

1 **16.5.11 Floodplain and Coastal Hazards Management**

2 **A. Statement of purpose and intent.**

3 (1) Certain areas of the Town are subject to periodic flooding, causing serious damages to
4 properties within these areas. Relief is available in the form of federally subsidized flood
5 insurance as authorized by the National Flood Insurance Act of 1968.

6 (2) Therefore, the Town has chosen to become a participating community in the National Flood
7 Insurance Program and agrees to comply with the requirements of the National Flood
8 Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this ~~article~~ **Floodplain**
9 **and Coastal Hazards Management Ordinance.**

10 (3) It is the intent of the Town to require the recognition and evaluation of flood hazards in all
11 official actions relating to land use in the floodplain areas having special flood hazards. This
12 body has the legal authority to adopt land use and control measures to reduce future flood
13 losses pursuant to 30-A M.R.S §§3001-3007, 4352 and 4401-4407 . and Title 38 MRSA
14 Section 440.

15 (4) **In addition, the Town recognizes that climate change is causing sea levels to rise which**
16 **increases storm surge and flooding. To better protect coastal areas, the Town has**
17 **adopted land use and control measures that will work in tandem with flood hazard**
18 **requirements to reduce damage and loss to property and bolster public safety.**

19 **B. Definitions.**

20 Unless specifically defined in §16.3, words and phrases used in this article have the same
21 meanings as they have in common law to give this article its most reasonable application.

22 **C. Establishment of flood and coastal hazard areas.**

23 (1) The Town elects to comply with the requirements of the National Flood Insurance Act of
24 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the
25 aforesaid Act, provides that areas of the Town having a special flood hazard be identified by
26 the Federal Emergency Management Agency and that floodplain management measures be
27 applied in such flood hazard areas. This ~~article~~ ordinance establishes a flood hazard
28 development permit system and review procedure for development activities in the
29 designated flood hazard areas of the Town.

30 (2) The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
31 identified by the Federal Emergency Management Agency in a report entitled "Flood
32 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
33 accompanying Flood Insurance Rate Map dated July 3, 1986, and Flood Boundary and
34 Floodway Map dated **[must check on this]** are adopted by reference and declared to be a part
35 of this ~~article~~ ordinance.

36

- 37 (3) **The Town, in recognition of climate change driven sea level rise which increases the**
38 **reach of storm surge and flooding, chooses to identify those areas of Town so affected**
39 **as coastal hazard areas and establishes a coastal hazard development permit system**
40 **and review procedure for development in those designated areas.**
- 41 (4) **The coastal hazard areas, identified and shown on the Coastal Hazards Map dated**
42 **[date of final map version and adoption] are adopted by reference and declared to be a**
43 **part of this ordinance.**

44 **D. Flood and/or coastal hazard area applicability and permit required.**

- 45 (1) Before any construction or other development (as defined in §16.3), including the placement
46 of manufactured homes, begins within any areas of special flood hazard **and/or coastal**
47 **hazard** established in §16.5.11.C, a flood hazard **and/or coastal hazard** development
48 **permit** is to be obtained from the Code Enforcement Officer, except **when the Planning**
49 **Board must grant special exception approvals** as provided by Section I of this ordinance.
50 This permit(s) is in addition to any other building/regulated activity permits which may be
51 required pursuant to this ~~title~~ ordinance.
- 52 (2) **No new residential or non-residential principal structures may be located within a**
53 **flood hazard or a coastal hazard area. Reconstruction, rehabilitation, additions or**
54 **other improvements are allowed for existing structures. See Section H of this**
55 **ordinance for development standards.**
- 56 (3) **Any development permit for a lot which includes a portion of land area identified as**
57 **being within the Coastal Hazard Area must locate all proposed principal structures**
58 **outside the upland edge of the Coastal Hazard Area. The applicant must demonstrate**
59 **to the Code Enforcement Officer's or the Planning Board's satisfaction, depending on**
60 **the type of development, that the proposed structure(s) is outside the coastal hazard**
61 **area. Once that fact is ascertained, the applicant may proceed with any other**
62 **permitting processes as required by local, state or federal regulations.**

63 E. **Application requirements for permit.**

64 The application for a flood hazard **and/or coastal hazard** development permit shall be
65 submitted to the Code Enforcement Officer **and/or Planning Board** and include:

- 66 (1) The name and address of the applicant.
- 67 (2) An address and a map indicating the location of the construction site.
- 68 (3) A site plan showing the location of existing and/or proposed ~~structures~~
69 **development including but not limited to structures, sewage disposal facilities,**
70 **water supply facilities, areas to be cut and filled, and lot dimensions. Such a plan**
71 **must also show where the proposed development is located in relation to the**
72 **flood hazard and/or coastal hazard area boundaries.**
- 73 (4) A statement of the intended use of the structure and/or development.

74 (5) A statement of the cost of the development, including all materials and labor.

75 (6) A statement as to the type of sewage system proposed.

76 (7) Specification of dimensions of the proposed structure.

77 [Note: **Subsections 8-13 below apply only to new construction or substantial**
78 **improvements as defined by Title 16 of residential and non-residential principal**
79 **structures. For other allowed types of structures or improvements, these**
80 **subsections apply to both new and substantial improvements.**]

81 (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), North
82 American Vertical Datum (NAVD) or to a locally established datum in Zone A of
83 the flood hazard zone only, of the:

84 (a). Base flood for structures located in flood hazard areas, at the proposed site of all
85 new or substantially improved structures, which is determined:

86 [1] In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data contained in
87 the "Flood Insurance Study — Town of Kittery, Maine," as described in
88 §16.5.110.C or

89 [2] In Zone A:

90 i. From any base flood elevation data from federal, state, or other technical
91 sources (such as FEMA’s Quick-2 model, FEMA 265),including
92 information obtained pursuant to 16.5.11.H.11 and 16.5.11.K.(4) ~~from of~~
93 the ground at the intersection of the floodplain boundary and a line
94 perpendicular to the shoreline which passes along the ground through the
95 site of the proposed building.

96 ii. In the absence of all data described in this Section E, information to
97 demonstrate that the structure shall meet the elevation requirements in
98 16.5.11.H.6.(d).(2), 16.5.11.G.(b).(ii) or 16.5.11.H.8.(d).[2].

99 (b). **Information to demonstrate that structures in the Coastal Hazard Area meet**
100 **the elevation requirements in 16.5.11.H.(6).(f), 16.5.11.H.(7).(f) or**
101 **16.5.11.H.(8).(f).**

102 (c). Highest and lowest grades at the site adjacent to the walls of the proposed
103 building.

104 (d). Lowest floor, including basement, and whether or not such structures contain a
105 basement.

106 (e). Level, in the case of nonresidential structures only, to which the structure will be
107 floodproofed.

- 108 (9) A description of an base flood elevation reference point established on the site of ~~all new or~~
109 ~~substantially improved structures~~ developments for which elevation standards apply as
110 required in Section H of this ordinance.
- 111 (10) A written certification completed by a professional land surveyor, registered professional
112 engineer or architect; verifying that the base flood elevations shown on the application are
113 accurate.
- 114 (11) The following Certifications and verifications as required in §16.5.11.H by a registered
115 professional engineer or architect ~~that floodproofing methods for any:~~
- 116 (a). A Floodproofing Certificate (FEMA Form 81-65, as amended from time to time) for
117 flood hazard area development and/or written conformation for coastal hazard
118 development, to verify that the floodproofing methods for ~~Nonresidential~~ structures
119 will meet the floodproofing criteria of ~~Subsection 7(d) of this Section E, §16.5.11.H.(1),~~
120 ~~§16.5.11.H.(7) Subsection 7 of §16.5.11.H,~~ and other applicable standards in §16.5.11.H;
121 ~~and~~
- 122 (b). A V-Zone Certificate to verify that Construction in coastal-flood-high-hazard areas,
123 Zones V1 — 30 and VE and where applicable, written verification that development
124 in coastal hazard areas defined by the Town of Kittery, will meet the ~~floodproofing~~
125 criteria of ~~Subsection 11 of §16.5.11.H.(16)~~ and other applicable standards in
126 §16.5.11.H.
- 127 (c). A Hydraulic Openings Certificate to verify that engineered hydraulic openings in
128 foundation walls will meet the standards of §16.5.11.H.10.(b).
- 129 (d). A certified statement that bridges will meet the standards of §16.5.11.H.13.
- 130 (e). A certified statement that cContainment walls will meet the standards of §16.5.11.H.14.
- 131 (12) A description of the extent to which any watercourse will be altered or relocated as a result
132 of the proposed development.
- 133 (13) A statement of construction plans describing in detail how each applicable development
134 standard in §16.5.11.H will be met.

135 **F. Application fee and expert's fee.**

- 136 (1) A nonrefundable application fee as set out in Appendix A for minor development and for
137 all substantial improvements in the flood hazard and/or coastal hazard areas ~~is to~~ shall
138 be paid to the Town Clerk or Code Enforcement Officer, and a copy of a receipt for the
139 same must accompany the application.
- 140 (2) An additional fee may be charged if the Code Enforcement Officer, **Planning Board** and/or
141 Board of Appeals needs the assistance of a professional engineer or other expert. The
142 expert's fee must be paid in full by the applicant within 10 days after the Town submits a bill

143 to the applicant. Failure to pay the bill constitutes a violation of this title and is grounds for
144 the issuance of a stop-work order. An expert may not be hired by the municipality at the
145 expense of an applicant until the applicant has either consented to such hiring in writing or
146 been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a
147 decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

148 G. **Review standards of for flood hazard and/or coastal hazard development permit**
149 **applications.**

150
151 **The Planning Board is the permitting authority for all special exception flood hazard**
152 **and coastal hazard applications and will act on such applications as required in**
153 **16.5.11.H. The Code Enforcement Officer is the permitting authority for other types of**
154 **allowed development such as accessory structures and for minor development**
155 **applications for existing residential and non-residential structures.**

156 The Code Enforcement Officer **or the Planning Board as applicable** must:

157 (1) Review all applications for a flood hazard **and/or coastal hazard** development permit to
158 assure that proposed ~~building sites~~ developments are reasonably safe from flooding and to
159 determine that all pertinent requirements of §16.5.11.H, (Development Standards), have or
160 will be met or to .

161 (2) Utilize, in the review of all flood hazard development permit applications, the base flood
162 data contained in the "Flood Insurance Study - Town of Kittery, Maine," as described in
163 §16.5.11.C.

164 (3) In special flood hazard areas where base flood elevation data are not provided, **the**
165 **permitting authority** ~~Code Enforcement Officer~~ is to shall obtain, review and reasonably
166 utilize any base flood elevation and floodway data from federal, state, or other sources,
167 including information obtained pursuant to §16.5.11.E(8)(a)[2], §16.5.11.H.(11) and
168 §16.5.11.J, in order to administer §16.5.11.H of this article.

169 (4) When the Town establishes a base flood elevation in a Zone A by methods outlined in
170 §16.5.11.E.(8).(a).[2].i, the community shall submit that data to the Maine Floodplain
171 Management Program.

172 (5) **Utilize, in the review of all coastal hazard development permit applications, the Coastal**
173 **Hazard Map as described in §16.5.11.C and obtain, review and reasonably utilize any**
174 **additional data from federal, state or other resources, including any applicable**
175 **information obtained pursuant to a flood hazard application for the property and all**
176 **the sources listed in subsection (2) and (3) above.**

177 (6) Make interpretations of the location of boundaries of special flood hazard areas **and/or**
178 **coastal hazard areas** shown on the maps described in §16.5.11.C.

179 (7) In the review of flood hazard development permit applications, determine that all necessary

180 permits have been obtained from those federal, state and local government agencies from
181 which prior approval is required by federal or state law, including, but not limited to,
182 Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.
183 §1334.

184 (8) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine
185 ~~Office of Community Development~~ Floodplain Management Program prior to any alteration
186 or relocation of a watercourse and submit copies of such notifications to the Federal
187 Emergency Management Agency.

188 (9) If the application satisfies the requirements of this ordinance, approve the issuance of one of
189 the following flood hazard development permits based on the type of development:

190 (a). Issue a two-part flood hazard development permit for elevated structures. Part I is to
191 authorize the applicant to build a structure to and including the first horizontal floor only
192 above the base flood level. At that time the applicant must provide the Code
193 Enforcement Officer with an “under construction” Elevation Certificate completed by a
194 professional land surveyor, registered professional engineer or architect based on Part I
195 permit construction , for verifying compliance with the elevation requirements of
196 Subsections 6, 7, 8 and 12 of §16.5.11.H. an application for Part II of the flood hazard
197 permit. Following review of the application Elevation Certificate data, which review
198 must take place within three working days of receipt of the application, the Code
199 Enforcement Officer is to shall issue Part II of the flood hazard development permit. Part
200 II authorizes the applicant to complete the construction project; or

201 (b). Issue a flood hazard development permit for floodproofing of non-residential structures
202 that are substantially improved non-residential structures that are not being elevated but
203 meet the floodproofing standards of §16.5.11.H 7. The application for this permit shall
204 include a Floodproofing Certificate signed by a registered professional engineer or
205 architect or:

206 (c). Issue a flood hazard development permit for minor development for all development that
207 is not a substantial improvement such as repairs, maintenance, renovations or additions
208 whose value is less than 50% of the market value of the structure. Minor development
209 also includes but is not limited to: accessory structures as provided for in §16.5.11.H,
210 mining, dredging, filling, grading, paving, excavation, drilling operations, storage of
211 equipment or materials, deposition or extraction of materials, public or private sewage
212 disposal systems or water supply facilities that do not involve structures; and non-
213 structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

214 (10) If the application satisfies the requirements of this ordinance, issue a coastal hazard
215 development permit for one of the following types of development:

216 (a) For elevated structures which must meet the requirements of Subsections 6, 7, 8 and
217 11 of §16.5.11.H; or

218 (b) **For non-residential structures, which are not being elevated and must meet the**
219 **floodproofing standards of §16.5.11.H.(7); or**

220 (c) **For minor development that does not meet the less than 50% market value**
221 **requirements and meets the criteria for minor development as described in**
222 **Subsection 9.(c) above.**

224 (11) Maintain, as a permanent record, copies of all flood hazard and coastal hazard development
225 applications, corresponding permits issued and data relevant thereto, including reports of the
226 Board of Appeals on variances granted under the provisions of §16.2.12 and this ordinance;
227 and copies of elevation certificates, floodproofing certificates, and certificates of compliance
228 and certifications of design standards required under the provisions of §16.5.11.E,
229 §16.5.11.G and §16.5.11.I.

230 (12) **For both flood hazard and coastal hazard development applications, each time a**
231 **permit is sought, the construction and labor costs for the development must be**
232 **compared to the assessed value of the structure, beginning on [date this ordinance is**
233 **adopted] to determine whether or not the improvements are less than 50% of the**
234 **assessed value of the structure. In addition, the first permit granted for a property**
235 **after [date this ordinance was adopted] begins the ten year cumulative process. Every**
236 **permit's construction and labor costs after the first permit is issued for the next ten**
237 **years will be added in total and compared to the assessed value. If, during that ten-year**
238 **period, a structure's cumulative improvement costs meet or exceed the 50%**
239 **substantial improvement threshold, that structure must meet the substantial**
240 **improvement requirements of this ordinance in full as described in . Structures that**
241 **did not meet the substantial improvement threshold over the ten-year period that**
242 **began with the first permit issued after [date of ordinance adoption] will re-start the**
243 **ten-year cumulative process at the time of their next permit, whenever that might be.**

244 H. **Development standards.**

245
246 All development in areas of special flood hazard **or coastal hazard areas** are to meet the
247 following applicable standards:

248 (1) ~~New construction or substantial improvement of any structure~~ All development must:

249 (a). Be designed or modified and adequately anchored to prevent flotation (excluding piers
250 and docks), collapse or lateral movement of the structure development resulting from
251 hydrodynamic and hydrostatic loads, including the effects of buoyancy;

252 (b). Use construction materials that are resistant to flood damage;

253 (c). Use construction methods and practices that will minimize flood damage; and

254 (d). Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other
255 service facilities, that are designed and/or located so as to prevent water from entering or

- 256 accumulating within the components during flooding conditions.
- 257 (2) All new and replacement water supply systems ~~are to~~ shall be designed to minimize or
258 eliminate infiltration of floodwaters into the systems.
- 259 (3) All new and replacement sanitary sewage systems ~~are to~~ shall be designed and located to
260 minimize or eliminate infiltration of floodwaters into the system and discharges from the
261 system into floodwaters.
- 262 (4) On-site waste disposal systems ~~are to~~ shall be located and constructed to avoid impairment
263 to them or contamination from them during floods.
- 264 (5) All development associated with altered or relocated portions of a watercourse ~~is to~~ shall be
265 constructed and maintained in such a manner that no reduction occurs in the flood-carrying
266 capacity of ~~any~~ the watercourse.
- 267 (6) ~~New construction or~~ Substantial improvement of any residential structure located within:
- 268 (a). Zones A1 — 30, AE and AH ~~is to~~ shall have the lowest floor (including basement)
269 elevated to at least ~~one foot~~ two feet above the base flood elevation.
- 270 (b). Zones AO and AH ~~is to~~ shall have adequate drainage paths around structures on slopes,
271 to guide floodwater away from the proposed structures.
- 272 (c). Zone AO ~~is to~~ shall have the lowest floor (including basement) elevated above the
273 highest adjacent grade:
- 274 [1] At least ~~one foot~~ two feet higher than the depth specified in feet on the community's
275 Flood Insurance Rate Map; or
- 276 [2] At least three feet if no depth number is specified.
- 277 (d). Zone A ~~is to~~ shall have the lowest floor (including basement) elevated:
- 278 [1] To at least ~~one foot~~ two feet above the base flood elevation utilizing information
279 obtained pursuant to §16.5.11.E(8)(a)[2], 16.5.11.G(4) or 16.5.11.I.(4).
- 280 [2] In the absence of all data described in Subsection [1] above, to at least three feet
281 above the adjacent grade of the structure.
- 282 (e). Zones V1 — 30 and VE is to meet the requirements of Subsection 16 of this section H.
- 283 (f). Coastal Hazard Areas must meet the requirements of Subsection 16 of this section
284 H.
- 285 (7) ~~New construction or~~ Substantial improvement of any nonresidential structure located within:

- 286 (a). Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to
287 at least ~~one foot~~ **two feet** above the base flood elevation or, together with attendant
288 utility and sanitary facilities, must:
- 289 [1] Be floodproofed to at least ~~one foot~~ **two feet** above the base flood level so that below
290 that elevation the structure is watertight with walls substantially impermeable to
291 passage of water;
- 292 [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads
293 and the effects of buoyancy; and
- 294 [3] Be certified by a registered professional engineer or architect that the floodproofing
295 design and methods of construction are in accordance with accepted standards of
296 practice for meeting the provisions of this section. Such certification must be
297 provided with the application for a flood hazard development permit, as required by
298 §16.5.11.E(10), and shall include a record of the elevation above mean sea level to
299 which the structure is floodproofed. ~~of the lowest floor, including basement.~~
- 300 (b). Zones AO and AH ~~is to~~ must have adequate drainage paths around structures on slopes,
301 to guide floodwater away from the proposed structures.
- 302 (c). Zone AO ~~is to~~ must have the lowest floor (including basement) elevated above the
303 highest adjacent grade:
- 304 [1] At least ~~one foot~~ **two feet** higher than the depth specified in feet on the community's
305 Flood Insurance Rate Map; or
- 306 [2] At least three feet if no depth number is specified; or
- 307 [3] Together with attendant utility and sanitary facilities, be floodproofed to meet the
308 elevation requirements of this section and floodproofing standards of Subsection 7(a)
309 of this section H.
- 310 (d). Zone A ~~is to~~ shall have the lowest floor (including basement) elevated to :
- 311 [1] At least ~~one foot~~ **two feet** above the base flood elevation utilizing information
312 obtained pursuant to §16.5.11.E(8)(a)[2], 16.5.11.G(4) or 16.5.11.I.(4). or
- 313 [2] In the absence of all data described in Subsection (d).[1] above to at least ~~two~~**three**
314 feet above the highest adjacent grade to the structure; or
- 315 [3] Together with attendant utility and sanitary facilities, be floodproofed to ~~one~~ **two feet**
316 above the base flood elevation established in this Subsection (d).[1] or [2] and meet
317 the floodproofing standards of §16.5.11.H.(1).(a), (b), or (c).
- 318 (e). Zones V1 — 30 and VE ~~is to~~ shall meet the requirements of Subsection 16 of this
319 section H.

320 (f). **Coastal Hazard Areas must meet the requirements of Subsection 16 of this section**
321 **H.**

322 (8) ~~New or s~~Substantially improved manufactured homes located within:

323 (a). Zones A1 — 30, AE or AH must:

324 [1] Be elevated ~~on a permanent foundation~~ such that the lowest floor is at least ~~one foot~~
325 **two feet** above the base flood elevation; and

326 [2] Be on a permanent foundation which may be poured masonry slab or foundation
327 walls, with hydraulic openings, or may be reinforced pier or block supports, any of
328 which support the manufactured home so that no weight is supported by its wheels
329 and axles; and

330 [3] Be securely anchored to an adequately anchored foundation system to resist flotation,
331 collapse, or lateral movement. Methods of anchoring may include, but are not limited
332 to:

333 [a] Over-the-top ties anchored to the ground at the four corners of the manufactured
334 home, plus two additional ties per side at intermediate points (manufactured homes
335 less than 50 feet long require one additional tie per side); or

336 [b] By frame ties at each corner of the home, plus five additional ties along each side
337 at intermediate points (manufactured homes less than 50 feet long require four
338 additional ties per side).

339 [c] All components of the anchoring system described in Subsection 8(a).[3].[a] and
340 [b] of this section must be capable of carrying a force of 4,800 pounds.

341 (b) Zones AO and AH ~~are to~~ shall have adequate drainage paths around structures on slopes,
342 to guide floodwater away from the proposed structures.

343 (c) Zone AO ~~are to~~ shall have the lowest floor (including basement) elevated above the
344 highest adjacent grade:

345 [1] At least ~~one foot~~ **two feet** higher than the depth specified in feet on the community's
346 Flood Insurance Rate Map; or

347 [2] At least three feet if no depth number is specified; and

348 [3] Meet the anchoring requirements of Subsection 8.(a).[3] of this section H.

349 (d) Zone A ~~are to~~ shall:

350 [1] Be elevated on a permanent foundation as described in subsection (8).(a).[2] such
351 that the lowest floor (including basement) is at least ~~one foot~~ **two feet** above the base

- 352 flood elevation utilizing information obtained pursuant to ~~have the lowest floor~~
353 ~~elevated to at least one foot above the base flood elevation utilizing information~~
354 ~~obtained pursuant to §16.5.11.E.(8).(a).[2], 16.5.11.G.(4) or 16.5.11.I.(4).~~
- 355 [2] In the absence of all data described in Subsection (d).[1] above, to at least ~~two~~ **three**
356 **feet** above the highest adjacent grade to the structure; or
- 357 [3] Meet the anchoring requirements of Subsection 8.(a).[3].
- 358 (e). Zones V1 — 30 and VE are to meet the requirements of Subsection 16 of this section
359 H.
- 360 (f). **Coastal Hazard Areas must meet the requirements of Subsection 16 of this section**
361 **H.**
- 362 (9) Recreational Vehicles located within:
363
364 (a). Zones A, A1-30, AE, AO, and AH shall either:
- 365 [1] Be on the site for fewer than 180 consecutive days; and,
366 [2] Be fully licensed and ready for highway use. A recreational vehicle is ready for
367 highway use if it is on its wheels or jacking system, is attached to the site only by
368 quick disconnect type utilities and security devices, and has no permanently attached
369 additions; or
- 370 [3] Be permitted in accordance with the elevation and anchoring requirements for
371 "manufactured homes" in §16.5.11.H.(8).[a].[3].
- 372 (b). Zones V1-30 and VE shall meet the requirements of either §16.5.11.H.(9).(a).[1] or [2]
373 or §16.5.11.H.(16).
374
- 375 (10) Accessory structures, as defined in Title 16, located within Zones A1-A30, AE, AO,
376 AH, and A shall be exempt from the elevation criteria required in §16.5.11.H.(6) and (7)
377 above, if all other requirements of §16.5.11.H and all the following requirements are
378 met:
379
- 380 (a). Have unfinished interiors and not be used for human habitation;
- 381 (b). Have hydraulic openings as specified in §16.5.11.H.(12).(b), in at least two different
382 walls of the accessory structure;
- 383 (c). Be located outside the floodway;
- 384 (d). When possible, be constructed and placed on the building site so as to offer the
385 minimum resistance to the flow of floodwaters and be placed further from the source
386 of flooding than is the primary structure; and

387 (e). Have only ground fault interrupt electrical outlets. The electric service disconnect shall
388 be located above the base flood elevation and when possible outside the Special Flood
389 Hazard Area.

390
391 (11) Floodways.

392 (a). In Zones A1 — 30 and AE riverine areas, encroachments, including fill, ~~new~~
393 ~~construction~~, substantial improvement, and other development, are not permitted within
394 ~~riverine areas, for which a regulatory floodway which~~ is designated on the community's
395 "Flood Boundary and Floodway Map," unless a technical evaluation certified by a
396 registered professional engineer is provided demonstrating that such encroachments will
397 not result in any increase in flood levels within the community during the occurrence of
398 the base flood discharge.

399 (b). In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway is
400 designated, encroachments, including fill, ~~new construction~~, substantial improvement,
401 and other development, are not permitted in the floodway as determined in
402 §16.5.11.H.(11).(c) unless a technical evaluation certified by a registered professional
403 engineer is provided demonstrating that the cumulative effect of the proposed
404 development, when combined with all other existing development and anticipated
405 development:

406 [1] Will not increase the water surface elevation of the base flood more than ~~one foot~~ **two**
407 **feet** at any point within the community; and

408 [2] Is consistent with the technical criteria contained in FEMA's guidelines and standards
409 for flood risk analysis and mapping. ~~Section 2-7, entitled "Hydraulic Analyses," Flood~~
410 ~~Insurance Study—Guidelines and Specifications for Study Contractors, FEMA~~
411 ~~37/September, 1985, as amended.~~

412 (c). In Zone A1-30, AE and A riverine areas, ~~in for which the~~ regulatory floodway is
413 designated, the regulatory floodway is determined to be the channel of the river or other
414 watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain
415 as measured from the normal high-water mark to the upland limit of the floodplain.
416 ~~encroachments, including fill, new construction, substantial improvement, and other~~
417 ~~development, are not permitted unless a technical evaluation certified by a registered~~
418 ~~professional engineer is provided meeting the requirements of Subsection 9(b) of this~~
419 ~~section.~~

420 (12) New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO,
421 AH and A that meets the development standards of this section, including the elevation
422 requirements of Subsection 6, 7 or 8 of this section H, and is elevated on posts, columns,
423 piers, piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the
424 elevation requirements provided all the following criteria are met or exceeded:

425 ~~Walls, with the exception of crawl spaces less than three feet in height, must not be part of~~

- 426 ~~the structural support of the building; and~~
- 427 (a). Enclosed areas are not "basements" as defined in §16.5.11.B; and
- 428 (b). Enclosed areas ~~are to~~ shall be designed to automatically equalize hydrostatic flood forces
- 429 on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting
- 430 this requirement must either:
- 431 [1] Be engineered and certified by a registered professional engineer or architect; or
- 432 [2] Meet or exceed the following minimum criteria:
- 433 [a] A minimum of two openings having a total net area of not less than one square
- 434 inch for every square foot of the enclosed area;
- 435 [b] The bottom of all openings may be no higher than ~~one foot~~ **two feet** above the
- 436 lowest grade; and
- 437 [c] Openings may be equipped with screens, louvers, valves, or other coverings or
- 438 devices, provided that they permit the entry and exit of floodwaters automatically
- 439 without any external influence or control, such as human intervention, including
- 440 the use of electrical and other nonautomatic mechanical means; ~~and~~
- 441 (c) The enclosed area may not be used for human habitation; and
- 442 (d) The enclosed area ~~may be used~~ are usable solely for building ~~maintenance~~, access,
- 443 parking of vehicles, or storing of articles and equipment used for maintenance of the
- 444 building.
- 445 (13) New construction or substantial improvement of any bridge located within Zones A1-30,
- 446 AE, AO, AH, A, V1-30, and VE and a coastal hazard area shall be designed such that:
- 447 (a). When possible, the lowest horizontal member (excluding the pilings or columns) is
- 448 elevated to at least **two feet** above the base flood elevation; and
- 449 (b). A registered professional engineer shall certify that:
- 450 [1] The structural design and methods of construction shall meet the elevation
- 451 requirements of this section and the floodway standards of §16.5.11.H.(11); and
- 452 [2] The foundation and superstructure attached thereto are designed to resist flotation,
- 453 collapse, and lateral movement due to the effects of wind and water loads acting
- 454 simultaneously on all structural components. Water loading values used shall be those
- 455 associated with the base flood.
- 456 (14) New construction or substantial improvement of any containment wall located within:
- 457 (a) Zones A, A1-30, AE, AO, AH, V1-30 and VE shall:

- 458 [1] Have the containment wall elevated to at least **two feet** above the base flood elevation;
- 459 [2] Have structural components capable of resisting hydrostatic and hydrodynamic loads
460 and the effects of buoyancy; and
- 461 [3] Be certified by a registered professional engineer or architect that the design and
462 methods of construction are in accordance with accepted standards of practice for
463 meeting the provisions of this section. Such certification shall be provided with the
464 application for a Flood Hazard Development Permit, as required by §16.5.11.E.(11).
- 465 (b) Zones AO and AH shall have adequate drainage paths around containment walls on
466 slopes, to guide floodwater away from the proposed walls.
- 467 (c) Zone AO shall have the top of the containment wall elevated above the highest adjacent
468 grade:
- 469 [1] At least **two feet** higher than the depth specified in feet on the Town’s Flood
470 Insurance Rate Map; or
- 471 [2] At least **three feet** if no depth number is specified; and
- 472 [3] Shall meet the requirements of §16.5.11.H.(14).(a).[2] and [3].
- 473 (15) New construction or substantial improvement of wharves, piers and docks are permitted in
474 Zones A, A1-30, AE, AO, AH V1-30 and VE in and over water and seaward of the mean
475 high tide if the following requirements are met:
- 476 (a) Wharves, piers and docks shall comply with all applicable local, state, and federal
477 regulations; and
- 478 (b) For commercial wharves, piers and docks, a registered professional engineer shall
479 develop or review the structural design, specifications and plans for the construction.
- 480 (16) Coastal floodplains.
- 481 (a) All **New construction of residential or non-residential principal structures is**
482 **prohibited within Zones A, A1-30, V1-30 and VE. Other permitted new**
483 **construction located within Zones A, A1-30, V1-30 and VE is shall be located**
484 **landward of the reach of the highest annual spring tide, **except as provided by****
485 **§16.5.11.H.(16).(b).[7].**
- 486 (b) New construction allowed per (a) above or substantial improvement of any structure
487 located within Zones V1-30, ~~or~~ VE, **or a coastal hazard area** must:
- 488 [1] Be ~~prohibited unless the following criteria are met:~~
- 489 i. The area is zoned for general development or its equivalent, as defined in the

490 ~~Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S. §438-A;~~
491 ~~or~~
492 ii. ~~The area is designated as densely developed as defined in 38 M.R.S. § 436-A,~~
493 ~~Subsection 3.~~

494 [1] Be elevated on posts or columns such that:

495 [a] The bottom of the lowest structural member of the lowest floor (excluding the
496 pilings or columns) is elevated to ~~one foot~~ **two feet** above the base flood level;

497 [b] The pile or column foundation and the elevated portion of the structure attached
498 thereto is anchored to resist flotation, collapse, and lateral movement due to the
499 effects of wind and water loads acting simultaneously on all building components;
500 and

501 [c] Water loading values used must be those associated with the base flood. Wind
502 loading values used must be those required by applicable state and local building
503 standards.

504 [2] Have the space below the lowest floor:

505 [a] Free of obstructions; or

506 [b] Constructed with open wood lattice-work, or insect screening intended to collapse
507 under wind and water without causing collapse, displacement, or other structural
508 damage to the elevated portion of the building or supporting piles or columns; or

509 [c] Constructed with non-supporting breakaway walls which have a design safe
510 loading resistance of not less than 10 nor more than 20 pounds per square foot.

511 *NOTE: NFIP flood insurance premiums will be higher for breakaway walls that*
512 *exceed 299 square feet. The larger the square footage of the enclosure, the higher the*
513 *cost of the insurance. Developers are advised to inquire into flood insurance*
514 *premiums rates before commencing construction.*

515 [3] A registered professional engineer or architect must:

516 [a] Develop or review the structural design, specifications and plans for the
517 construction, which must meet or exceed the technical criteria contained in the
518 Coastal Construction Manual (FEMA-55/~~February, 1986~~); and

519 [b] Certify that the design and methods of construction to be used are in accordance
520 with accepted standards of practice for meeting the criteria of Subsection (16).(b).

521 (c) The use of fill for structural support in Zones V1-30, and VE **and within a coastal**
522 **hazard area** is prohibited.

- 523 (d) Human alteration of sand dunes within Zones V1-30, ~~and~~ VE, and a coastal hazard area
524 is prohibited. ~~unless it can be demonstrated by a registered professional engineer that~~
525 ~~such alterations will not increase potential flood damage.~~
- 526 (e) The enclosed areas below the lowest floor may shall be used solely for parking vehicles,
527 building access, and storage.
- 528 [4] Lobster sheds and fishing sheds may be located seaward of the mean high tide and
529 shall be exempt from the elevation requirement in §16.5.11.H.(7) only if permitted as
530 a special exception use following review and approval by the Planning Board, as
531 provided in §16.5.11.I, and if all the following requirements and those of
532 §16.5.11.H.(1), §16.5.11.H.(11) and §16.5.11.H.(12) are met.
- 533 [a] The special exception use shall be limited to low value structures such as metal or
534 wood sheds 200 square feet or less and shall not exceed one story.
- 535 [b] The structure shall be securely anchored to the wharf or pier to resist flotation,
536 collapse, and lateral movement due to the effort of wind and water loads acting
537 simultaneously on all building components.
- 538 [c] The structure will not adversely increase wave or debris impact forces affecting
539 nearby buildings.
- 540 [d] The structure shall have unfinished interiors and shall not be used for human
541 habitation.
- 542 [e] Any mechanical, utility equipment, and fuel storage tanks must be anchored and
543 either elevated or floodproofed to one foot above the base flood elevation.
- 544 [f] All electrical outlets shall be ground fault interrupt type. The electrical service
545 disconnect shall be located on shore above the base flood elevation and when
546 possible outside the Special Flood Hazard Area.

547 **I. Special Exception Use Review**

548 The Planning Board shall hear and decide upon applications for special exception uses
549 provided for in this ordinance. The Planning Board shall hear and approve, approve with
550 conditions, or disapprove all applications for special exception uses. An applicant informed
551 by the Code Enforcement Officer or Town Planner that a special exception use permit is
552 required shall file an application for the permit with the Planning Board.

- 553 (1) Review procedure for a special exception flood hazard **and/or coastal hazard**
554 development permit
- 555 a. The flood hazard **and/or coastal hazard** development permit application with
556 additional information attached addressing how each of the special exception use
557 criteria specified in this ordinance will be satisfied, may serve as the permit

- 558 application for the special exception permit.
- 559 b. Before deciding any application, the Planning Board shall hold a public hearing on
560 the application within thirty (30) days of their receipt of the application.
- 561 c. If the Planning Board finds that the application satisfies **all** relevant requirements of
562 the ordinance, the Planning Board must approve the application or approve with
563 conditions within 45 days of the date of the public hearing.
- 564 d. A special exception permit issued under the provisions of this ordinance shall
565 expire if the work or the change involved is not commenced within 180 days of the
566 issuance of the permit by the Planning Board.
- 567 e. The applicant shall be notified by the Planning Board in writing over the signature of
568 the Chair of the Planning Board that flood insurance is not available for structures
569 located entirely over water or seaward of mean high tide.

570 J. **Certificate of compliance.**

571 No land in a special flood hazard area may be occupied or used and no structure which is
572 constructed or substantially improved may be occupied until a certificate of compliance is
573 issued by the Code Enforcement Officer subject to the following provisions:

574 (1) For new construction or substantial improvement of any elevated structure allowed by
575 this ordinance, the applicant shall submit:

576 (a). ~~The applicant must submit~~ An elevation certificate completed by a registered
577 professional Maine land surveyor, registered professional engineer, or architect for
578 compliance with Subsection 6, 7, 8 or 11 of §16.5.11.H; and

579 ~~A registered professional engineer or architect in the case of:~~

580 ~~[1] Floodproofed, nonresidential structures, for compliance with § 16.5.11.H(7); and~~

581 (b). For structures in Zones V1-30 and VE, certification by a registered professional
582 engineer or architect that the design and construction used are in compliance of
583 structures in the coastal floodplains for compliance with §16.5.11.H.(16).(b).

584 (2) The applicant shall submit written notification to the Code Enforcement Officer that
585 the development is complete and complies with the provisions of this ordinance. ~~for a~~
586 certificate of compliance is to be submitted by the applicant in writing, along with a
587 completed elevation certificate, to the Code Enforcement Officer.

588 (2) Within 10 working days, the Code Enforcement Officer is to must review the application
589 within 10 working days of receipt of the application and issue a certificate of compliance,
590 provided the building conforms with the provisions of this article.

591 (a) Review the required certificate(s) and the applicant's written notification; and

592 (b) Upon determination that the development conforms to the provisions of this
593 ordinance, shall issue a certificate of compliance.

594 K. **Review of subdivision and development proposals.**
595

596 The Planning Board must, when reviewing subdivisions and other proposed developments
597 that require review under other federal law, state law or local ordinances or regulations, and
598 all projects on five or more disturbed acres, or in the case of manufactured home parks
599 divided into two or more lots, assure that:

600
601 (1) All such proposals are consistent with the need to minimize flood damage.

602 (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are
603 located and constructed to minimize or eliminate flood damages.

604 (3) Adequate drainage is provided so as to reduce exposure to flood hazards.

605 (4) All proposals include base flood elevation, flood boundaries, and, in a riverine floodplain,
606 floodway data. These determinations shall be based on engineering practices recognized
607 by the Federal Emergency Management Agency.

608 (5) Any proposed development plan must include a ~~statement~~ condition of plan approval
609 requiring that the developer will require that structures on any lots in the development
610 having any portion of its land within a Special Flood Hazard Area, must be constructed in
611 accordance with §16.5.11.H of this ordinance. and that sSuch requirement will be included
612 in any deed, lease, purchase and sale agreement, or document transferring or expressing an
613 intent to transfer any interest in real estate or structure, including, but not limited to, a
614 time-share interest. The statement must clearly articulate that the municipality may
615 enforce any violation of the construction requirement and that fact ~~is also to~~ shall also be
616 included in the deed or any other document previously described. The construction
617 requirement must also be clearly stated on any map, plat or plan to be signed by the
618 Planning Board or local reviewing authority as part of the approval process.

619 **L. Appeals and variances**
620

621 The Board of Appeals may, upon written application of an aggrieved party, hear and decide
622 appeals where it is alleged that there is an error in any order, requirement, decision, or
623 determination made by, or failure to act by, the Code Enforcement Officer in the administration
624 or enforcement of the provisions of this Ordinance. The Board of Appeals may also grant a
625 variance from the requirements of the ordinance when the development request requires the
626 Code Enforcement Officer as permitting authority. See §16.2.12.F.(6). Appeals of Planning
627 Board decisions must go to the State Superior Court.
628

629 **M. Appeal Procedure for Administrative and Variance Appeals**

630

631 (a) An administrative or variance appeal may be taken to the Board of Appeals by an
632 aggrieved party within thirty days after receipt of a written decision of the Code
633 Enforcement Officer or Planning Board.

634

635 (b) Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as
636 appropriate, shall transmit to the Board of Appeals all of the papers constituting the record
637 of the decision appealed from.

638

639 (c) The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of
640 its receipt of an appeal request.

641

642 (d) The person filing the appeal shall have the burden of proof.

643

644 (e) The Board of Appeals shall decide all appeals within thirty-five days after the close of the
645 hearing, and shall issue a written decision on all appeals.

646

647 (f) The Board of Appeals shall submit to the Director of Planning and Development, a report
648 of all variance actions, including justification for the granting of the variance and an
649 authorization for the Code Enforcement Officer to issue a Flood Hazard Development
650 Permit, which includes any conditions to be attached to said permit.

651

652 (g) Any aggrieved party who participated as a party during the proceedings before the Board
653 of Appeals may take an appeal to Superior Court in accordance with State laws within
654 forty-five days from the date of any decision of the Board of Appeals.

655

656 **N. Enforcement and penalties**

657

658 (1) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance
659 pursuant to Title 30-A MRSA § 4452.

660

661 (2) The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this
662 Ordinance.

663

664 (3) In addition to other actions, the Code Enforcement Officer may, upon identifying a violation,
665 submit a declaration to the Administrator of the Federal Insurance Administration requesting a
666 flood insurance denial. The valid declaration shall consist of:

667

668 (a) The name of the property owner and address or legal description of the property sufficient
669 to confirm its identity or location;

670

671 (b) A clear and unequivocal declaration that the property is in violation of a cited State or
672 local law, regulation, or ordinance;

673

- 674 (c) A clear statement that the public body making the declaration has authority to do so and a
675 citation to that authority;
676
677 (4) Evidence that the property owner has been provided notice of the violation and the prospective
678 denial of insurance; and,
679
680 (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National
681 Flood Insurance Act of 1968, as amended.
682

683 **O. Validity and severability**

684
685 If any section or provision of this ordinance is declared by the courts to be invalid, such decision
686 shall not invalidate any other section or provision of this ordinance.
687

688 **P. Conflict with other ordinances**

689
690 This ordinance shall not in any way impair or remove the necessity of compliance with any other
691 applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this ordinance
692 imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this
693 ordinance shall control.
694