation to existing conditions and municipal land use regulations. Any proposed buildings must also be shown.
 - ii. If the proposed ROW could or will provide frontage to lots other than the lot under consideration, those abutting lots and their structures, if any, must also be shown on the sketch plan.

371 iii. While not required, a plan prepared by a surveyor is
372 recommended.

373 c. Planning Board review and decisions, including site walk

374 i. The Planning Board must determine whether the Right-of-
375 Way sketch plan proposal complies with municipal land
376 use regulations regarding both submission content and
377 design and must, when necessary, make specific
378 suggestions to be incorporated by the applicant in
379 subsequent submissions.

380 ii. If the sketch plan is accepted and approved, with or without
381 conditions, the next application step will be a Final Plan.

382 iii. A site walk may be scheduled at the Planning Board's
383 discretion.

384 (3). Final Plan

385 a. Failure to submit final plan application. If a Right-of-Way final
386 plan is not submitted to the Planning Board within six months after
387 the approval of the sketch plan, the Planning Board may, at its
388 discretion, refuse to act on the final plan and require resubmission
389 of the sketch plan. Any plan resubmitted must comply with all
390 application requirements, including payment of application fees.

391 b. Process, including optional public hearing

392 i. The applicant must submit a final Right-of-Way plan for
393 review and consideration by the Planning Board. Any
394 conditions imposed by sketch plan approval must be
395 addressed in the submission.

396 ii. The Planning Board may, at its discretion, choose to hold a
397 public hearing. If a public hearing will be held, the
398 proceedings must conform to public hearings as described
399 by 16.8.9.C.(3).

400 iii. The Planning Board may, at its discretion, request a review
401 of the plans by the Town's peer review engineer. The cost
402 of this peer review will be borne by the applicant.

403 iv. The Technical Review Committee (TRC) must review the
404 final plan and submit comments prior to final plan
405 approval.

406 v. The Board must accept the application as complete and
407 after consideration and review, which may span more than
408 one regularly scheduled meeting, vote to approve with or
409 without conditions or deny the plan.

410 c. Plan requirements

411 i. A complete final plan application must fulfill all the
412 requirements as indicated on the application checklist and
413 described by §16.8.9.D.(10) unless the Planning Board, by

414 formal action, upon the applicant's written request, waives
415 or defers any requirement(s) for submission. The Board
416 may request any additional information pertinent to
417 complete understanding of the application.

418 d. Findings of Fact

419 i. Action by the Planning Board must be based upon findings
420 of fact which certify or waive compliance with all the
421 required standards of this ordinance, and which certify the
422 Right-of-Way plan meets the requirements as listed in
423 §16.8.9.D.(4).(b).

424 ii. In addition, the Board must find that the proposed ROW:

425 a. Does not create any nonconforming lots or
426 buildings; and

427 b. Can reasonably permit vehicular passage.

428 e. Street naming

429 i. Prior to submission of the final plan for Planning Board
430 signatures (see §16.9.4.C.f.i below), the applicant must
431 apply for and be approved for, a street name which
432 complies with Chapter 8.5 of the municipal regulations.

433 ii. Once approved, the street name must be placed on the final
434 plan prior to submission for Planning Board signature.

435 iii. Street signage is required per Chapter 8.5-5.

436 f. Final Plan approval and recording

437 i. A plan has final approval only when the Planning Board
438 has indicated approval by formal action and the plan has
439 been properly signed by a majority of the Planning Board
440 members or by the Chair or Vice-Chair only, if so voted by
441 the Planning Board.

442 ii. An approved Row-of-Way plan involving the division of
443 land, easements, or property boundary modification must
444 be recorded by the York County Registry of Deeds. A
445 paper copy and electronic copy of the recorded plan must
446 be returned to the Town Planner. An as-built plan and
447 electronic files may also be required at the discretion of the
448 Town Planner or Director of Planning.

449 g. Performance guaranty

450 i. Prior to the issue of a building permit, the applicant must,
451 in an amount and form acceptable to the Town Manager,
452 file with the Municipal Treasurer an instrument to cover the
453 full cost of the required improvements. A period of one
454 year (or such other period as the Planning Board may
455 determine appropriate, not to exceed three years) is the
456 guaranty time within which required improvements must be

- 457 completed.
- 458 ii. In cases where the Right-of-Way plan consists of an
- 459 extension of an existing road and as approved, will remain
- 460 unpaved with minimal site improvements required, the
- 461 Director of Planning may waive the performance guaranty.
- 462 iii. Where applicable, a maintenance agreement must be
- 463 included in the document of covenants, homeowners'
- 464 documents and/or as riders to the individual deed.
- 465 h. Modifications to approved plans. No modifications to an approved
- 466 Right-of-Way final plan may be made unless such modifications
- 467 comply with §16.9.4.
- 468 i. Appeal of Planning Board decision. Appeal of a Right-of-Way
- 469 plan decision by the Planning Board may be made per §16.2.12.B.